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25-ORD-349

November 6, 2025

In re: Melanie Barker/Kentucky State Treasury

**Summary:** The Office cannot find that the Kentucky State Treasury (“the Treasury”) subverted the intent of the Open Records Act (“the Act”), within the meaning of KRS 61.880(4), because the Treasury is not the custodian of the records at issue.

***Open Records Decision***

On August 25, 2025, Melanie Barker (“the Appellant”) submitted a request to the Treasury for “records ‘stating or identifying’ the amount of funds received or deposited into” the trust and agency account mentioned in KRS 186.040(5)(b) “for year 2024” and “records of ‘withdrawals’ from [the same account] for the year 2024.” In a timely response, the Treasury stated it was “not the custodian of records” for the items requested and the Appellant’s request “should be directed to the Cabinet for Health and Family Services.” This appeal followed.

KRS 186.040(4)(a) allows a person obtaining or renewing a certificate of registration for a motor vehicle at the county clerk’s office to make an optional donation of one dollar to the Child Care Assistance Fund. Under KRS 186.040(5)(b), at least 95 percent of those donations “shall be deposited into a trust and agency account in the State Treasury to the credit of the Cabinet for Health and Family Services” (“the Cabinet”), to be used by the Cabinet for certain enumerated purposes.

As part of the Commonwealth’s “unified and integrated system of accounts” under KRS 41.280(1), “[t]he Treasurer shall keep a record of each depository, showing the amount deposited and the date, and the amount checked out and the date,” KRS 41.280(1)(c), and “shall provide the Finance and Administration Cabinet with information regarding accumulated receipts and the status of warrants,” KRS 41.280(1)(d). Furthermore, “[t]he Treasurer shall maintain electronic records in the unified and integrated system of accounts that show all checks issued, the name of the payee, date, and amount and shall be in a format that is readily reconcilable

with the warrants issued by the Finance and Administration Cabinet.” KRS 41.130(4).

Under KRS 61.880(4), a person who “feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to . . . the misdirection of the applicant,” may appeal to the Attorney General. Here, the Appellant claims the Treasury “misdirected” her to the Cabinet as the proper custodian of the requested records. However, the Treasury argues that the records in its “information database for deposits and payments made in the Child Care Assistance Fund” are the records of other agencies. Specifically, the Treasury states the records belong to the county clerks, who collect the funds; the Cabinet, which administers the funds; and the Finance and Administration Cabinet, which accounts for the funds. Thus, the Treasury claims it is not the custodian of the database, but merely an administrator of the account for other agencies, and it cannot decide whether the records are subject to disclosure under the Act because the transactions recorded in the database are “ultimately controlled” by the Cabinet.

A public agency “is responsible only for those records within its own custody or control.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 856 (Ky. 2013) (citing *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136 (1980)). Although the Treasury maintains the database in question, it does not follow that the Treasury is necessary the custodian of the account records. In 19-ORD-091, the Office found the Commonwealth Office of Technology could not be considered the custodian of “data on state-issued devices, used by employees of other agencies,” because only those other agencies were competent “to make confidentiality determinations, or decisions as to responsiveness of records or applicability of exemptions, that require knowledge and expertise resting solely with the user agency” in control of the records. Similarly, here, the Treasury claims it merely maintains the database for the Cabinet, which has ultimate control over the records.

In support of its position, the Treasury has provided a copy of its records retention schedule. According to that schedule, the Treasury’s Deposits Folder “verifies that the funds the state receives are deposited into the proper Treasury accounts per the requirements of KRS 41.280, as well as funds redeposited through the CR5 process,” while “[t]he original depository information is retained at the Finance and Administration Cabinet.”<sup>1</sup> Notably, under “Access Restrictions,” the schedule states: “Agencies shall consult legal counsel regarding open records matters” (emphasis added). Thus, the retention schedule suggests that other agencies, not the

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<sup>1</sup> See Kentucky State Treasury, Records Retention Schedule, “Deposits Folder,” Series 03507, available at <https://kdla.ky.gov/records/RetentionSchedules/Documents/State%20Records%20Schedules/kytreasurer.PDF> (last accessed Nov. 4, 2025).

Treasury itself, are to determine whether records of deposits with the Treasury should be publicly disclosed under the Act.

It is not apparent whether the Appellant has previously attempted to obtain transaction records for the Child Care Assistance Fund from the Cabinet, or from any other agency. Nevertheless, as the Office held in 19-ORD-091, the Treasury is not the proper custodian of the Cabinet's information database containing those transactions. Thus, based on the record presented, the Office cannot find that the Treasury subverted the intent of the Act by misdirection of the applicant, within the meaning of KRS 61.880(4).<sup>2</sup>

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.

**Russell Coleman**  
Attorney General

/s/ Zachary M. Zimmerer  
Zachary M. Zimmerer  
Assistant Attorney General

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Distributed to:

Ms. Melanie Barker  
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Ms. Katrina Stoner

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<sup>2</sup> Because this issue is dispositive of the appeal, it is unnecessary to address the Treasury's argument that providing the requested information would require it to "create records" to satisfy the Appellant's request.