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25-ORD-060

March 7, 2025

In re: William Sharp/Department of Corrections

Summary: The Department of Corrections ("the Department") did not violate the Open Records Act ("the Act") when it determined a request posed an unreasonable burden under KRS 61.872(6).

Open Records Decision

William Sharp ("Appellant") submitted a six-part request to the Department seeking records related to the education of county jailers regarding "inmate fees, copays, reimbursements, or other collections efforts for medical, dental, and psychological care" received by inmates. Relevant to this appeal, the Appellant sought, "all correspondence" between six Department employees and "any Kentucky jailer" from 2022 to 2024 related to "inmate fees, copays, reimbursements, or other collections efforts for medical care received in custody"; "Copies of all reports, notices, memoranda, statistical analyses, or other documents regarding the Commonwealth's denial of reimbursement requests submitted pursuant to" KRS 441.045(7)(b); and "Copies of all reports, memoranda, or other documents" from 2022 to 2024 "documenting instances of double reimbursement (or attempts to seek double reimbursement) for inmate medical care in violation of" KRS 441.045(13)(e).[1]

In response, the Department denied the request under KRS 61.872(3)(b) because it did not "precisely describe" the records sought by the Appellant. It explained that the request, as written, "yielded approximately 20,000 pages of records." Thus, the Department states that providing responsive records would

[1] The Department's initial responses to the Appellant's request sought two extensions of time to respond. The Appellant states that he did not object to those requests and he has not challenged those extensions on appeal.

require "hundreds of hours" to "perform any necessary redactions" and the request, therefore, would place an "unreasonable burden" on it. This appeal followed.[2]

Under KRS 61.872(6), a public agency may deny a request to inspect records "[i]f the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency." However, an agency must substantiate its denial "by clear and convincing evidence." *Id.* When determining whether a particular request places an unreasonable burden on an agency, the Office considers the number of records implicated, whether the records are in a physical or electronic format, and whether the records contain exempt material requiring redaction. *See, e.g.*, 97-ORD-088 (finding a request implicating thousands of physical files pertaining to nursing facilities to be unreasonably burdensome, where the files were maintained in physical form in several locations throughout the state, and each file was subject to confidentiality provisions under state and federal law). Of these, the number of records implicated "is the most important factor to be considered." 22-ORD-182. In addition to these factors, the Office has found that a public agency may demonstrate an unreasonable burden if it does not catalog its records in a manner that will permit it to query keywords mentioned in the request. *See, e.g.*, 96-ORD-042 (finding that it would place an unreasonable burden on the agency to manually review thousands of files for the requested keyword to determine whether such records were responsive). When a request does not "precisely describe" the records to be inspected, KRS 61.872(3)(b), the chances are higher that the agency is incapable of searching its records using the broad and ill-defined keywords used in the request.

Here, the Department has identified approximately 20,000 pages of records that are responsive to the Appellant's request. Further, the Department explains that responsive records concern the medical information of inmates which will necessitate the redaction of personal and medical information under KRS 61.878(1)(a) and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), which is incorporated into the Act by KRS 61.878(1)(k). HIPAA is a federal law that applies to "covered entities," which include "health care providers." 45 C.F.R. § 160.103. Entities covered under HIPAA, such as the Department, which provides health care services to individuals, are prohibited from releasing the "individually identifiable

[2] The remaining subparts of the request sought training materials and records related to "counties' assignment" of their "ability to receive payment from the Commonwealth to 'the person providing' the medical care to inmates." The Department provided all responsive training materials and explained that it does not possess records related to the "counties' assignment." The Appellant has not challenged those parts of the Department's response.

health information" of individuals. *Id.* The Department explains that responsive records "relate to fees associated with medical care of inmates and, therefore, would contain" individually identifiable health information that it "would have to redact prior to disclosure." In 14-ORD-109, a school system sustained its denial under KRS 61.872(6) where the request implicated over 6,200 emails subject to mandatory review and redaction under state and federal privacy laws. *See also* 11-ORD-173 (involving over 8,500 emails subject to redaction under state and federal law). Similarly, the Department has explained that its approximately 20,000 responsive records are subject to mandatory review and redaction under HIPPA. Thus, the Department here has carried its burden under KRS 61.872(6) that reviewing 20,000 pages of responsive records places an unreasonable burden on the agency.[3]

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/ Zachary M. Zimmerer
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Distributed to:

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[3] Because KRS 61.872(6) is dispositive of the issue on appeal, it is unnecessary to address the Department's arguments under KRS 61.872(3)(b).