



COMMONWEALTH OF KENTUCKY  
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**21-ORD-219**

November 18, 2021

In re: Christina Brumley/Hide-A-Way Hills Property Owners Association, Inc.

**Summary:** In the absence of any proof that the Hide-A-Way Hills Property Owners Association, Inc. (the “Association”) is a public agency subject to the Open Records Act (“Act”), the Association was not required to respond to a request submitted to it under the Act.

***Open Records Decision***

Christina Brumley (“Appellant”) submitted a request to the Association for books, ballots, receipts of the last five years, and records related to the annual meeting on a specific date. Having received no response from the Association, this appeal followed.

Residents of Kentucky are permitted to inspect 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). Therefore, for the Act to apply to the Association, it must come within the definition of “public agency” under KRS 61.870(1).

Although the Association did not respond to the Appellant’s initial request for records, the Association did respond to the appeal and asserts that it is not a public agency under the Act. The Association explains that it is a “non-profit, non-stock corporation organized pursuant to KRS §§ 273.161-405.” As proof, the Association submits its articles of incorporation and its certificate of incorporation confirming that it is a “non-stock” and “non-profit”

corporation. Thus, because the Association is a private entity, it can only be considered a public agency if it “derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds.” KRS 61.870(1)(h). Because the Association has provided proof that it is a private entity, the burden shifts to the Appellant to provide evidence that at least 25% of the funds the Association expends are derived from state or local funds. But the record on appeal contains no such evidence. Consequently, the Association is not subject to the Act because it is not a public agency and it was not required to respond to the Appellant’s initial records request.

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 within 30 days from the date of this decision. 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. The Attorney General will accept notice of the complaint emailed to OAGAppeals@ky.gov.

**Daniel Cameron**  
**Attorney General**

/s/Matthew Ray  
Matthew Ray  
Assistant Attorney General

#322

Distributed to:

Christina Brumley  
Christopher P. Farris, Esq.