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24-ORD-166

July 22, 2024

In re: Makeda Charles/The Courier-Journal

**Summary:** The Office cannot find that the Courier-Journal (“the Newspaper”) violated the Open Records Act (“the Act”) because the Office cannot find that it is a “public agency” subject to the Act.

***Open Records Decision***

On June 11, 2024, Makeda Charles<sup>1</sup> (“Appellant”) submitted a request to the Newspaper for recordings and transcripts of voicemail messages she left on the Newspaper’s phone line. On June 27, 2024, having received no response from the Newspaper, 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 Newspaper 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).

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<sup>1</sup> 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 Newspaper 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 private entity, such as the Newspaper, is only a “public agency” subject to the Act if 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 requester carries the burden to make a *prima facie* case that, in the fiscal year covering the scope of his or her request, at least 25% of the funds the entity expended in Kentucky were from state or local funds. *See, e.g.*, 23-ORD-070; 21-ORD-173. Here, the Appellant did not attempt to make such a *prima facie* case. Thus, the Office cannot find that the Newspaper is a public agency subject to the Act.

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/ Zachary M. Zimmerer  
Zachary M. Zimmerer  
Assistant Attorney General

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Distributed to:

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