



COMMONWEALTH OF KENTUCKY
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21-ORD-047

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In re: Jenny Patten/Cabinet for Health and Family Services

Summary: Because the Cabinet for Health and Family Services (“Cabinet”) failed to respond to an open records request within ten days, it violated the Open Records Act (“the Act”) as modified by Senate Bill 150. The Cabinet also violated the Act when it did not produce records that should exist pursuant to a contract with a COVID-19 testing provider.

Open Records Decision

On January 27, 2021, Jenny Patten (“Appellant”) asked the Cabinet to provide “any and all information” on several subjects. Specifically, she sought “any and all information between this department [*sic*] and Labcorp,” “any and all information regarding how many positive test results, in Kentucky, have been conducted through Labcorp and included in the state positivity totals,” “any and all information regarding how many PCR positive test results, in Kentucky, have been conducted through Labcorp and included in the state positivity totals,” and “any and all information for all state contracted labs used for Kentucky CV testing.” With respect to each portion of the request, the Appellant added: “This includes but [*is*] not limited to emails, correspondence, contracts, emails, documents.” After the Cabinet failed to respond to the request within ten days, the Appellant initiated this appeal.

Normally, a public agency must respond to an open records request within three business days. KRS 61.880(1). In response to the public health

emergency caused by the novel coronavirus, however, the General Assembly modified that requirement when it enacted Senate Bill 150 (“SB 150”), which became law on March 30, 2020. SB 150 provides, notwithstanding the provisions of the Act, that “a public agency shall respond to the request to inspect or receive copies of public records within 10 days of its receipt.” SB 150 § 1(8)(a). The Cabinet violated the Act by failing to respond to the Appellant’s request within ten days.

On appeal, the Cabinet asserts that the Appellant’s request does not sufficiently describe the records sought. Under the Act, a request to inspect public records must describe those records in a manner “adequate for a reasonable person to ascertain the nature and scope of [the] request.” *Commonwealth v. Chestnut*, 250 S.W.3d 655, 661 (Ky. 2008). If the request is for copies of public records, it must “precisely describe[] the public records which are readily available within the public agency.” KRS 61.872(3)(b). The first portion of the Appellant’s request does not meet either standard because it does not identify the “department” to which it refers within the Cabinet, or the specific “information” that she seeks. The Cabinet is a large state agency, and the Appellant has not limited the scope of her request by identifying the specific information that she is seeking. Perhaps she seeks information related to contract negotiations with Labcorp, but that cannot be ascertained from a request for “all information.” Similarly, her request for “any and all information for all state contracted labs used for Kentucky CV testing” does not specify what information she seeks. Because these requests do not allow a reasonable person “to ascertain the nature and scope of [the] request,” the Cabinet did not violate the Act when it denied these portions of the Appellant’s request. *Chestnut*, 250 S.W.3d at 661.

The Appellant’s other request, seeking “any and all information” related to the positivity rate of tests administered by Labcorp, is more specific. Rather than seeking “any and all” information about Labcorp, here the Appellant seeks information related to COVID-19 tests. And, although she is requesting “any and all information,” the Appellant has nevertheless narrowed that request to e-mails, contracts, and other documents containing the requested information. In response to this request, the Cabinet provided the Appellant with copies of contracts it has executed with Labcorp and other testing providers. However, the Cabinet has not provided records related to the results

of COVID-19 tests administered by Labcorp. Under the terms of the contract the Cabinet has provided, Labcorp must report positive cases “to the state health department in the preexisting manner.” Any reasonable person reviewing the Appellant’s request could determine that these are the reports the Appellant seeks.¹ Yet the Cabinet has not produced these reports, nor has it claimed that such reports are exempt from inspection. KRS 61.880(1). For this reason, it 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/ James M. Herrick

James M. Herrick
Assistant Attorney General

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Distributed to:

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¹ This Office notes that the Appellant has routinely made similar requests to the Cabinet, and each time her requests get more specific. Based on this pattern and practice, it is clear that the Appellant is seeking statistical information related to the state’s administration of the COVID-19 testing program.