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25-ORD-141

May 29, 2025

In re: EWU Media/The McCracken County Sheriff's Office

Summary: The McCracken County Sheriff's Office ("the Sheriff's Office") did not violate the Open Records Act ("the Act") when it denied a request for public records on the basis of residency.

Open Records Decision

EWU Media ("Appellant") submitted a request to the Sheriff's Office seeking various investigative records related to a specific criminal investigation. In response, the Sheriff's Office denied the request, stating the Appellant is not a resident of the Commonwealth as defined by KRS 61.870(10). 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." The Appellant, in its original request and on appeal, states that it qualifies as a "news-gathering organization" under KRS 189.635(9)(b)1.e. That subdivision defines a "news-gathering organization" as "[a]n online-only newspaper or magazine that publishes news or opinion of interest to a *general audience* and is not affiliated with any entity described in subparagraph 2. of this paragraph" (emphasis added).

To start, it is necessary to turn to the text of the Act. KRS 189.635(9)(b)1.e requires five elements for an entity to qualify as "news-gathering organization." The entity must be an (1) online-only (2) newspaper or magazine (3) that publishes news or opinion (4) of interest to a general audience and (5) is not affiliated with any entity described in KRS 196.635(9)(b)2. Here, the Sheriff's Office does dispute that the Appellant is an online-only entity that is not affiliated with any entity described in

KRS 196.635(9)(b)2. Instead, it argues that the Appellant is not a “newspaper or magazine.”

As proof, the Sheriff’s Office points to the Appellant’s self-professed status as a “Youtube, Facebook, and other social media platform content creator.” The Sheriff’s Office asserts that “Youtube channels or Facebook profiles [cannot] be considered an online only newspaper or magazine because [those terms] go[] against the plain meaning of the words ‘newspaper or magazine.’” Thus, according to the Sheriff’s Office, because the Appellant is not a newspaper or magazine, it cannot be a resident of the Commonwealth under KRS 189.635(9)(b)1.e.

In response, relying on 24-ORD-049, the Appellant asserts that public agencies may not deny a request based on residency if the requester states he or she is a resident. However, 24-ORD-049 addressed a public agency that had denied a request because it disagreed with the requester’s statement that his request was for a noncommercial purpose. This distinction is important because a requester’s right of access to nonexempt records does not change based on the purpose of his or her request.¹ But if a requester is not a resident of the Commonwealth, he or she does not even have the right to inspect any public records. *See* KRS 61.872(2)(a). Thus, a public agency does not violate the Act when it correctly denies a request based on residency, even if the requester has stated he or she is a resident of the Commonwealth. *See, e.g.,* 25-ORD-119 (finding the public agency did not violate the Act when it denied a request based on residency despite the appellant’s assertion that it was a resident of the Commonwealth); 25-ORD-018; 24-ORD-238.

The Act does not define newspaper or magazine. Under KRS 446.080(4) “[a]ll words and phrases” used in Kentucky statutes generally must be “construed according to the common and approved usage of language.” According to Merriam-Webster’s Dictionary, 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.”²

¹ Rather, if public records are requested for a commercial purpose, the public agency may impose certain requirements, including a reasonable fee including staff costs, a certified statement of the purpose for which the records will be used, and the establishment of a contract. *See* KRS 61.874(4).

² The Office has previously referred to Merriam-Webster’s Dictionary to determine the common meaning of words not defined by the Act. *See, e.g.,* 20-ORD-061; 08-ORD-140

Relevant here, both definitions clearly encompass entities with a focus on *printed* materials.³ The record in this appeal makes clear that, at the time of the request, the Appellant published videos online. Simply publishing videos, whether on YouTube or Facebook, does not turn an individual or entity into a “newspaper or magazine” under the Act.⁴ As such, because the Appellant was not a newspaper or magazine at the time it made its request, the Sheriff’s Office’s response to its request did not violate the Act.⁵ *See also* 25-ORD-119.

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.

³ In the context of KRS 189.635(9)(b)1.e., which specifically includes “online-only” entities, *printed* materials refers to written materials in an online forum.

⁴ The Appellant describes the work that goes into creating its videos to argue it is a news gathering organization. But the question before the Office is not whether the Appellant’s employees do work that may be described as journalism. Rather, the relevant question is whether the Appellant is “magazine or newspaper,” because that is what the statute’s text requires. The Act does not include any digital entity that styles itself as a news gathering organization in its definition of “resident of the Commonwealth.” *See* KRS 61.870(10)(g) (excluding from residents of the Commonwealth “[a]ny other entity that publishes news content by any means to the general public . . .”).

⁵ The Sheriff’s Office notes that the Appellant’s website states it has a “digital news website currently under development, set to soon deliver the latest news from around the world and local news reports.” The Sheriff’s Office also observes that the news website’s most recent posting occurred “10 months ago,” and the website’s landing page “still has stories from 2018 and 2023” on it. The Appellant does not dispute these facts. The existence of a previously active news website has no bearing on whether the Appellant was a “news-gathering organization” at the time it submitted its request.

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