



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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21-ORD-014

January 29, 2021

In re: Samuel G. Hayward, Jr./Labor Cabinet

Summary: The Labor Cabinet (“Cabinet”) violated the Open Records Act (“the Act”) when it denied a request to inspect training materials. However, the Cabinet did not violate the Act when it denied requests for information and a request for records for which it is not the official custodian.

Open Records Decision

On November 5, 2020, the Cabinet received Samuel Hayward’s (“Appellant”) request for certain records related to the Office of Unemployment Insurance.¹ The Appellant’s request contained nine subparts, six of which the Cabinet denied for various reasons. This Office will address each part in turn.

First, the Appellant sought the “total amount” of sick days that unemployment referees had taken since June 2020, and the “total amount” of

¹ The Appellant had previously submitted his request to the Education and Workforce Development Cabinet in June of 2020. Following Executive Order 2020-686 and the reassignment of the Office of Unemployment Insurance to the Labor Cabinet under the Governor’s statutory reorganization authority, the Appellant’s request was forwarded to the Labor Cabinet. The Appellant initiated this appeal because he had not received a response from any public agency. While the Education and Workforce Development Cabinet’s failure to timely respond is a violation of the Act, the Labor Cabinet ultimately responded to the Appellant’s request. For that reason, the Labor Cabinet is denominated as the appropriate party against whom this appeal was taken. Because the Labor Cabinet received the request on November 5, 2020, its November 12, 2020 response was timely. *See* 2020 SB 150 § 1(8) (permitting public agencies to respond to requests made under the Act within ten days during the state of emergency).

claimants who have been found eligible for benefits but who have not yet received “a single payment.” The Act does not require public agencies to fulfill requests for information. KRS 61.872; *Dept. of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013) (“The ORA does not dictate that public agencies must gather and supply information not regularly kept as part of its records.”). The Cabinet properly denied each of these requests as requests for information.

Second, the Appellant sought copies of the training materials that would explain how to facilitate payments to claimants following an award of benefits. The Cabinet denied this request. As grounds for its denial, the Cabinet claimed that the responsive training materials are exempt from inspection under KRS 341.190(4). KRS 341.190(4) provides that “[i]nformation obtained from an employing unit or individual and other records made by the cabinet in the administration of [KRS Chapter 341] are confidential and shall not be published or be open for public inspection,” except as otherwise provided.

Recently, in 21-ORD-006, this Office considered KRS 341.190 and a similar request for training materials under the Act. There, this Office concluded that the phrase “other records,” as used in the statute, applies only to those records that contain information pertaining to specific employers or workers.² As a result, this Office found that the Cabinet could not rely on KRS 341.190 to deny inspection of the training materials at issue in that decision. *See generally* 21-ORD-006. Here, the Cabinet has not claimed that these training materials contain information about a specific employer or worker, and the Cabinet has not distinguished these training materials from those materials addressed in 21-ORD-006. Accordingly, the Cabinet violated the Act when it denied inspection of the responsive training materials.

Finally, the Appellant sought a “complete list, by day, of questions” submitted to the Governor at his daily press conferences. In response to this request, the Cabinet explained that it is not the custodian for the records the Appellant was seeking. Under KRS 61.872(4), “[i]f the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency’s public records.” Here, the Cabinet

² As a courtesy, this Office includes a copy of 21-ORD-006.

directed the Appellant to the records custodian for the Governor's Office.³ Because the Governor's Office would have the responsive records, the Cabinet did not violate the Act in its response to the Appellant.⁴

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

James M. Herrick
Assistant Attorney General

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Enclosure

Distributed to:

Samuel G. Hayward, Jr.
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³ The Appellant claims that he has submitted multiple open records requests to the Governor's Office and that he has received no response. But the Appellant has not submitted any documents in support of his claims. *See, e.g.*, KRS 61.880(2)(a). Thus, this Office is unable to consider whether the Governor's Office has violated the Act.

⁴ The Cabinet provided certain records in response to other portions of the Appellant's request and Appellant has not challenged the Cabinet's response in that regard. Accordingly, this Office declines to address those portions of the request as they are moot under 40 KAR 1:030 § 6.