



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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24-ORD-207

September 25, 2024

In re: Thomas Law Offices/Kentucky Board of Medical Licensure

Summary: The Kentucky Board of Medical Licensure (“the Board”) violated the Open Record Act (“the Act”) when it failed to appropriately respond to a request to inspect records. The Board also violated the Act, within the meaning of KRS 61.880(4), when it required a request to be resubmitted using a specific form. The Board did not violate the Act when it did not provide records it cannot locate based on the description provided in the request.

Open Records Decision

On August 6, 2024, Skyler Thompson, on behalf of Thomas Law Offices (“Appellant”), submitted a request to the Board for the “Kentucky Board of Medical Licensure file of” a specific doctor. The Appellant submitted the request on a form created by the Office of the Inspector General’s Division of Healthcare. That same day, the Board instructed the Appellant to resubmit the request using the standardized form developed by the Attorney General. Subsequently, on August 21, 2024, the Appellant asked if the Board had received its August 6, 2024, request. That same day, the Board stated that it had not,¹ and the Appellant resubmitted its request “for the entire licensure file of” the same doctor. In response, the Board denied the request, stating it was “too vague and imprecise.” This appeal followed.

Under KRS 61.880(1), upon receiving a request for records under the Act, a public agency “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.” Further, under KRS 61.872(2)(c), “[a] public agency shall not require the use of any particular

¹ The Board explains that, because it had instructed the Appellant to resubmit its request using the Attorney General’s form, it believed the Appellant’s August 21 inquiry referred to a resubmitted request using that form.

form for the submission of an open records request.” This Office has also found that a public agency misdirects requesters, within the meaning of KRS 61.880(4), when the agency requires the use of a particular online form to submit requests under the Act. *See, e.g.*, 22-ORD-167.

Here, the Board’s initial response neither granted nor denied the Appellant’s request. Moreover, that response required the Appellant to resubmit the request using the Office’s standardized form. *See* KRS 61.876(4). Accordingly, the Board violated the Act when it did not grant or deny the Appellant’s August 6 request. Further, the Board subverted the Act, within the meaning of KRS 61.880(4), and when it misdirected the Appellant to a particular form it was not required to use.²

Under the Act, a public agency’s custodian of records “may require a written application . . . describing the records to be inspected.” KRS 61.872(2)(a). A request to inspect public records must describe those records in a manner “adequate for a reasonable person to ascertain the nature and scope of [the] request.” *Commonwealth v. Chestnut*, 250 S.W.3d 655, 661 (Ky. 2008). If the request is for copies of public records, it must “precisely describe[] the public records which are readily available within the public agency.” KRS 61.872(3)(b). A description is precise “if it describes the records in definite, specific, and unequivocal terms.” 98-ORD-17 (internal quotation marks omitted).

Here, the Appellant sought “the entire licensure file” of a doctor it identified by last name only. But the Board claims it licenses “at least eight” individuals “with the last name” specified by the requester. Thus, the Board explains it cannot determine which records the Appellant seeks. When the requester does not provide sufficient information to enable the agency to locate the requested records through a reasonable effort, the description fails to comply with KRS 61.872(3)(b). *See, e.g.*, 24-ORD-151; 16-ORD-242; 14-ORD-173; 13-ORD-077; 02-ORD-196. Here, the Board can only guess at which records are responsive to the Appellant’s request. Such a request does not describe “records in definite, specific, and unequivocal terms.” 98-ORD-17. Accordingly, the Board did not violate the Act when it denied a request as “too vague and imprecise” to locate responsive records.

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

² The Board claims the Appellant’s August 6 request was not intended for it because it was submitted using a form created to request records possessed by the Office of the Inspector General. But the Appellant’s request identified the Board as the custodian of the requested records. Moreover, the Board did not direct the Appellant to the Office of the Inspector General or attempt to confirm whether the Appellant intended to request its records. Instead, the Board required the use of a particular form.

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:

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