



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN  
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE  
SUITE 200  
FRANKFORT, KY 40601  
(502) 696-5300

24-ORD-148

June 18, 2024

In re: Gabrielle Sorresso/Kentucky Cabinet for Health and Family Services

**Summary:** The Kentucky Cabinet for Health and Family Services (the “Cabinet”) did not violate the Open Records Act (“the Act”) when it partially denied a request for records because the requester is not a resident of the Commonwealth.

***Open Records Decision***

Gabrielle Sorresso (“Appellant”) submitted a request to the Cabinet for “historic childcare provider data for the state of Kentucky.” The Appellant specified that she requested “a list of child care facilities that were ever active in [Kentucky] from the early 2000s to present,” and that the list should include each “childcare facilities’ name, address, facility type (including licensed, unlicensed, and family day homes), license issue/expiration date, date opened/closed, . . . capacity,” and “whether the center accepts subsidies, quality rating, or cost.” In a timely response, the Cabinet partially granted the request and provided “the only existing record responsive to the Appellant’s request.”<sup>1</sup> The Cabinet also partially denied the request because it does not possess “historical data” and “does not have readily available information for the issue /expiration dates or open/closure dates of the child care centers.” This appeal followed.

On appeal, the Cabinet now claims the request was properly denied because the Appellant does not qualify as a “resident of the Commonwealth” under KRS 61.870(10). Under KRS 61.872(2)(a), only a “resident of the Commonwealth

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<sup>1</sup> Once a public agency states affirmatively that it does not possess any additional records, the burden shifts to the requester to present a *prima facie* case that additional records do exist. See *Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester establishes a *prima facie* case that additional records do or should exist, “then the agency may also be called upon to prove that its search was adequate.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341).

shall have the right to inspect public records.” The Act provides seven ways in which a person may qualify as a “resident of the Commonwealth.” *See* KRS 61.870(10). The term includes an individual residing in the Commonwealth, a domestic business entity, a foreign business entity registered with the Secretary of State, a person “that is employed and works at a location or locations within 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. *Id.* A “resident of the Commonwealth” also includes a “newsgathering organization,” as defined in KRS 189.635(8)(b)1.a.–e. *Id.* If the requester fails to provide a statement regarding his or her residency qualifications, then the agency’s records custodian may ask the requester to provide such a statement. KRS 61.872(2)(a).

Here the Appellant has not provided a statement regarding her residency qualifications. Rather, the Appellant indicates she is an out-of-state “graduate student working on a project studying supply and demand of childcare nationally.”<sup>2</sup> At no point did the Appellant assert that she is, or qualifies as, a “resident of the Commonwealth” under KRS 61.870(10). Accordingly, the Cabinet did not violate the Act when it partially denied the Appellant’s request because she does not meet the residency requirement under KRS 61.870(10).

A party aggrieved by this decision may appeal it by initiating an 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).

**Russell Coleman**  
**Attorney General**

/s/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

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<sup>2</sup> The signature block on the Appellant’s request lists a university located in New York.

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Distributed to:

Gabrielle Sorresso

Vickie D. Walters

Elyssa S. Morris

Peyton Sands