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26-ORD-114

March 23, 2026

In re: Jewel Wireman/Big Sandy Area Development District

**Summary:** The Big Sandy Area Development District (“the District”) violated the Open Records Act (“the Act”) by failing to cite the applicable statutory exception that justifies withholding the records and explain how it applies. However, the District ultimately invoked KRS 209.140, incorporated into the Act by KRS 61.878(1)(l), and its denial is justified on that basis.

***Open Records Decision***

On October 22, 2025, Jewel Wireman (“the Appellant”) submitted a request to the District for copies of “any and all records [the District] may have pertaining to my mother.”<sup>1</sup> The Appellant noted that she is the “daughter of Grace Wireman,” provided her mother’s date of birth, and stated that she was “currently in the process of pursuing emergency guardianship for my mother and would greatly appreciate guidance on how to properly submit this request under Kentucky’s Open Records Act.” On October 28, 2025 (after the close of business), the Appellant sent a follow-up email regarding the status of her October 22, 2025, request.<sup>2</sup> By email dated October 29, 2025, the District’s Executive Director advised the Appellant that her October 28, 2025, email was the first email his agency had received from her. Without further explanation, the District stated it was “unable to release any information at this time due to HIPAA regulations. Once you have been appointed Guardian, please provide

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<sup>1</sup> In particular, the Appellant requested: (1) “Documentation, notes, or reports referencing her cognitive decline or related issues”; (2) “Records of any individuals or agencies contacted regarding her condition”; and (3) “Any outcomes, determinations, or follow-up actions recorded by your office.”

<sup>2</sup> The Appellant sent her initial request at 3:40 p.m. on Wednesday, October 22, 2025, and the District’s response was therefore due by the close of business on Wednesday, October 29, 2025. Under KRS 61.880(1), a public agency has five business days following receipt of a request in which to send a written response.

me with the documentation and we will provide you with any information that we possess and that we can legally release that relates to your request.”<sup>3</sup>

In response, the Appellant reiterated on October 30, 2025, that she was “currently in the process of pursuing emergency guardianship” for her mother and further acknowledged “that certain health information cannot be released without proper authorization under HIPAA.” However, the Appellant also noted that she made her original request under the Act, “which allows access to certain non-medical records held by public agencies, even when guardianship has not yet been established.” The Appellant clarified that she is “not seeking confidential medical information, but rather any public documentation, reports, communications, or determinations maintained” by the District “that may relate to actions taken by” it relating to her mother. On October 31, 2025, the Executive Director notified the Appellant that he was forwarding “what information that [*sic*] I have to our attorney for review” and stated that he would “get back to” the Appellant.

In a final response dated November 3, 2025, the District stated it was denying the Appellant’s request “pursuant to restrictions provided for by [HIPAA], as enacted on August 21, 1996, and the resulting regulations issued by the U.S. Department of Health and [Human] Services and the HIPAA Privacy Rule.” On December 5, 2025, the Appellant reiterated that she did not request any records exempt from disclosure under HIPAA; rather, she asked for “non-medical public records” under the Act and “specifically acknowledged that any protected medical information could and should be properly redacted.” This appeal followed.

On appeal, counsel for the District maintains that the District did not receive the Appellant’s October 22 request until it received her email, to which it was attached, on October 29. The District also asserts that “neither request stated that [the Appellant] was not requesting any HIPAA protected medical records.” The District further noted that the Appellant “does not appear to be questioning that [its] records regarding Grace Wireman are in fact HIPAA protected records.” According to the District, its only contact with Grace Wireman resulted from its contract with the Cabinet for Health and Family Services (“CHFS”), Department for Aging and Independent Living.<sup>4</sup> The District advises that Grace Wireman died on January 7, 2026, and that Ms. Wireman’s passing does not nullify her privacy rights under

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<sup>3</sup> The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 42 U.S.C. § 1320d *et seq.*, is incorporated into the Open Records Act by KRS 61.878(1)(k). Because the Appellant has consistently maintained that she is not asking for copies of any records that are protected from disclosure under HIPAA, and the District ultimately invoked KRS 209.140, which is controlling under the circumstances presented, further discussion of HIPAA is unwarranted.

<sup>4</sup> The District included copies of its current agreement with CHFS; the CHFS-approved “Homecare Case Management Policies and Procedures”; the Notice of Privacy Practices required by CHFS; and the approved forms the District uses under its agreement with CHFS.

HIPAA. Finally, the District acknowledges that the Appellant’s December 5, 2025, email clarifies that she is asking for “information regarding any referrals made by [the District] to [CHFS] pursuant to KRS Chapter 209,” but asserts, for the first time, that such records are confidential and that KRS 209.140 prohibits disclosure of any such records. Notwithstanding deficiencies in the District’s initial response, the Office agrees that KRS 209.140, which is incorporated into the Act by KRS 61.878(1)(l), is controlling.

Under KRS 61.880(1), a public agency must determine within five business days whether to grant a request for public records or deny it and notify the requester, in writing, of its decision. When a public agency denies a request under the Act, its written response 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). Its response cannot be merely “limited and perfunctory.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996); KRS 61.880(2)(c). In other words, “[t]he 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). However, a public agency is not “obliged in all cases to justify non-disclosure on a line-by-line or document-by-document basis.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 851 (Ky. 2013).

Upon receipt of the Appellant’s request on October 29, 2025, the District sent a timely response per KRS 61.880(1), but it merely stated it was “unable to release any information at this time due to HIPAA regulations.” This “limited and perfunctory response” violated the Act. In particular, the District violated KRS 61.880(1) by failing to explain how either HIPAA or any regulations it was invoking applied to specific records it was withholding on that basis.<sup>5</sup> On appeal, the District cites KRS 209.140 and 922 KAR 5:070 but again fails to explain how KRS 209.140 applies to the records withheld. Thus, the District’s initial response did not comply with the Act.

Nevertheless, under KRS 209.140(1), “All information obtained by the department<sup>[6]</sup> staff or its delegated representative, as a result of an investigation made pursuant to this chapter, shall not be divulged” (emphasis added).<sup>7</sup> Insofar as the District possesses any responsive documents, notes, reports, outcomes, determinations, or follow-up actions regarding Grace Wireman’s cognitive decline or

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<sup>5</sup> That response also did not cite HIPAA or any of the regulations promulgated thereunder.

<sup>6</sup> For purposes of KRS Chapter 209, which relates to the “protection of adults who may be suffering from abuse, neglect, or exploitation,” KRS 209.010(1), the term “department” refers to the Department for Community Based Services within CHFS. KRS 209.020(3).

<sup>7</sup> None of the limited exceptions codified at KRS 209.140(1)(a)–(f) apply here.

any related issues, those records fall within the parameters of KRS 209.140(1), and the District properly denied the Appellant's request on that basis.

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/ Michelle D. Harrison  
Michelle D. Harrison  
Assistant Attorney General

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Distributed to:

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