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24-ORD-149

June 25, 2024

In re: Makeda Charles/Central State Hospital

Summary: The Central State Hospital (“the Hospital”) did not violate the Open Records Act (“the Act”) when it did not provide records it does not possess.

Open Records Decision

Makeda Charles¹ (“Appellant”) submitted a request, dated April 12, 2024, to the Hospital seeking a variety of records related to her time as a patient at the Hospital. Specifically, she sought information about the manufacturers of medications she received and “a letter about [her] mental health evaluation status.”² In response, the Hospital stated responsive records “do not exist.” This appeal followed.³

¹ The Office takes notice of its decision in 24-ORD-135 involving another appeal initiated by the Appellant. Based on the record developed in that appeal, the Office found that the Louisville Regional Airport Authority did not violate the Act when it denied a request for records because the Appellant is not a resident of the Commonwealth. The Act only gives a “resident of the Commonwealth” the statutory right to demand access to public records. KRS 61.872(2)(a). It does not, however, prohibit nonresidents from obtaining public records. Rather, “[t]he official custodian *may* require the applicant 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).” *Id.* (emphasis added). Here, the Hospital has not challenged the Appellant’s status as a “resident of the Commonwealth.” Thus, that issue is not properly before the Office and its decision in 24-ORD-135 is not dispositive here.

² In her request, the Appellant also sought several other categories of records related to her time as a patient of the Hospital. In her appeal, the Appellant has not challenged the Hospital’s responses to those portions of her request.

³ As part of her appeal, the Appellant included an undated request and a request dated April 9, 2024, that sought, among other things, certain “video footage.” To appeal a denial of a request to the Office, a complaining party must “forward to the Attorney General a copy of the written request and a copy of the written response denying inspection.” KRS 61.880(2)(a). In her appeal, the Appellant asserts that the “Hospital is claiming that they have no video footage.” However, the Appellant has not provided the Office with a copy of a response in which the Hospital claimed it has no video footage. Thus, the Appellant has not perfected her appeal as to her requests for video footage.

On appeal, the Hospital maintains that it does not possess a “letter about [the Appellant’s] mental health evaluation status” nor does it maintain a record tracking the manufacturers of medications it administers to each patient. Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to present a *prima facie* case that the requested record does or should exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester makes a *prima facie* case that the records do or should exist, then the public 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). Here, the Appellant has not made a *prima facie* case that the Hospital possesses records responsive to her request. Accordingly, the Hospital did not violate the act when it did not provide records it does not possess.

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.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
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Distributed to:

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