



COMMONWEALTH OF KENTUCKY
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20-ORD-099

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In re: Melissa Stone/University of Louisville

Summary: The University of Louisville (“University”) violated the Open Records Act (“Act”) by requiring a requester to provide a “sworn, notarized statement” attesting to the noncommercial purpose of her request to inspect records.

Open Records Decision

On March 2, 2020, Melissa Stone (“Appellant”) requested several categories of records from the University. In a timely response, the University stated that it was reviewing the request and, because the request implicated records dating several years back, “additional time” was needed to fulfill the request. However, the University subsequently contacted Appellant and requested that she provide a “sworn, notarized statement . . . specifying the purpose for which the requested records will be used” because the University believed Appellant sought the records for a commercial purpose.¹ By e-mail dated April 7, 2020, Appellant stated that she was “not requesting these records for a commercial purpose. Therefore, no sworn, notarized statement is required, nor will one be provided.” Appellant contacted the University on April 17 and May 1, 2020, to inquire regarding the status of the request. On May 1, the University stated it had “not received the required certification,” and requested again that Appellant “provide a notarized statement that the records will not be used for a commercial purpose.”

¹ The University came to this conclusion because it searched the Internal Revenue Service’s directory of registered non-profit organizations and was unable to find the organization with which Appellant was affiliated.

Appellant subsequently initiated this appeal, reiterating that her March 2 request “never indicated it was for a commercial use, nor do we plan on using the records in this way.” The University has demonstrated a pattern of delaying access to records to this Appellant. *See* 20-ORD-043. For the reasons that follow, this Office finds that the University has again violated the Act.

Ordinarily, a requester’s identity or the purpose for which she seeks records is irrelevant in fulfilling a request to inspect records. *See Zink v. Commonwealth*, 902 S.W.2d 825, 828 (Ky. App. 1994). Rather, “the Legislature clearly intended to grant any member of the public as much right to access to information as the next.” *Id.* On the other hand, if the requester seeks public records for a commercial purpose as defined in KRS 61.870(4)(a), a public agency may require the requester to provide a certified statement explaining the commercial purpose. KRS 61.874(4)(b).

Here, the University assumed, with little evidence, that Appellant’s request was for a commercial purpose and refused to provide the records even after Appellant informed the University, in writing, that her request was not. Of course, the Act permits a public agency, in accepting requests for public records, to require a “[w]ritten application, signed by the applicant and with his name printed legibly on the application, describing the records to be inspected.” KRS 61.872(2)(a). In addition, KRS 61.874(4)(b) suggests that a public agency is permitted to ask whether the request is for a commercial purpose.

KRS 61.874(5) makes it unlawful for a person to obtain records for a commercial purpose without stating that purpose. KRS 61.874(5)(a). In fact, it is unlawful to state one commercial purpose and to use the records for a different commercial purpose, KRS 61.874(5)(b), just as it is unlawful to obtain records for a noncommercial purpose “if the person uses or knowingly allows the use of the public record for a commercial purpose.” KRS 61.874(5)(c). KRS 61.874(5) provides the recourse available to a public agency when a person misuses public records. However, nothing in the Act authorizes a public agency to simply designate a request as one for a commercial purpose and demand a certified statement to delay access to public records. To hold otherwise would be contrary to the statutory right of each member of the public to be provided with prompt access to public records and would impair the stated policy of the Act. *See* KRS 61.871.

It is sufficient under the Act that the Appellant stated that the request was for a noncommercial purpose. The University's duty under the Act was then to produce the records or to provide a brief explanation of the exception that authorized the University to withhold the requested records. KRS 61.878(1); KRS 61.880(1). Because it failed to do so, the University violated 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 proceedings.

Daniel Cameron
Attorney General

/s/ Michelle D. Harrison

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Distributed to:

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