



COMMONWEALTH OF KENTUCKY
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21-ORD-148

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In re: Joshua Powell/Fayette County Coroner's Office

Summary: The Fayette County Coroner's Office (the "Coroner") violated the Open Records Act (the "Act") when it failed to respond in writing to a request submitted to it. The Coroner also subverted the intent of the Act by misdirecting the Appellant.

Open Records Decision

Joshua Powell ("Appellant") has sought the same record from three separate public agencies, with each public agency denying his request and claiming that another of the two agencies possess the record.

On June 22, 2021, the Appellant requested from the Coroner "copies of all policy and procedure manuals, standard operating procedure manuals or similar termed document in use by *your agency*[, which] were in use in October 2017" and copies of the policy and procedure manuals "currently in use by *your agency*." (emphasis added). On June 25, 2021, the Coroner responded by leaving a voicemail with the Appellant and stating that it did not have the requested documents "on file" in the Coroner's Office. The Coroner followed up by sending an email on July 9, 2021, reiterating the voicemail response in left approximately two weeks earlier. In its July 9, 2021, email, the Coroner directed Appellant to submit his request to the Lexington Fayette County Urban Government ("City").

On July 9, 2021, following the Coroner's instructions, Appellant submitted the same request to the City, seeking the policy and procedure manuals related to the Coroner. In a timely written response, the City likewise denied the request, and directed the Appellant to the Justice and Public Safety Cabinet ("Cabinet").

On July 13, 2021, following the City's instructions, the Appellant submitted the same request to the Cabinet. In a timely response, the Cabinet sent the Appellant back to both the Coroner and the City, claiming "County Coroners are elected officials and the Office of the State Medical Examiner (OSME) does not have any oversight or authority over the elected county corners."

First, the Coroner violated the Act when it failed to issue a timely written response to the Appellant's request. Upon receiving a request to inspect public records, a public agency "shall notify in writing the person making the request, within the five (5) day period" whether it will comply with the request. KRS 61.880(1). Instead of responding to the Appellant in writing, the Coroner left the Appellant a voicemail. The Coroner failed to issue a response in writing until July 9, 2021, approximately two weeks after receiving the request. Therefore, it violated the Act.

Second, the Coroner subverted the intent of the Act. Under KRS 61.880(4), if "a person feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to . . . the misdirection of the applicant, the person may complain in writing to the Attorney General[.]"

On appeal, the Coroner admits that it is an elected constitutional office, established under Section 99 of the Kentucky Constitution, with an elected term of four years. However, the Coroner argues that he is governed by KRS Chapter 72, and that under KRS 72.255, the Cabinet "shall adopt administrative regulations to carry out the provisions of KRS Chapter 72[.]" Thus, according to the Coroner, whatever policies govern the Coroner's Office are established by administrative regulation promulgated by the Cabinet, and the Appellant should address his request to the Cabinet.

The Appellant has been sent on a circular path. The Appellant specifically asked the Coroner to provide a copy of the policies and procedures that are in operation at the Coroner's Office. The Coroner should know what policies govern its office, and it defies logic that it does not possess copies of any such policies, or know which records are responsive to the Appellant's request. If, on the other hand, the Coroner's position is that no such policy, or at least no written policy, exists, then it should have affirmatively stated as much. *See, e.g.*, 15-ORD-018 (finding that when a requested record does not exist, the public agency must affirmatively state so when denying the request). It is true that when a public agency "does not have custody or control of the public record requested," it may direct the requester to the official custodian of the public agency possessing such records. KRS 61.872(4). But if any agency in this Commonwealth should know what policies apply to the Fayette County Coroner's Office, it is the Coroner. The Coroner has therefore misdirected the Appellant, and has subverted the intent of the Act by doing so.

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
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/s/Marc Manley
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Distributed to:

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