



COMMONWEALTH OF KENTUCKY
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25-ORD-143

May 30, 2025

In re: Merissa Henderson/Norton Healthcare

Summary: The Office cannot find that Norton Healthcare (“Norton”) 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 April 15, 2025, Merissa Henderson (“Appellant”) submitted a request to Norton for “all forensic medical evaluations, notes, photographs, and consultation reports” related to an evaluation conducted between January 4 and 8, 2018. On May 2, 2025, having received no response from Norton, 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). Here, the Appellant claims Norton violated the Act because it did not respond to her request in writing or provide her with the requested records within five business days of its receipt of her request. However, an entity is only subject to the Act if it is a “public agency,” as defined by KRS 61.870(1).

Here, Norton states it is not a public agency under KRS 61.870(1). Indeed, it is a private corporation, and is therefore only a “public agency” subject to the Act if, “within any fiscal year, [it] 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 in Kentucky were from state or local funds. *See, e.g.*, 24-ORD-166; 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 Norton is a public agency subject to the Act.¹

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
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

Merissa Henderson
Sara Clark Davis, Associate General Counsel, Norton Healthcare

¹ After this appeal was initiated, Norton advised that it has produced all requested records pursuant to its obligations under federal law. *See* 45 C.F.R. § 164.524(b) (governing covered entities' obligations related to requests for medical records).