



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-104

June 3, 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 provided all responsive records it had in its possession.

Open Records Decision

Jenny Patten (“Appellant”) requested from the Cabinet a list of entities performing PCR tests for the Commonwealth of Kentucky, the contracts for the entities analyzing such PCR tests, and the receipts for any payments made to any such entities for such PCR tests. The Cabinet created a list of entities performing PCR tests and provided that list to the Appellant. The Cabinet also provided two contracts for the PCR tests. This appeal followed.

The Appellant claims that the contracts she received from the Cabinet do not reflect the number of tests performed in the Commonwealth. She therefore claims that the Cabinet must be withholding records. In response, the Cabinet asserts that it has provided the Appellant with all documents it has in its possession. The Cabinet explains that not all tests administered in Kentucky are performed subject to state issued contracts. For example, many people can obtain such tests using their own private insurance plans. Therefore, the Cabinet would not have records reflecting state payment for tests equal to the number of tests being reported. In addition, the Cabinet noted that the University of Kentucky may possess records responsive to the

tests administered by it, and that the Finance and Administration Cabinet may possess records regarding state contracts procuring testing.

Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to present a *prima facie* case that the requested records do exist. *Bowling v. Lexington-Fayette Urban Cty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). Appellant notes that there is a large discrepancy between the number of tests reflected in the contracts provided to her by the Cabinet and the number of tests reported on the state's website. However, this discrepancy does not necessarily suggest that the Cabinet possesses additional contracts or receipts that have not been provided. As the Cabinet notes, the Commonwealth did not contract for all such testing. Thus, Appellant has failed to present a *prima facie* case that the Cabinet is in possession of additional records responsive to her request. Furthermore, insofar as Appellant alleges the Cabinet should have more records in its possession, this Office is not equipped to resolve such dispute. *See, e.g.*, 20-ORD-100; 19-ORD-234; 19-ORD-083; 03-ORD-61; OAG 89-81. As such, this Office is unable to find that the Cabinet 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/ Marc Manley
Marc Manley
Assistant Attorney General

#147

Distributed to:

Jenny Patten
Peyton Sands