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26-ORD-262

June 8, 2026

In re: Matthew D. Hardin/Cabinet for Health and Family Services

Summary: Because the requester has made a *prima facie* showing that certain public records exist in the possession, custody, or control of the Cabinet for Health and Family Services ("the Cabinet"), the Cabinet violated the Open Records Act ("the Act") by failing to adequately explain the search it performed and by failing to rebut the presumption that such records exist.

Open Records Decision

On April 15, 2026, Matthew D. Hardin, of MDH Properties of Texas, LLC ("the Appellant"),[1] submitted a request to the Cabinet's Department for Medicaid Services ("DMS") for public records "pertaining to or reflecting amounts paid to and/or received from individual hospitals for Medicaid services provided during state fiscal years ending 2022, 2023, 2024, and 2025." To aid the Cabinet in locating the records efficiently, the Appellant stated the "most likely custodians include any DMS unit or division responsible for Medicaid supplemental payments (possibly the DMS division of Fiscal Management)."

Regarding the specific records sought, the Appellant clarified that he was requesting records containing particular information[2] "in whatever form your agency

[1] The Appellant explained that "MDH Properties owns real property in Ohio County, Kentucky," which makes it a "resident" within the meaning of KRS 61.870(10)(e).

[2] Specifically, the Appellant requested: "records reflecting . . . the amount of any supplemental payment and/or add-on payment made to reimburse each hospital, for each SFY, for healthcare services provided to Medicaid enrollees and/or uninsured patients, whether made via fee for services (FFS) or through Managed Care Organizations (MCOs) and "records containing . . . the amount of any state directed payment made to reimburse each hospital, for each SFY, for healthcare services provided to Medicaid enrollees and/or uninsured patients." (emphasis added). For both parts of the request, the Appellant stated that "in the event the state breaks this information up by type of hospital

maintains it, on a per-hospital or per entity basis, by state fiscal year SFY 2022-SFY 2025."[3]

On April 23, 2026, the Cabinet denied the Appellant's request because "the information requested does not exist in any record format. Under Kentucky's Open Records Act, a public agency is not required to compile information for a particular request or otherwise create a document to satisfy a request." The Cabinet further stated it would "need to compile the particular information into a report. Consequently, the Cabinet is denying your request since it is not required to create a record to satisfy a request." On May 8, 2026, the Appellant initiated this appeal challenging the Cabinet's denial of his request.

On appeal, the Appellant explains that "publicly available information in numerous attachments of Kentucky's Commonwealth Medicaid plan, as well as Kentucky's approved preprints for directed payment programs included on the Centers for Medicare and Medicaid Services website, indicates that Kentucky has certain payment programs for hospitals that provide Medicaid services." In addition, "Kentucky has programs listed in Attachments 4.19-A and B of the state plan, and there are preprints for directed payment programs." The Appellant provides a list of the "[p]rogram or payment" and the corresponding "[p]ublic source identifying the program or payment" establishing that "Kentucky has or had . . . supplemental payments made to reimburse hospitals or physicians employed or affiliated with hospitals for healthcare services to Medicaid enrollees or uninsured patients." Next, he also provides a similar list establishing that "Kentucky has or had . . . directed payment programs for hospitals or physicians employed or affiliated with hospitals for healthcare services to Medicaid enrollees or uninsured patients." In summary, the Appellant maintains that "states including the Commonwealth of Kentucky with payment programs for hospitals that provide Medicaid services maintain these records, as affirmed by their . . . statutes, websites, rules, and also releases by peer jurisdictions."[4] He also provides a list of "examples from my request to help identify the Kentucky-equivalent of the requested classes of records."

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or class of services, *e.g.*, children's hospitals, public or private hospitals, long-term acute care hospitals, [or] inpatient/outpatient hospital services, I request such breakout."

[3] The Appellant clarified that he was *not* seeking "information related to nursing home facilities, intermediate care facilities, ambulance providers, non-emergency transportation, or other non-hospital healthcare providers" and was not seek[ing] patient-level information or protected health information."

