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25-ORD-119

May 13, 2025

In re: EWU Media/Louisville Metro Government

Summary: Louisville Metro Government (“Metro”) did not violate the Open Records Act (“the Act”) when it denied a request for public records on the basis of the requester’s residency.

Open Records Decision

EWU Media (“Appellant”) submitted two requests to Metro on January 25 and February 10, 2025. Both requests sought various investigative records related to two criminal investigations. In response to the January 25 request, Metro determined the request was for a commercial purpose, and thus charged a higher fee for copies of the records under KRS 61.874(5). Four days later, Metro issued an additional denial because it found the Appellant is not a resident of the Commonwealth, as the term is defined by KRS 61.870(10). In response to the February 10 request, Metro denied the request as being for a commercial purpose. This appeal followed.

Under KRS 61.872(2)(a), “[a]ny resident of the Commonwealth shall have the right to inspect public records.” “A requester must fit the definition of ‘resident of the Commonwealth’ at the time his request is made.” 25-ORD-018. KRS 61.870(10)(g) defines “resident of the Commonwealth” to include a “news-gathering organization” defined in KRS 189.635(9)(b). The Appellant, in its original requests and on appeal, asserts that it qualifies as a “news-gathering organization” because it is “[a]n online-only newspaper or magazine that publishes news or opinion of interest to a *general audience . . .*” KRS 189.635(9)(b)1.e. (emphasis added).

To determine whether the Appellant qualifies as a resident of the Commonwealth, we start with the text of the Act. To qualify as a “news-gathering organization” under KRS 189.635(9)(b)1.e, the entity must: (1) be online-only; (2) be a newspaper or magazine; (3) publish news or opinion (4) that is of interest to a

general audience; and (5) not be affiliated with any entity described in KRS 196.635(9)(b)2. Metro does not dispute that the Appellant satisfies the first and fifth of these elements. Instead, it argues that the Appellant does not satisfy elements 2, 3, and 4.

As described in its requests and on appeal, at the time the request was made, the Appellant published its material and videos on Facebook and YouTube, which could be accessed via links on the Appellant's website. Metro states the Appellant's "Facebook, YouTube channel, and website contain only 'true crime' summaries using video and audio taken directly from law enforcement case files and supplemented with superimposed text, video effects, sound effects, and dramatic voice overs." Further, Metro points to a disclaimer contained in all the Appellant's posted videos, which states, "All information contained in this video presentation is provided for entertainment purposes only. . . ." The Appellant does not dispute Metro's assertions that it is focused solely on "true crime." Instead, it asserts the Act does not "exclude[] crime-focused journalism from the definition of news-gathering organizations."¹ However, the Act does limit the definition of news-gathering organization under KRS 189.635(9)(b)1.e. to entities that "publish[] news or opinion of interest to a general audience."

Here, it is not immediately clear that an entity that re-tells the stories of salacious crimes "for entertainment purposes only" is publishing "news or opinion." And, even if such material qualifies as "news or opinion," it is not apparent that "true crime" stories are "of interest to a general audience." By limiting the KRS 189.635(9)(b)1.e. definition of news-gathering organization to entities that publish news or opinion "of interest to a general audience," the Act makes clear that not just any published "news or opinion" qualifies the entity as a news-gathering organization.² Ultimately, however, the Office need not decide today whether an

¹ The Appellant also asserts that an agency must accept the requester's statement that it is a "news-gathering organization." The Office has previously stated that an agency may not demand proof of the requester's residency status. *See, e.g.*, 22-ORD-120. Here, however, the Metro did not demand proof of the Appellant's residency status. Rather, it disagreed with the Appellant's assessment of itself and issued a denial. The Office has previously found an agency's denial does not violate the Act when the record on appeal demonstrates that the requester was not a resident of the Commonwealth at the time of the request. *See, e.g.*, 25-ORD-018 (finding the requester was not a resident of the Commonwealth); 24-ORD-238 (same).

² Indeed, KRS 189.635(9)(b)1.f. includes in the definition of "news-gathering organization" "[a]ny other entity that publishes news content by any means to the general public" However, such entities are not included in the definition of "resident of the Commonwealth" under the Act. KRS 61.870(10)(g) (including only news-gathering organizations "as defined in KRS 189.635(9)(b)1.a. to e." in the definition of "resident of the Commonwealth").

entity that only publishes “true-crime” content “publishes news or opinion of interest to a general audience.” KRS 189.635(9)(b)1.e. also requires the entity to be a “newspaper or magazine.” The record before the Office makes clear that the Appellant is neither.

The Act does not define newspaper or magazine. Under KRS 446.080(4) “[a]ll words and phrases” used in the Kentucky Revised Statutes “shall be construed according to the common and approved usage of language,” except for “technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law.” A newspaper is “a paper that is printed and distributed usually daily or weekly and that contains news, articles of opinion, features, and advertising,” and a magazine is a “print periodical containing miscellaneous pieces (such as articles, stories, poems) and often illustrated.”³

Relevant here, both definitions clearly encompass entities with a focus on *printed* materials. The record in this appeal makes clear that, at the time of the request, the Appellant published its content with videos. Simply publishing or republishing videos on YouTube or Facebook does not turn an individual or entity into a “newspaper or magazine” as defined by the Act.⁴ As such, because the Appellant was not a newspaper or magazine at the time it made its requests, Metro’s responses to those requests did not violate the Act.⁵

³ See *Newspaper*, MERRIAM-WEBSTER.COM, available at <https://www.merriam-webster.com/dictionary/newspaper> (last visited May, 2, 2025); *Magazine*, MERRIAM-WEBSTER.COM, available at <https://www.merriam-webster.com/dictionary/magazine> (last visited May, 13, 2025). The Office has previously referred to Merriam-Webster’s Dictionary when determining the common meaning of words not defined by the Act. See, e.g., 20-ORD-061; 08-ORD-140.

⁴ The Appellant asserts that Metro’s “archaic, print-centric definition of journalism . . . fails to recognize how news is delivered in the digital age.” But the issue is not how news is delivered in the digital age; what is at issue here is the meaning of the words the General Assembly chose to use in the Act. The text of the Act does not include just any digital publication in the definition of “news-gathering organization.” See KRS 61.870(10)(g) (excluding from the definition of “resident of the Commonwealth” “[a]ny other entity that publishes news content by any means to the general public. . .”). Further, the Appellant argues that an agency may not deny a request based on its determination of whether the requester is or is not a “news-gathering organization” without violating the United States and Kentucky Constitutions. That question is beyond the scope of the Office’s review in this appeal. Here, the Office’s analysis is limited to whether Metro violated the Act. See KRS 61.880(2)(a).

⁵ Under KRS 61.872(2)(a), only a “resident of the Commonwealth” has the “right to inspect public records.” Because a nonresident has no statutory right of inspection, a public agency cannot violate the Act by denying a nonresident’s request—regardless of the reason it provides when denying the request. Thus, the Office cannot find that Metro violated the Act when it denied both the Appellant’s requests on the grounds that they were made for a commercial purpose.

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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