



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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24-ORD-013

January 17, 2024

In re: Monty Corbett/Breathitt–Wolfe EMS, Inc.

Summary: The Office is unable to find that the Breathitt–Wolfe EMS, Inc. (“the Corporation”) violated the Open Records Act (“the Act”) because the Office is unable to find that it is a public agency subject to the Act.

Open Records Decision

On December 1, 2023, Monty Corbett (“Appellant”) submitted a request for records to the Corporation. The Appellant requested the “EMS runs” performed by the Corporation in Wolfe County during 2022 and 2023. On December 15, 2023, having received no written response from the Corporation, the Appellant initiated this appeal.¹

“Each *public agency*, upon any request for records made under [the Act], shall determine within five (5) [business] days . . . after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision.” KRS 61.880(1) (emphasis added). Here, the Appellant claims the Corporation violated KRS 61.880(1) because it did not respond to his request in writing or provide him with the requested records. However, an entity is only subject to the Act if it is a “public agency,” as defined by KRS 61.870(1). On appeal, the Corporation states it was not required to issue a written response to the Appellant’s request, or otherwise comply with the Act, because it is not a “public agency.”

¹ The Appellant states a representative of the Corporation orally denied his request during a telephone conversation. The Appellant also raises many issues related to the quality of services the Corporation provides. However, those complaints do not involve the application of the Act, and therefore, an appeal under KRS 61.880(2) is not the proper forum for the Appellant to raise such concerns. *See, e.g.*, 23-ORD-218; 23-ORD-166 n.2; 23-ORD-048 n.1; 22-ORD-244 n.3.

No one disputes that the Corporation is a private, for-profit entity.² A private entity, such as the Corporation, only becomes a “public agency” subject to the Act if it is a “body which, within any fiscal year, derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds.” KRS 61.870(1)(h). Here, the Corporation claims it does not meet the definition of a “public agency” under KRS 61.870(1)(h) because, “while it has requested funding from Wolfe County, it has never been provided funding from Wolfe County.” The Corporation further argues the Appellant has provided no proof that it receives any funds from state or local authorities.

When a requester claims that a private entity is a public agency subject to the Act, the burden is on the requester to make a *prima facie* case that, in the fiscal year covering the scope of his or her request, at least 25% of the funds the entity expended were from state or local funds. *See, e.g.,* 23-ORD-070; 21-ORD-173. Here, the Appellant admits he has been unsuccessful in determining the sources of the Corporation’s funding. Thus, the Appellant has failed to make a *prima facie* case that the Corporation receives at least 25% of its funds expended from state or local funds. As a result, the Office cannot find that the Corporation is a public agency subject to the Act.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under KRS 61.880(3), the Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings. The Attorney General will accept notice of the complaint emailed to OAGAppeals@ky.gov.

Russell Coleman
Attorney General

/s/ Matthew Ray
Matthew Ray
Assistant Attorney General

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² The Corporation’s records on file with the Kentucky Secretary of State indicate that it is a for-profit corporation that was incorporated on April 25, 2019.

Distributed to:

Monty Corbett
Jarred Fannin