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21-ORD-181

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In re: WFPL News/Cabinet for Health and Family Services

Summary: The Cabinet for Health and Family Services (“Cabinet”) violated the Open Records Act (“the Act”) when it failed to explain how exceptions to the Act applied to the record withheld. However, the Cabinet did not violate the Act when it withheld information that is prohibited from disclosure under state law.

Open Records Decision

On July 9, 2021, WFPL News (“Appellant”) requested that the Cabinet provide a “spreadsheet exported from Kentucky’s Electronic Death reporting System containing death records logged by a county coroner’s office or a medical examiner” between January 1, 2015, and May 31, 2021. The Appellant asked that the spreadsheet include “cause of death (and any underlying causes),” county of death, date of death, and whether the death was reported by a county coroner or by a medical examiner. The Cabinet provided a spreadsheet that included the requested information,¹ with the exception of counties of death. The Cabinet explained that “the addition of this data point would allow identification of decedents to an unacceptable degree,” which “would violate [the Cabinet’s] responsibility to maintain the privacy of all involved.” Although the Cabinet cited KRS 61.878(1)(a), (k), and (l), it gave no further explanation of how those exceptions applied to the withheld information. This appeal followed.

¹ The Cabinet indicated that all of the deaths were reported by county coroners, rendering the fourth field of information unnecessary.

When a public agency denies a request under an exception to the Act, it must give “a brief explanation of how the exception applies to the record withheld.” KRS 61.880(1). The agency’s explanation must “provide particular and detailed information,” not merely a “limited and perfunctory response.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). Here, the Cabinet briefly explained why it believed the county of death was “information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy” under KRS 61.878(1)(a). However, the Cabinet failed to explain how disclosing the counties of death “is prohibited by federal law or regulation or state law” under KRS 61.878(1)(k), or how disclosure of that information “is prohibited or restricted or otherwise made confidential by enactment of the General Assembly” under KRS 61.878(1)(l). Thus, the Cabinet violated the Act. *See, e.g.*, 21-ORD-099.

On appeal, the Cabinet no longer relies on personal privacy under KRS 61.878(1)(a) because, as the Cabinet acknowledges, “the privacy exception does not directly prohibit release of information after death.” Instead, the Cabinet relies on KRS 213.131, which is incorporated into the Act under KRS 61.878(1)(l), and the Health Information Portability and Affordability Act (“HIPAA”), 42 U.S.C. §§ 1320d *et seq.*, which is incorporated into the Act under KRS 61.878(1)(k).

The Cabinet indicates that the information requested by the Appellant is contained in death certificates maintained by the Office of Vital Statistics (“Vital Statistics”). Death certificates are “vital records.” *See* KRS 213.011(14). It is “unlawful for any person to permit inspection of, or to disclose information contained in vital records or to copy or issue a copy of all or part of any record *except as authorized* by [KRS Chapter 213], by regulation, or by order of a court of competent jurisdiction.” KRS 213.131(1) (emphasis added). And KRS 61.878(1)(l) exempts from inspection “[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly[.]” Accordingly, the requested information is exempt from disclosure except to the extent that inspection is permitted under KRS Chapter 213 or authorized by regulation.²

KRS 213.131(3) requires the state registrar to prepare an annual alphabetical list of deaths in Kentucky that includes the name of the deceased, date of death, and county of death. This annual list “shall be an open record

² This Office is not aware of any administrative regulation that would authorize the Cabinet to provide the requested information to the Appellant.

subject to inspection by the public upon request.” KRS 213.131(3). Thus, the only record containing vital statistics information for which inspection has been specifically authorized is the list that the state registrar is required to prepare under KRS 213.131(3). However, the Appellant did not request the annual lists of deaths, and instead sought this information from a different database.

The Cabinet provided the Appellant with a spreadsheet that included dates of death and causes of death, but not counties of death. By requesting the annual lists from the Cabinet, the Appellant could have obtained dates of death and counties of death, but not cause of death. Thus, KRS 213.131(3) does not authorize the Cabinet to release all of the data requested by the Appellant. Disclosure of that information is prohibited under KRS 213.131(1), which is incorporated into the Act under KRS 61.878(1)(l). Therefore, the Cabinet did not violate the Act when it refused to provide a spreadsheet including county of death in conjunction with cause of death.³

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 proceeding.

Daniel Cameron
Attorney General

/s/ James M. Herrick

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Distributed to:

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³ Because the Cabinet properly denied the request under KRS 213.131(1), it is unnecessary to consider the Cabinet’s alternative argument under HIPAA.