



COMMONWEALTH OF KENTUCKY  
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**21-ORD-173**

September 16, 2021

In re: Dave Burke/St. Elizabeth Medical Center

**Summary:** The St. Elizabeth Medical Center (the “Medical Center”) is not a public agency subject to the Open Records Act (“Act”).

***Open Records Decision***

On July 9, 2021, Dave Burke (“Appellant”) asked the Center for a copy of his medical file by submitting a request pursuant to the Act. On August 9, 2021, having received no response from the Center, the Appellant initiated this appeal.

The Act only permits residents of Kentucky to inspect the public records of public agencies. *See generally* KRS 61.872. “Public records” means “all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained *by a public agency.*” KRS 61.870(2) (emphasis added). Thus, for the Act to apply to the Medical Center, it must come within the definition of “public agency” under KRS 61.870(1).

The Medical Center did not respond to the notice of appeal issued by this Office. However, according to its website, the Medical Center is a “registered 501(c)(3) non-profit corporation” owned and operated by the Catholic diocese in Northern Kentucky.<sup>1</sup> Because the Medical Center is a private entity, it can only be considered a “public agency” under KRS 61.870(1) if it “derives at least

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<sup>1</sup> “About Us.” St. Elizabeth Healthcare. Available at <https://www.stelizabeth.com/care/about/> (last visited Sept. 8, 2021).

twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds.” Because it is facially apparent that the Medical Center is a private entity, the burden is on the Appellant to provide some evidence that the Medical Center derives at least 25% of the funds it expends from Commonwealth funds. But the Appellant provides no such evidence. Accordingly, the Medical Center is not a public agency subject to the Act, and it was not required to respond to the Appellant’s request or to his appeal to this Office.

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/Matthew Ray  
Matthew Ray  
Assistant Attorney General

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Distributed to:

Dave Burke  
St. Elizabeth Medical Center