



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-100**

June 1, 2021

In re: NorthKey Community Care/Kentucky Public Pensions Authority

**Summary:** The Kentucky Public Pensions Authority (“Authority”) did not violate the Open Records Act (“the Act”) when it denied a request for specific data regarding retirement system members and accounts under KRS 61.661(1)(a).

***Open Records Decision***

Northern Kentucky Mental Health Mental Retardation Regional Board, Inc. d/b/a NorthKey Community Care (“Appellant”) requested records containing specific and comprehensive information about its current and former employees who were participants in the Non-Hazardous Kentucky Employees Retirement System.<sup>1</sup> The Appellant stated that it wished to use this information to contest the Authority’s finding that the Appellant owed a certain amount in unfunded liability based on its employees’ participation in the retirement system. The Authority denied the request under KRS 61.661(1)(a), explaining that the Appellant had requested specific data about retirement system members, which is confidential. This appeal followed.

KRS 61.878(1)(l) exempts from disclosure records or information made confidential by an act of the General Assembly. Under KRS 61.661(1)(a), the General Assembly has provided that “[e]ach current, former, or retired member’s account shall be administered in a confidential manner, and specific data regarding a current, former, or retired member shall not be released for

---

<sup>1</sup> The Appellant also requested other records that do not appear to be in dispute. The Authority provided some of the requested records, but stated that it had no records responsive to other portions of the request. The Appellant has not challenged the Authority’s actions response in this regard.

publication,” except in three circumstances. First, “[t]he member or recipient may authorize the release of his or her account information.” KRS 61.661(1)(a)1. Second, the Authority “may release account information to the employer or to other state and federal agencies as it deems necessary or in response to a lawful subpoena or order issued by a court of law.” KRS 61.661(1)(a)2. And third, the Authority must release certain categories of information about current or former legislators “[u]pon request by any person.” KRS 61.661(1)(a)3.

The Appellant does not dispute that the information it requested is “specific data” about individual members’ retirement accounts. However, the Appellant argues that the records are not confidential because the Appellant is not requesting the information “for publication.” Thus, the Appellant claims that the phrase “released for publication” means that member information may be released to any member of the public for any purpose, unless the requester intends to publish the information.<sup>2</sup> Such an interpretation, however, would render each of the three exceptions to KRS 61.661(1)(a) meaningless. For example, if the General Assembly intended for any member of the public to access this information so long as he does not publish it, why would the General Assembly permit the Authority to deny an employer’s request for such information when the employer has not first obtained a subpoena? *See* KRS 61.661(1)(a)2.<sup>3</sup> Simply put, under KRS 61.661(1)(a) this information is confidential unless one of three specifically enumerated exceptions applies. None of them applies here. Thus, the Authority did not violate the Act when it denied the Appellant’s request for this information.

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.

---

<sup>2</sup> In support of its argument, the Appellant cites 13-ORD-008, which found member information confidential under KRS 61.661(1)(a). The Appellant attempts to distinguish this case by stating that the requester in 13-ORD-008 was a reporter. But that decision did not turn on the purpose of the request because KRS 61.661(1)(a) makes such information confidential in all but three enumerated circumstances.

<sup>3</sup> For this reason, the Appellant’s argument that it is entitled to this information because it is an employer lacks merit. The Authority, in its discretion, may release the account information to an employer. KRS 61.661(1)(a)2. If the Authority chooses not to voluntarily release such information to the employer, then the employer’s remedy is to obtain a subpoena, not to file a request under the Act.

21-ORD-100

Page 3

**Daniel Cameron**  
**Attorney General**

/s/ James M. Herrick

James M. Herrick  
Assistant Attorney General

#143

Distributed to:

Matthew C. Smith, Esq.  
Justin M. McNeil, Esq.