



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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22-ORD-085

April 28, 2022

In re: Winston Wright/Dismas Charities, Inc.

Summary: In the absence of evidence that Dismas Charities, Inc. (“Dismas”) receives at least 25% of its funds expended in Kentucky from state or local authority funds, Dismas is not a public agency under the Open Records Act (“the Act”).

Open Records Decision

On March 22, 2022, Winston Wright (“Appellant”) requested various records from Dismas relating to the Appellant. Dismas responded by stating that it was not a “public agency” and therefore not subject to the Act. This appeal followed.

The Appellant asserts that Dismas is a public agency because it operates under contract with the Department of Corrections. Under the Act, the definition of “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). However, “any funds derived from a state or local authority in compensation for goods or services that are provided by a contract obtained through a public competitive procurement process shall not be included in the determination of whether a body is a public agency[.]” *Id.*

Dismas is a private non-profit operator of residential re-entry centers for parolees, probationers, and pre-release offenders. On appeal, Dismas has supplied an affidavit from its chief financial officer, which states that in its most recent fiscal year, “of the funds expended by Dismas in the Commonwealth of Kentucky, 5.9% were derived from Kentucky state or local authority funds.” Furthermore, the affidavit states that all of those funds “are

received in compensation for goods and services that are provided by a contract obtained through the public procurement process via competitive negotiation.” The Appellant has offered no evidence to rebut the affiant’s sworn statements. Because the record on appeal does not contain sufficient evidence to find that Dismas is a public agency under KRS 61.870(1)(h), this Office cannot find that Dismas is subject to the Act.¹ Accordingly, Dismas was not required to comply with 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 e-mailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

/s/ James M. Herrick

James M. Herrick
Assistant Attorney General

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Distributed to:

Winston Wright, #102720
Jason R. Hollon, Esq.
Mr. Steve Smith

¹ This Office has found on several previous occasions that Dismas was not subject to the Act. *See, e.g.*, 17-ORD-020; 11-ORD-109; 09-ORD-085; 02-ORD-119.