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26-ORD-020

January 16, 2026

In re: Ice Miller LLP/Office of Medical Cannabis

Summary: The Cabinet for Health and Family Services, Office of Medical Cannabis (“the Agency”) did not violate the Open Records Act (“the Act”) when it withheld confidential or proprietary records under KRS 61.878(1)(c).

Open Records Decision

On September 17, 2025, law firm Ice Miller LLP (“the Appellant”), representing an entity called Nectar Markets of Kentucky, LLC, submitted a request to the Agency for, *inter alia*, a “copy of the application, including all application contents and materials, submitted by” certain applicants who received medical cannabis business dispensary licenses or Tier III cultivation licenses. The Agency provided the requested applications, but withheld “supporting documents submitted by applicants (*e.g.*, documentation of sufficient capital)” on the grounds that the Act “exempts from disclosure ‘[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained . . . [f]or the grant or review of a license to do business.’ KRS 61.878(1)(c)(2)(d).” The Agency added that “[t]hese supporting documents are records that a private company considers proprietary and confidential and are not readily disclosed to the public or a competitor.”¹ On November 17, 2025, the Appellant submitted a renewed request specifically for “copies of the requested materials submitted by each applicant to satisfy the **documentation of sufficient capital** requirement” (emphasis in original). The Agency denied that request on the same basis. This appeal followed.

¹ The Agency also redacted “personal information, including residential addresses, phone numbers, email addresses, driver’s license numbers, dates of birth, and social security numbers related to the ‘Individuals and Entities of Interest’ section of the records” under KRS 61.878(1)(a). Those redactions are not at issue in this appeal.

KRS 61.878(1)(c)2.d. exempts from disclosure “[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained [f]or the grant or review of a license to do business.” Here, as is clear from the terms of the Appellant’s request, the Agency compiles and maintains the records at issue for the granting of licenses to do business as a medical cannabis cultivator or dispensary. Further, the initial application for a cannabis business license is governed by 915 KAR 1:010 § 3(5)(q), which requires “the applicant [to] submit [d]ocumentation of sufficient capital available to the applicant, either on deposit or through extension of credit from one (1) or more financial institutions.” As the Agency explains, all medical cannabis business license applicants were required “to provide bank account information or letters of credit from financial institutions, which it compiled and maintains, in order to be considered for the grant of” a license. Thus, the records requested by the Appellant are clearly “required by an agency to be disclosed to it” within the meaning of KRS 61.878(1)(c)2.

The remaining question is whether the records are “generally recognized as confidential or proprietary.” In *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995), the Court considered the applicability of KRS 61.878(1)(c)2. to required disclosures of “a financial history of [a] corporation, projected cost of the project, the specific amount and timing of capital investment, copies of financial statements and a detailed description of the company’s productivity, efficiency and financial stability.” The Court concluded, “It does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is ‘generally recognized as confidential or proprietary.’” *Id.* Similarly, in *Marina Management Services, Inc. v. Commonwealth, Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995), the Court found KRS 61.878(1)(c)1.² applicable to “information on asset values, notes payable, rental amounts[,] related party transactions, profit margins, net earnings, and capital income,” which would provide “the ability to ascertain the economic status of [private] entities without the hurdles systematically associated with acquisition of such information about privately owned organizations.” Accordingly, the Office has recognized that information about “how well-capitalized [a] company is” constitutes confidential or proprietary information. 17-ORD-243; 17-ORD-198. That is precisely the nature of the records at issue here.

Under KRS 61.878(4), “[i]f any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.” Here, the Appellant claims the disputed records could “be produced on a limited, redacted basis.” However, the Agency explains that “the capital documents at issue consist wholly of confidential financial information (e.g., account numbers, amounts, terms, conditions, etc.)” and

² Although KRS 61.878(1)(c)1. is a separate subsection from the one at issue here, it contains the same language regarding records “generally recognized as confidential or proprietary.”

therefore cannot be redacted to remove such information. Accordingly, the Agency did not violate the Act when it withheld records constituting “documentation of sufficient capital” of private entities in reliance on KRS 61.878(1)(c)2.d.

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/ James M. Herrick
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Assistant Attorney General

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