



COMMONWEALTH OF KENTUCKY
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20-ORD-032

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In re: James Winburn/Fayette County Detention Center

Summary: The Fayette County Detention Center (“FCDC”) did not violate the Open Records Act (“Act”) in denying inmate’s request for a free copy of his medical records. KRS 422.317(1) does not apply because FCDC is not a health care provider and therefore is exempt from KRS 422.317(1). In accordance with KRS 61.874(1) and *Friend v. Rees*, 696 S.W.2d 325 (Ky. App. 1985), the denial is affirmed.

Open Records Decision

The question presented in this appeal is whether the FCDC violated the Act in denying Appellant’s December 5, 2019, request for a copy of his daily medication log and other medical records dating back to February 2019. FCDC denied his request “due to insufficient funds to cover the cost of copies. CAO Policy 8R(1)(8) requires a charge of \$0.10 per page.” As of January 13, 2020, Appellant had \$0.12 in his inmate account. He also had a “debt” of \$501.70. Thus, FCDC requested that Appellant resubmit his request when his account had sufficient funds to cover the cost of the copies.

According to KRS 61.874(1), “[w]hen copies are requested, the custodian may require a written request and advance payment of the prescribed fee.” *See also Friend v. Rees*, 696 S.W.2d 325, 326 (Ky. App. 1985). The Act does not contain a waiver of the requirements codified at KRS 61.874(1) for indigent requesters or

those unable to pay the fees. To claim a right to the subject records, however, Appellant relies upon KRS 422.317(1). KRS 422.317(1) requires a hospital or a “health care provider” to provide, without charge, a copy of a patient’s medical record to him upon written request. The statute does not define “health care provider.” However, “health care provider” is defined several times throughout the Kentucky Revised Statutes. The most expansive definition is found in KRS 304.40-260(1), the insurance code, which provides:

“Health care provider” means any physician, osteopath, dentist, podiatrist, nurse or nurse's assistant, certified registered nurse anesthetist, physical or occupational therapist, or psychologist, licensed to practice health care in this state; any hospital, medical clinic, medical foundation, health maintenance organization, extended care facility, intermediate care facility, nursing home, emergency treatment center, outpatient medical or surgical center, frontier nursing service, or any other facility or service licensed under any act of this state to provide health care within this state; or any officer, director, employer agent thereof; and any corporation, partnership or sole proprietorship which directly provides medical services to its employees.

All other definitions for “health care provider” appearing in the Kentucky Revised Statutes provide a more narrow definition, but generally always include physicians and nurses at a minimum. *See* KRS 214.450(5); KRS 217.930(2); KRS 217.5401(5); KRS 311.621(10); and KRS 405.024. No provision of the Kentucky Revised Statutes considers local or regional jails to be “health care providers.” Moreover, under KRS 422.317(2), the Department of Corrections “shall *not* be considered as a health care provider under this section[.]” KRS 422.317(2) (emphasis added). While KRS 422.317(2) does not explicitly exclude local or county jails, it in combination with the fact that no provision of the Kentucky Revised Statutes considers local or county jails to be “health care providers” provides further support that KRS 422.317(1) does not apply here.

The Department, and local correctional facilities like FCDC under the Department’s jurisdiction, are exempt from KRS 422.317(1). Appellant is not entitled to receive a free copy of his medical records from FCDC under KRS 422.317(1). Therefore, FCDC did not violate the Act.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. 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 proceeding.

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/s/ Michelle D. Harrison

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Distributed to:

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