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26-ORD-135

March 30, 2026

In re: John Davis/Kentucky Real Estate Commission

Summary: The Kentucky Real Estate Commission (“the Commission”) did not violate the Open Records Act (“the Act”) when it partially denied a request for public records because the requester is not a resident of the Commonwealth.

Open Records Decision

John Davis (“the Appellant”) submitted a request to the Commission for records related to a specific complaint. In response, the Commission provided several hundred pages of documents, but it withheld seven records as confidential attorney-client communications and attorney work product. This appeal followed.

Under KRS 61.872(2)(a), “[a]ny resident of the Commonwealth shall have the right to inspect public records.” A public agency “may require the applicant to provide a statement in the written application of the manner in which the applicant is a resident of the Commonwealth under KRS 61.870(10)(a) to (f).” *Id.* The Act defines “resident of the Commonwealth” in KRS 61.870(10) as:

- (a) An individual residing in the Commonwealth;
- (b) A domestic business entity with a location in the Commonwealth;
- (c) A foreign business entity registered with the Secretary of State;
- (d) An individual that is employed and works at a location or locations within the Commonwealth;
- (e) An individual or business entity that owns real property within the Commonwealth;
- (f) Any individual or business entity that has been authorized to act on behalf of an individual or business entity defined in paragraphs (a) to (e) of this subsection; or
- (g) A news-gathering organization as defined in KRS 189.635(9)(b)1.a. to e.

The requester must qualify as a resident under at least one of these paragraphs to be entitled to inspect records under the Act. *See, e.g.*, 26-ORD-033.

On appeal, the Department asserts the Appellant is not entitled to inspect public records because he is not a resident of the Commonwealth. A public agency may properly deny a request for records that does not contain a statement of the manner in which the requester is a resident of the Commonwealth. *See, e.g.*, 25-ORD-136; 21-ORD-193. Here, the Appellant provided an address for a post office box in Texas and did not state the manner in which he qualified as a resident of the Commonwealth under KRS 61.870(10).

Further, because only a “resident of the Commonwealth” has the “right to inspect public records,” KRS 61.872(2)(a), a nonresident has no statutory right of inspection. Accordingly, a public agency cannot violate the Act by denying a nonresident’s request, regardless of the reason it gives when denying the request. *See, e.g.*, 25-ORD-156; 25-ORD-119 n.5. Thus, “even if a public agency chooses to provide responsive records despite the requester’s status as a nonresident, the agency cannot violate the Act with its production of records or its redaction of those records.” 25-ORD-156 (citing 25-ORD-108). Here, because the Commission was not obligated under the Act to provide records to the Appellant, it did not violate the Act when it partially denied the Appellant’s request.

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
James M. Herrick
Assistant Attorney General

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Distributed to:

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