



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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21-ORD-058

March 29, 2021

In re: Edward Dove/Cabinet for Health and Family Services

Summary: The Cabinet for Health and Family Services (“Cabinet”) did not violate the Open Records Act (“the Act”) when it did not provide records that are made confidential under KRS 620.050(5).

Open Records Decision

On February 1, 2021, attorney Edward Dove (“Appellant”) requested records pertaining to the Cabinet’s investigation of suspected child abuse by a named individual during a specified period. In a separate request on the same date, the Appellant requested records pertaining to the Cabinet’s investigation of suspected child abuse or neglect involving another named individual. After more than 20 days had passed without a response to his requests, the Appellant initiated this appeal.

On appeal, the Cabinet asserts that it never received the Appellant’s requests. 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 requests, 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.

The Cabinet further asserts that the requested records are confidential under KRS 620.050(5), which is incorporated into the Act under KRS 61.878(1)(l). Under KRS 620.050(5), “a report of suspected child abuse, neglect, or dependency and all information obtained by the cabinet or its delegated representative, as a result of an investigation or assessment made pursuant to this chapter . . . shall not be divulged to anyone except” a person who is permitted to inspect such records under KRS 620.050(5)(a) through (j). There is no evidence in this record that the Appellant is one of those individuals that may receive such records under any of the provisions of KRS 620.050(5). Therefore, the Cabinet did not violate the Act when it did not provide the records to the Appellant.

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 proceeding.

Daniel Cameron
Attorney General

/s/ James M. Herrick

James M. Herrick
Assistant Attorney General

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Distributed to:

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