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21-ORD-157

August 20, 2021

In re: Glenn Hayden/Graves County School District

Summary: The Graves County School District (“District”) did not violate the Open Records Act (“the Act”) when it did not provide a copy of a record to a county resident prior to his inspection of the record under KRS 61.872(2)(a) and KRS 61.874(1).

Open Records Decision

On June 12, 2021, Glenn Hayden (“Appellant”) requested an electronic copy of the personnel action report reflecting the hiring of the District’s athletic director. In response, the District stated that the record was available for the Appellant’s inspection during its regular business hours. On appeal, the Appellant argues that he has a right to obtain a copy of the record without prior inspection. In other words, the Appellant raises the same issue that he raised in 21-ORD-143; 21-ORD-153; and 21-ORD-154.

The Appellant is a resident of the county where the records are located. Under KRS 61.872(2)(a), “[a]ny resident of the Commonwealth shall have the right to inspect public records.” Inspection of public records on the agency’s premises is the basic right provided by the Act. “*Upon inspection*, the applicant shall have the right . . . to obtain copies of all public records not exempted by the terms of KRS 61.878.” KRS 61.874(1) (emphasis added). Thus, under KRS 61.874(1), a requester’s right to obtain copies of records is conditioned on his prior inspection of those records. *See, e.g.*, OAG 76-375 (finding that “[t]he right to have copies of records is ancillary to the right of inspection and does not stand by itself,” and therefore “[i]f a person has not inspected the records he desires to copy[,] there is no requirement that copies of any records must be delivered to him”); OAG 82-629 (finding that the Act “does not contemplate

that a public agency shall send requested records to a person who has not inspected them”).

In 1992, the General Assembly enacted KRS 61.872(3), which provides that public records may be inspected either “[d]uring the regular office hours of the public agency” or “[b]y receiving copies of the public records from the public agency through the mail.” The second alternative, however, is not available to all requesters. Rather, “[t]he public agency shall mail copies of the public records to *a person whose residence or principal place of business is outside the county in which the public records are located* after he or she precisely describes the public records which are readily available within the public agency.” KRS 61.872(3)(b) (emphasis added). Thus, a person who does not live or work outside the county where the records are located is not entitled to receive copies without having first inspected the records in person at the suitable facility provided by the agency. *See Commonwealth v. Chestnut*, 250 S.W.3d 655, 661 (Ky. 2008) (finding that “KRS 61.872(3)(b) seemingly applies when someone residing outside the county in which the public records are located desires to receive copies of the public records through the mail,” not a person “in the same county as the records kept by the custodian”); *see also* 97-ORD-46 (finding that “[a] requester who both lives and works in the same county where the public records are located may be required to inspect the records prior to receiving copies”); 92-ORD-1620 (finding that KRS 61.872(3)(b) “reflects a concern that persons residing outside the county where the records are maintained should not be compelled to travel great distances in order to inspect those records”).

The District asserts that the Appellant resides or has his principal place of business within Graves County, where the record is located. The Appellant does not refute the District’s assertion. Thus, the Appellant’s right to obtain a copy of the record is merely incidental to his right under KRS 61.874(1); *i.e.*, the right to obtain a copy “[u]pon inspection.” Accordingly, the District did not violate the Act when it made the requested record available for the Appellant’s inspection during its regular business hours, as opposed to sending him a copy of the record. *See* 21-ORD-143.

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.

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