



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

24-ORD-052

March 5, 2024

In re: Jennifer Toribio Naas/Masterson Station Homeowners' Association

Summary: The Office cannot find that the Masterson Station Homeowners' Association (the "Association") violated the Open Records Act ("the Act") because the Office cannot find that it is a "public agency" subject to the Act.

Open Records Decision

On January 30, 2024, Jennifer Toribio Naas ("Appellant") submitted a request to the Association for various types of records. On February 8, 2024, having received no response from the Association, the Appellant initiated this appeal.

"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 Association violated the Act because it did not respond to her request in writing or provide her 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 Association admits that it did not respond to the Appellant's request because it is a "private Kentucky non-profit, non-stock corporation" and "not a 'public agency' that possesses 'public records.'"

A private entity, such as the Association, can only become 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). The requester carries the burden 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 did not attempt to make such a *prima facie* case. Thus, the Office cannot find that the Association is a public agency subject to the Act. *See also* 15-ORD-145 (concluding that a homeowners' association is not 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

#050

Distributed to:

Jennifer Toribio Naas
Zachary G. Cato
Mary Wethington
Lena Campbell