



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

21-ORD-220

November 18, 2021

In re: David Pennington/Mountain Comprehensive Care Center

Summary: In the absence of any proof that the Mountain Comprehensive Care Center (the “Center”) is a public agency under the Open Records Act (“the Act”), the Center was not required to respond to a request submitted to it under the Act.

Open Records Decision

David Pennington (“Appellant”) submitted a request to the Center for records relating to the operation and financial management of a specific apartment complex in Eastern Kentucky. The Center provided some of the requested records but denied the Appellant’s access to others. The Center did not cite any exemptions to the Act in support of its denial. This appeal followed.

As a threshold matter, the parties dispute whether the Center is a public agency subject to the Act. The Center claims it is a private entity, but the Appellant claims that the Center is “funded by tax dollars [and] federal and state grants[.]” Under the Act, the definition of a “public agency” includes [a]ny body which, within any fiscal year, 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). This Office has found that in the absence of evidence that a private entity receives state or local funds, the entity is not a public agency under the Act. *See, e.g.*, 21-ORD-112.

Although the Appellant alleges that the Center is funded “by tax dollars,” he provides no evidence to support his claim. The Center, however, explains that the only “tax dollars” it receives come from the Department of Housing and Urban Development (“HUD”), a federal agency, in the form of

rental subsidies for affordable housing.¹ The Center also claims to have received a grant from “Federal Home Loan Bank,” which it describes as a private entity despite containing the word “Federal” in its name. Even if there is some evidence in the record that the Center may be receiving federal funds, there is no evidence that the Center is receiving any state or local funds. The receipt of federal funds does not convert a private entity into a public agency under KRS 61.870(1)(h). Because there is no evidence in the records to support the Appellant’s claim that the Center receives state or local funds, this Office cannot find that the Center is a public agency subject to the Act. Accordingly, this Office is without jurisdiction to consider the merits of the Center’s denial of the Appellant’s 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

#323

Distributed to:
Sgt. David K. Pennington
Julie Paxton

¹ Even these funds, according to the Center, are provided directly to the tenant, who in turn, uses the funds to pay each month’s rent to the Center. Thus, the Center does not directly receive federal tax dollars from federal agencies.