



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-133

May 22, 2025

In re: Melanie Barker/Cabinet for Health and Family Services

**Summary:** The Cabinet for Health and Family Services (“the Cabinet”) violated the Open Records Act (“the Act”) when it failed to explain how an exemption applied to public records. However, the Cabinet did not violate the Act when it withheld, under KRS 61.878(1)(k), records the disclosure of which is prohibited by KRS 205.175.

### *Open Records Decision*

Melanie Barker (“the Appellant”) submitted a request to the Cabinet for “the ‘Contract/Agreement’ – for any employer – who has participated in the Employee Child Care Assistance Partnership Program.” In a timely response, the Cabinet provided a blank form titled “Employee Child Care Assistance Partnership Notice of Action.” The Cabinet added, however, that if the “request is for the completed forms, the records are exempt pursuant to KRS 61.878(1)(a) and (k).” This appeal followed.

The Cabinet argues it fulfilled the Appellant’s request when it provided the blank form. On appeal, however, the Appellant clarifies that she was seeking the completed forms from all participants in the program. A public agency does not violate the Act when it makes a reasonable construction of an ambiguous request and acts accordingly. *See, e.g., 22-ORD-240; 20-ORD-153.* Here, however, the Cabinet responded to *both* possible meanings of the Appellant’s request and denied the request insofar as it might relate to completed forms. Therefore, the sufficiency of the Cabinet’s response and the merits of its denial are at issue.

When a public agency denies a request for records, it must “include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” KRS 61.880(1). The agency must “provide particular and detailed information” in giving its explanation, not merely a “limited and perfunctory response.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). “The agency’s explanation must be detailed enough to permit [a reviewing] court to assess its claim and the opposing party to challenge it.” *Ky. New*

*Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013). Thus, when an agency withholds records under KRS 61.878(1)(a) as “public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy,” it must articulate the privacy interest that is implicated. *See, e.g.*, 23-ORD-279; 20-ORD-033. Similarly, when the agency withholds records under KRS 61.878(1)(k) as “public records or information the disclosure of which is prohibited by federal law or regulation or state law,” it must identify the provision of law that prohibits disclosure. *See Edmondson*, 926 S.W.2d at 858; *see also* 20-ORD-060; 97-ORD-178. Here, the Cabinet merely cited the statutory provisions without explanation. Therefore, the Cabinet violated the Act.

On appeal, however, the Cabinet identifies KRS 205.175 as the statute prohibiting disclosure of the requested records. KRS 61.878(1)(k) exempts from disclosure “[a]ll public records or information the disclosure of which is prohibited by federal law or regulation or state law.” As the Cabinet explains, the requested forms pertain to the Employee Child Care Assistance Partnership, a public assistance program in which the Cabinet participates. KRS 205.175(1) provides that “[a]ll letters, reports, communications, and other matters, written or oral, to the cabinet or any of its agents, representatives, or employees, or to any board or official” involved in public assistance programs “shall be absolutely privileged.” Under KRS 205.175(2), the “[i]nformation received or transmitted shall not be published or be open for public inspection,” with certain exceptions that do not apply here. Thus, the requested records are exempt from disclosure under KRS 61.878(1)(k).<sup>1</sup> Accordingly, the Cabinet did not violate the Act when it denied the Appellant’s request for the completed public assistance forms.

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.

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<sup>1</sup> Because KRS 61.878(1)(k) is dispositive of this issue, it is unnecessary to address the applicability of KRS 61.878(1)(a).

**Russell Coleman**  
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Distributed to:

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