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26-ORD-269

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In re: Jane Dentinger/Louisville Metro Government

Summary: Louisville Metro Government (“Metro”) violated the Open Records Act (“the Act”) when it failed to explain how an exemption applied to public records. However, Metro did not violate the Act when it withheld medical records under KRS 61.878(1)(a).

Open Records Decision

On October 22, 2025, Jane Dentinger (“the Appellant”) submitted a request to Metro for “all records concerning” the Appellant’s deceased mother “that were investigated by Elder Abuse” in connection with two “initial events” on February 1, 2003, and September 17, 2004. On December 15, 2025,¹ Metro stated it had retrieved the records and asked for “a photo of [the Appellant’s] ID” to verify that she was the daughter of the deceased, explaining that “[r]edactions will be less for an immediate family member.” After the Appellant complied, Metro asked whether the Appellant could provide “proof from the courts” that she was the executrix of her mother’s estate. The Appellant replied that she was not the executrix. The following day, Metro provided to the Appellant 739 pages of documents, noting it had redacted “date of birth, social security number, phone number, policy numbers, bank account numbers, home addresses and personal e-mail addresses per KRS 61.878(1)(a) in protection of personal privacy.” Metro further stated that “[m]edical notes were withheld and redacted per KRS 61.878(1)(k).” This appeal followed.

The Appellant claims Metro violated the Act when it failed to “[i]dentify any specific statutory exemption to justify withholding additional responsive records beyond” the redacted records it provided. Here, Metro cited KRS 61.878(1)(k) as its basis for withholding medical notes. However, when a public agency denies a request

¹ Under KRS 61.880(1), a public agency must respond to a request for public records within five business days. Here, it is unclear from the record whether Metro responded to the Appellant prior to this communication on December 15, 2025. However, the timeliness of Metro’s response is not among the issues raised by the Appellant.

for records, it 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) (emphasis added). The agency must “provide particular and detailed information” in giving its explanation, not merely a “limited and perfunctory response.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). “The 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). Thus, when an agency withholds records under KRS 61.878(1)(k) as “public records or information the disclosure of which is prohibited by federal law or regulation or state law,” it must identify the provision of law that prohibits disclosure. *See Edmondson*, 926 S.W.2d at 858; *see also* 20-ORD-060; 97-ORD-178. Here, Metro merely cited the statutory provision without explanation. Therefore, Metro violated the Act.

On appeal, however, Metro no longer relies on KRS 61.878(1)(k). Instead, Metro cites KRS 61.878(1)(a), which exempts from disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Metro explains that 215 pages of medical records were obtained by police from nursing homes and hospitals documenting the care and treatment of the Appellant’s mother, which it withheld from the Appellant on grounds of privacy.² The Attorney General has consistently recognized a significant privacy interest in medical information that outweighs the ordinary public interest in disclosure. *See, e.g.*, 25-ORD-279; 19-ORD-207; 18-ORD-186; 09-ORD-059; 06-ORD-209; 03-ORD-208.

In this case, the Appellant claims Metro improperly denied her access to her mother’s medical records because she is not the executrix of the estate. Metro, however, points out that federal and state privacy laws afford a personal representative of the patient special access to the patient’s medical records. The Office has recognized that specific privacy laws and regulations provide a “useful guide” for discerning the contours of personal privacy protection under KRS 61.878(1)(a). 14-ORD-113; *see also* 17-ORD-103. Here, it is instructive that privacy rules under the Health Insurance Portability and Accountability Act (“HIPAA”) allow a personal representative of a patient the same right to access the patient’s protected health information as the patient. *See* 45 C.F.R. § 164.502(g)(1). And, as to deceased persons, “[i]f under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual’s estate, a covered entity must treat such person as a personal representative [with] respect to protected health information relevant to such

² The Appellant claims Metro failed to segregate nonexempt portions of records from exempt portions as required by KRS 61.878(4). However, Metro states that only the medical records have been withheld in their entirety.

personal representation.” 45 C.F.R. § 164.502(g)(4). Additionally, Metro cites KRS 422.317(1), which places limits on copying fees for medical records provided to “the patient or the patient’s attorney or the patient’s authorized representative.” These provisions illustrate the principle that the personal representative of an individual, living or dead, stands in the shoes of that person for purposes of the privacy of medical records. Thus, Metro properly considered the fact that the Appellant is not the executrix, administratrix, or other authorized representative of her mother’s estate in determining her right to access medical information. Accordingly, Metro did not violate the Act when it withheld the medical records under KRS 61.878(1)(a).

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
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/s/ James M. Herrick
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