[4] The fact other jurisdictions have provided the Appellant with comparable records in response to requests made pursuant to their counterparts to Kentucky's Open Records Act, while useful context, is not dispositive or legally relevant in determining whether the Cabinet discharged its duty under the Act.

In response, the Cabinet reiterates that existing legal authority confirms a public agency "is not obligated to respond to questions or provide information." To comply with the Appellant's request, the Cabinet states that it "*will need to go into each file*, compile the particular information into a document, and create a record that conforms to the Appellant's requested parameters. The information sought does not exist in a record as requested" (emphasis added). Because the "Cabinet does not have the particular information in the format requested," the Cabinet maintains that its response did not violate the Act.

Once a public agency states affirmatively that it does not possess any existing, responsive records, the burden shifts to the requester to make a *prima facie* case that the requested records exist in the possession, custody, or control of the agency. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester makes a *prima facie* case that the records do or should exist, the agency must provide "a written explanation for their nonexistence." *Eplion v. Burchett*, 354 S.W.3d 598, 603 (Ky. App. 2011) (quoting 10-ORD-078). Further, upon the requester making a *prima facie* case, "the agency may also be called upon to prove that its search was adequate." *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341). A requester's bare assertion that a public agency must or should possess the requested records is not adequate to make a *prima facie* case that the agency does, in fact, possess the records. *See*, *e.g.*, 22-ORD-040. Rather, to make a *prima facie* case that the agency possesses or should possess the requested records, the requester must provide a statute, regulation, or factual support for that contention. *See*, *e.g.*, 26-ORD-168; 21-ORD-177; 11-ORD-074. The Appellant has done this.

Here, the Appellant has not relied on a bare assertion to support his contention that the Cabinet possesses existing, responsive records; instead, he cites both relevant sections of the Kentucky Revised Statutes and the corresponding regulations, in addition to information derived from the Cabinet's website, each of which confirm the Cabinet possesses or takes certain actions related to the requested records. Most importantly, the Cabinet has admitted it possesses records containing the information identified by the Appellant. According to the Cabinet, it can "*go into each file* [and] compile the particular information into a document" (emphasis added). But that Appellant did not request that the Cabinet compile information for him. Rather, he identified particular types of information and asked for records that contain that information. Because the Cabinet confirmed that it does possess records that contain the information sought, and those must be produced unless exempted from the Act, the Appellant has made a *prima facie* case that responsive records exist.[5]

[5] The Office notes that the Cabinet does not argue that the Appellant's request does not precisely describe records, or that it would cause an unreasonable burden for the Cabinet to comply.

Because the Appellant has made a *prima facie* case that the Cabinet possesses records containing at least some of the requested information, the burden shifts to the Cabinet to provide a written explanation for the nonexistence of such records and to demonstrate the adequacy of the search it conducted. *See* 23-ORD-038; 21-ORD-278; 95-ORD-96. However, the record on appeal is devoid of any information regarding the nature and scope of the Cabinet's search.

"An adequate search for records is one using methods reasonably designed to find responsive records." 23-ORD-038; 95-ORD-096. To carry its burden that its search was adequate, the agency "must, at a minimum, specifically describe the types of files or identify the employees' whose files were searched." 24-ORD-161; 23-ORD-038; *see* KRS 61.880(1); KRS 61.880(2)(c). Just as the requester does not make a *prima facie* case that the agency possesses or should possess certain records "merely by asserting they do, an agency cannot meet its burden that its search was adequate merely by asserting it searched for records." 24-ORD-161; 23-ORD-038. The Appellant has made a *prima facie* case that some responsive records exist in the Cabinet's possession, and the Cabinet has acknowledged that files containing at least some of the records do exist; accordingly, the burden of rebutting the presumption that responsive records exist falls on the Cabinet under KRS 61.880(1) and KRS 61.880(2)(c). 25-ORD-033. Because the Cabinet has not attempted to rebut that presumption, or adequately explained the search methods it used, its response violated the Act.

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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