



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

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24-ORD-034

February 14, 2024

In re: Billy Jo Boyce/Lexington Police Department

**Summary:** The Lexington Police Department (“the Department”) did not violate the Open Records Act (“the Act”) when it denied a request for records because the requester is not a resident of the Commonwealth.

***Open Records Decision***

Billy Jo Boyce (“Appellant”) submitted a request to the Department for various records related to its investigation of a motor vehicle collision that resulted in her niece’s death. To meet the Act’s residency requirement, the Appellant alleged she was an individual authorized to act on behalf of a resident of the Commonwealth. *See* KRS 61.870(10)(f). The Appellant, however, currently resides in Idaho and did not describe on whose behalf she was authorized to act. In a timely response, the Department denied the Appellant’s request because she does not qualify as a “resident of the Commonwealth” under KRS 61.870(10). This appeal followed.

Under KRS 61.872(2)(a), only a “resident of the Commonwealth shall have the right to inspect public records.”<sup>1</sup> The Act provides seven ways in which a person may

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<sup>1</sup> The Office notes that KRS 61.872(2)(a) gives residents of the Commonwealth the statutory right to demand access to public records. It does not, however, prohibit nonresidents from obtaining public records. Rather, if a public agency refuses to provide a nonresident with public records then the nonresident has no recourse under the Act to demand the agency comply with the request. Further, it is questionable whether the Office has jurisdiction to even consider an appeal by a nonresident. “If a *complaining party* wishes the Attorney General to review a public agency’s denial of a request to inspect a public record, the *complaining party* shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection. . . . The Attorney General shall review the request and denial and issue . . . a written decision stating whether the agency violated provisions of KRS 61.870 to 61.884.” KRS 61.880(2)(a) (emphasis added). Thus, while KRS 61.872(2)(a) uses the term “resident of the Commonwealth,” KRS 61.880(2)(a) is not so limited and permits an appeal by “a complaining party.” KRS 61.880(2)(a), therefore, clearly allows an appeal to the Attorney General when the “complaining party” believes the agency has erroneously declared the “complaining party” to be a nonresident. Because the only issue before the Office in this appeal is the Appellant’s claim that the Department has erroneously applied the residency requirement to her, the Office has jurisdiction to consider the issue. However, because a nonresident has no statutory right to inspection,

qualify as a “resident of the Commonwealth.” See KRS 61.870(10). If the requester fails to provide a statement regarding his or her residency qualifications, then the agency’s records custodian may ask the requester to provide such a statement. KRS 61.872(2)(a).

The Office has previously found that an agency may ask for a “statement” in support of residency. See, e.g., 22-ORD-120. One way in which a requester may qualify as a resident is if he or she is an individual who “*has been authorized* to act on behalf of an individual or business entity defined in” KRS 61.870(10)(a) to (e). KRS 61.870(10)(f) (emphasis added). Because a requester may only rely on KRS 61.870(10)(f) if he or she “has been authorized” to do so, it is reasonable for the agency’s records custodian to ask for a copy of such authorization. Otherwise, a person could claim to act on another’s behalf without having first obtained that person’s consent. Further, if a requester could merely claim to be acting on a resident’s behalf, without identifying the resident or providing proof of his or her authorization, then KRS 61.870(10)(f) would completely eviscerate the Act’s residency requirement. Thus, while the general rule is that an agency’s records custodian may only ask for a “statement” of residency, 22-ORD-120, the agency’s records custodian may nevertheless ask for proof of the requester’s “authorization” to act on another’s behalf if KRS 61.870(10)(f) is the basis on which the requester relies to establish residency.

Here, the Appellant is the aunt of the decedent about whom the records relate. She admits she does not reside in the Commonwealth and neither did her niece. She also admits her niece’s husband is the executor of her niece’s estate and he allegedly “does not want the records to be provided.” The personal representative of a decedent’s estate (*i.e.*, the executor or administrator) is the person lawfully authorized to act on behalf of the estate. See, e.g., KRS 395.195 (establishing the transactions authorized by personal representatives); KRS 411.130(1) (requiring a civil action for wrongful death to be prosecuted by the personal representative of the deceased). Because the Appellant is not the personal representative of her niece’s estate, she is not authorized to act on behalf of the estate.<sup>2</sup> Accordingly, the Department did not violate the Act by denying the Appellant’s request because she does not qualify as a “resident of the Commonwealth” under KRS 61.870(10).

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a public agency cannot violate the Act by denying a nonresident’s request—regardless of the reason it provides when denying the request. Thus, in future appeals involving a “complaining party” who does not appear to be “a resident of the Commonwealth,” the Office may ask for a statement regarding the complainant’s residency because, if the complainant has no statutory right to inspection, then that fact is dispositive of whether the agency “violated the provisions of” the Act. KRS 61.880(2)(a).

<sup>2</sup> Further, it is not clear if the Appellant’s niece would have qualified as a resident of the Commonwealth under KRS 61.870(10)(a) to (e). The Appellant admits she did not “reside” in the Commonwealth. Thus, even if the Appellant were the personal representative of the estate, it is not clear that she would be acting “on behalf of an individual or business entity defined in” KRS 61.870(10)(a) to (e). KRS 61.870(10)(f).

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to 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/ Marc Manley  
Marc Manley  
Assistant Attorney General

#29

Distributed to:

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