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**20-ORD-155**

September 23, 2020

In re: Tresa Bridges/Greater Clark Foundation, Inc.

**Summary:** In the absence of evidence that Greater Clark Foundation, Inc. (“Foundation”) receives state or local funds, the Foundation is not a public agency that must comply with the Open Records Act (“the Act”).

***Open Records Decision***

On July 8, 2020, Tresa Bridges (“Appellant”) requested the Foundation’s latest IRS Form 990, a list of its board members with contact information, and an “instrument . . . from the Clark County Fiscal Court or any other Government agency that turned . . . assets over for indefinite use.” The Foundation did not respond to Appellant’s request. This appeal followed.

On appeal, the Foundation asserts that it is a private nonprofit corporation and therefore not subject to the Act. The Foundation, formed in 1915, formerly owned and operated Clark Regional Hospital, which it sold to another corporation in 2010. The Foundation changed its name at that time, but more recently changed it back again. Appellant claims that the proceeds from the sale of the hospital were public funds. However, Appellant provides no evidence that the hospital or the sale proceeds were ever public assets, and Appellant has mistakenly concluded that the Foundation’s change in name is evidence of a transaction.

The Foundation states that its board of directors is self-perpetuating and no director is appointed or subject to approval by any governmental body. *See* KRS

61.870(1)(g); KRS 61.870(1)(i). Furthermore, at no time has any local government official had the power to approve or veto the Foundation's activities or transactions. *See* KRS 61.870(1)(j). There is also no evidence that twenty-five percent of the Foundation's expenditures came from public funds. *See* KRS 61.870(1)(h). Lastly, the Foundation asserts that there is no "instrument" recording the transmission of assets from any governmental body to the Foundation because no such transaction has taken place.

Appellant offers no evidence that the Foundation qualifies as a "public agency" under the definition in KRS 61.870(1), whether through receipt of public funds or otherwise. Because the Foundation is not a "public agency" as defined under KRS 61.870, it is not subject to the Act, and it was not required to respond to Appellant's request.

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/ James M. Herrick

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Distributed to:

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