



COMMONWEALTH OF KENTUCKY
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22-ORD-168

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In re: Kurt Wallace/Kentucky Association of Counties

Summary: The Kentucky Association of Counties (“KACo”) did not violate the Open Records Act (“the Act”) by asking a requester to provide a statement demonstrating how he qualifies as a resident of the Commonwealth under KRS 61.870(10).

Open Records Decision

On Sunday, May 1, 2022, Kurt Wallace (“the Appellant”) sent an email to KACo requesting to inspect 27 categories of records. However, the Appellant’s request did not include a statement demonstrating how he qualified as a resident of the Commonwealth under KRS 61.870(10). Instead, he stated he was “a man in Kentucky.” In a timely response, KACo invoked KRS 61.872(5), claimed that some of the responsive records were stored “off-site,” and that the Appellant could expect to receive copies of the records on or before May 16, 2022. KACo also noted that the Appellant had failed to properly submit a written application under KRS 61.872(2)(a) because the request failed to include a statement demonstrating how the Appellant qualified as a resident of the Commonwealth. KACo asked the Appellant to provide “proof” of his residential status while KACo processed request. This appeal followed.

During the 2021 Regular Session, the General Assembly enacted House Bill 312 (“2021 HB 312”) which made a significant change to the Act. Effective June 29, 2021, “[a]ll public records shall be open for inspection by any resident of the Commonwealth” and “[a]ny resident of the Commonwealth shall have the right to inspect public records.” KRS 61.872. The Act defines “resident of the Commonwealth” to include an individual residing in the Commonwealth, a domestic business entity, a foreign business entity registered with the Secretary of State, a person employed in the Commonwealth, a person or business that owns real property in the Commonwealth, or any person “that has been authorized to act on behalf of” one of

these individuals. KRS 61.870(10). A “resident of the Commonwealth” also includes a “newsgathering organization” as defined in KRS 189.635(8)(b)1.a. to e. *Id.*

The official records custodian may require a person requesting to inspect records “to provide a statement in the written application of the manner in which the applicant is a resident of the Commonwealth under KRS 61.870(10)(a) to (f).” KRS 61.872(2)(a). Thus, although the official records custodian may require “a statement” from the applicant, KRS 61.872(2)(a) does not go so far as to allow the official records custodian to demand “proof” of an applicant’s residential status. Significantly, the “statement” does not have to be certified or made under oath.

Although KACo asked the Appellant to provide “proof” of his residential status in its initial response, KACo did not deny the Appellant’s request. On appeal, KACo provides emails it exchanged with the Appellant in which KACo retreated from requesting “proof,” and instead asked the Appellant “to provide the manner in which” he qualifies as a resident. KACo correctly informed the Appellant that the statement, “as a man in Kentucky,” does not demonstrate that a person qualifies as a resident of the Commonwealth under KRS 61.870(10). The Appellant responded that he “worked” in Kentucky, and thus he qualified as a resident under KRS 61.870(10)(d). KACo then produced to the Appellant 259 responsive records. Because KACo did not deny the Appellant’s request for failing to provide “proof” of residency, it did not violate the Act.

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/Marc Manley
Marc Manley
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Distribution:

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