



COMMONWEALTH OF KENTUCKY  
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**22-ORD-231**

October 31, 2022

In re: Mark Graham/Christian County Chamber of Commerce

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

***Open Records Decision***

On September 21, 2022, Mark Graham (“Appellant”) submitted a request containing three subparts to the Chamber for “live access” to various records. Having received no response from the Chamber, the Appellant re-submitted his request on September 22 and again on September 23. On September 23, the Chamber confirmed receipt of the Appellant’s requests and stated that “[a] reply should be expected by early next week.” However, on September 28, the Chamber explained to the Appellant that it is not a public agency under KRS 61.870(1) and is not required to respond to his requests. On October 3, 2022, having received no further response from the Chamber, the Appellant initiated this appeal.

Upon receiving a request to inspect records, a *public agency* must decide within five business days whether to grant the request or deny the request and explain why. KRS 61.880(1). However, “public agency” is defined under KRS 61.870(1). A private entity, such as the Chamber, is not a “public agency” subject to the Act unless it is a “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). The Chamber states on appeal that “it does not, within any fiscal year, derive at least 25% of its funds from any state or local funds.” The

Appellant presents no evidence to contradict the Chamber's claims. *See, e.g., 22-ORD-027* (requester failed to present evidence the local Chamber derived 25% of its funding from state or local funds).<sup>1</sup> Thus, this Office cannot find that the Chamber is subject to the Act because there is no evidence that it qualifies as a public agency under KRS 61.870(1).

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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](mailto:OAGAppeals@ky.gov).

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

s/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

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Distributed to:

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<sup>1</sup> Under KRS 61.880(2)(c) “[t]he burden of proof in sustaining the action shall rest with the agency.” However, the burden is on a requester to prove that the entity to which he submitted the request is a public agency subject to the Act because KRS 61.880(2)(c) does not apply if the entity is not an “agency.”