



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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21-ORD-023

February 9, 2021

In re: Joshua Powell/Office of the State Medical Examiner

Summary: The Office of the State Medical Examiner (“Medical Examiner”) did not violate the Open Records Act (the “Act”) when it denied a request for records that was unreasonably burdensome.

Open Records Decision

Joshua Powell (“Appellant”) claims that he delivered a request to inspect records to the Medical Examiner on December 4, 2020. After receiving no response, he initiated this appeal on January 11, 2021.

On appeal, the Medical Examiner claims it did not receive the Appellant’s request. An agency’s obligations under the Act arise only after its receipt of a request to inspect records. KRS 61.880(1). With nothing more than the parties’ divergent claims, this Office is unable to conclude that the Medical Examiner failed to issue a timely response to a request that it had received. *See, e.g.*, 20-ORD-134; 18-ORD-056; OAG 89-81.

Now having the request, the Medical Examiner claims that it cannot comply because the request places an unreasonable burden upon it. Under KRS 61.872(6), a public agency may deny a request that “places an unreasonable burden” on the agency. However, the agency must substantiate the unreasonable burden by clear and convincing evidence. *Id.* In considering whether an agency has met that burden, this Office considers the number of records implicated, whether the records are in a physical or electronic format, and whether the records contain

otherwise exempt material requiring redaction. *See, e.g., 97-ORD-088* (finding that a request implicating thousands of physical files pertaining to nursing facilities was unreasonably burdensome, where the files were maintained in physical form in several locations throughout the state, and each file was subject to confidentiality provisions under state and federal law). In addition to these factors, this Office has found that a public agency may demonstrate an unreasonable burden if it does not catalogue its records in a manner that will permit it to query keywords mentioned in the request. *See, e.g., 96-ORD-042* (finding that it would place an unreasonable burden on the agency to manually review thousands of files for the requested keyword to determine whether such records were responsive).

Here, the Appellant has requested copies of “any postmortem examination reports generated . . . [that identify] petechiae, cutaneous periorbital petechiae, periorbital petechiae and/or any other form of facial petechiae on the decedent” from 2015 to the present.¹ The Appellant also sought all examination reports that attributed the formation of petechiae to “resuscitative efforts,” such as CPR, and all reports in which the decedent presented petechiae where the cause of death was determined to be an accident. The Medical Examiner explains that the Appellant’s request seeking all of these reports generated since 2015 implicates over 12,000 reports. The Medical Examiner is unable to search an electronic database using the specific terms associated with the condition the Appellant has specified. Rather, the Medical Examiner would have to independently retrieve over 12,000 physical reports, stored in various centers throughout the state, and manually review each report to determine whether the specified condition or terms appear in each of those reports. The Medical Examiner estimates that to comply with the request would require 30 minutes of staff time to review each report. In total, that step would require approximately 6,000 hours of staff time. But if a report were responsive to the request, the Medical Examiner would have to expend even more staff time to redact confidential information. For these reasons, this Office finds that the Medical Examiner has carried its burden by clear and convincing evidence to demonstrate that the request is unreasonably burdensome. *See, e.g., 97-ORD-088; 96-ORD-042*. Thus, the Medical Examiner did not violate the Act when it denied Appellant’s unreasonably burdensome request.

¹ Petechiae is a bleeding condition that results in pinpoint, non-blanching spots that appear on the skin and may look like a rash. *See Ailbhe McGrath, Petechiae*, NCBI BOOKSHELF, available at <https://www.ncbi.nlm.nih.gov/books/NBK482331/> (last visited Feb. 8, 2021).

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/Marc Manley
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Joshua Powell
Amy V. Barker