



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

21-ORD-055

March 25, 2021

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

Summary: The Cabinet for Health and Family Services (“the Cabinet”) did not violate the Open Records Act (“the Act”) when it denied a request for records that did not precisely describe the records sought.

Open Records Decision

Jenny Patten (“Appellant”) asked the Cabinet to provide “documents, regarding the cycle virus threshold for a positive Covid19 [*sic*] test. This includes but is not limited to all data, records, contracts, emails. Keywords may include (but not limited to): CV test(s), Coronavirus test(s), Labcorp, CT, cycle threshold, PCR.” She also sought “documents regarding the CT (cycle threshold) value for all PCR tests, being used for testing in the state of Kentucky.” After receiving no response, the Appellant initiated this appeal.

On appeal, the Cabinet claims that it did not receive the Appellant’s request. KRS 61.880(1) allows a public agency three business days to respond to an open records request. However, in response to the coronavirus pandemic, the General Assembly passed Senate Bill 150 (“SB 150”), which provides that during the state of emergency and “[n]otwithstanding KRS 61.872 and 61.880, 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). SB 150 took effect on March 30, 2020. Accordingly, the Cabinet would have had ten days from the date on which it received the Appellant’s requests to issue a written response. However, because it is not clear from the record that the Cabinet ever received the Appellant’s request, this Office cannot find that the Cabinet failed to issue a timely response. *See, e.g.*, 20-ORD-134; 18-ORD-056; OAG 89-81.

After receiving the request on appeal, the Cabinet denied the request because the Appellant failed to precisely describe the records that she 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 Appellant’s request does not meet either standard. A request for all records “regarding the cycle virus threshold for a positive Covid-19 test” is an “open-ended any-and-all-records-that-relate type of request,” which does not precisely describe the records sought.¹ *See, e.g.*, 08-ORD-058. This Office has consistently stated that “blanket requests for information on a particular subject need not be honored.” *See, e.g.*, OAG 90-83; 95-ORD-108; 13-ORD-077. Thus, the Cabinet did not violate the Act when it denied the 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.

¹ According to the Centers for Disease Control and Prevention, “[t]o improve the test’s ability to detect virus, an RT-PCR test creates many copies of the same genetic material from the virus in a process called amplification. The cycle threshold (Ct value) is the point at which a reaction reaches a fluorescent intensity above background levels. The Ct value indicates when the nucleic acid target is detectable in the amplification process. There is a correlation between the Ct value and the amount of viral genetic material that was present in the specimen.” *What is a cycle threshold (Ct) value from a RT-PCR test?* Centers for Disease Control and Prevention Frequently Asked Questions, available at <https://www.cdc.gov/coronavirus/2019-ncov/lab/faqs.html#Interpreting-Results-of-Diagnostic-Tests> (last visited March 25, 2021). It appears that a test is considered positive once it detects a certain amount of virus below the cycle threshold number because the test required fewer “cycles” to reproduce detectable levels of virus. Although some states require testing companies to report the “cycle threshold information” to their respective state health departments, it is not clear whether the Cabinet requests this information from the testing providers. *See, e.g.*, December 3, 2020, Mandatory Reporting of Covid-19 Laboratory Test Results: Reporting of Cycle Threshold Values, Florida Dept. of Health, available at <https://www.flhealthsource.gov/files/Laboratory-Reporting-CT-Values-12032020.pdf> (last visited March 25, 2021). This discussion of the diversity in state reporting requirements emphasizes the point that it is not clear what the Appellant seeks when she asks for all information related to the cycle threshold value of Covid-19 tests. If the Appellant would like to inspect records that testing providers have given to the Cabinet in which the testing provider explains how the tests work, she should reframe her request to ask for such records.

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Daniel Cameron
Attorney General

/s/Marc Manley
Marc Manley
Assistant Attorney General

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Distributed to:

Jenny Patten
Peyton Sands