



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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24-ORD-156

July 2, 2024

In re: Makeda Charles/Federal Bureau of Investigation

Summary: The Office cannot find that the Federal Bureau of Investigation (“FBI”) violated the Open Records Act (“the Act”) because the FBI is a federal agency not subject to the Act.

Open Records Decision

On March 9, 2024, Makeda Charles¹ (“Appellant”) submitted a request to the FBI for a variety of records regarding her. Having received no response by June 1, 2024, the Appellant initiated this appeal.

“Each *public agency*, upon any request for records made under [the Act], shall determine within five (5) [business] days . . . after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision.” KRS 61.880(1) (emphasis added). Here, the Appellant claims the FBI violated the Act because it did not respond to her request in writing or provide her with the requested records. However, an entity is only subject to the Act if it is a “public agency,” as defined by KRS 61.870(1).

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 FBI 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.

A federal agency, such as the FBI, is not a “public agency” as defined by KRS 61.870(1). The Office has long recognized that the federal Freedom of Information Act (FOIA), rather than the Act, governs records in the custody or control of a federal agency. *See, e.g.*, 20-ORD-108; 06-ORD-108; 96-ORD-118. Thus, because the FBI is a federal agency to which the Act does not apply, the Office does not have jurisdiction to review the Appellant’s appeal regarding her request to the FBI.²

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
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

Makeda Charles

² Instructions on how to file an appeal under FOIA are located on the website for the United States Department of Justice. *See* “OIP Guidance: Adjudicating Administrative Appeals Under the FOIA” Office of Information Policy, *available at* <https://www.justice.gov/oip/oip-guidance/Adjudicating%20Administrative%20Appeals%20Under%20the%20FOIA> (last accessed July 2, 2024).