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24-ORD-224

October 15, 2024

In re: Nicole Smith/Jessamine County Board of Education

Summary: The Jessamine County Board of Education (“the Board”) violated the Open Records Act (“the Act”) when it denied a request for public records on the basis of residency when the requester stated the manner in which she qualified as a resident of the Commonwealth under KRS 61.870(10).

Open Records Decision

On August 7, 2024, Nicole Smith (“the Appellant”), on behalf of Acme Research Institute of Kentucky LLC (“Acme”), submitted a request to the Board for certain data regarding capital and operating expenditures during the 2024 fiscal year. In a timely response, the Board denied the request because it contained no information about the “Kentucky residency for Acme” or “the commercial purposes, if any, of the request.” In reply, the Appellant described the commercial purposes of her request and asserted that the request complied with the Act’s residency requirement in two ways. First, she stated Acme was a “foreign business entity registered with the Secretary of State” under KRS 61.870(10)(c). Second, the Appellant stated she was an “individual that is employed and works at a location or locations within the Commonwealth” under KRS 61.870(10)(a). Although she did not give her home address for privacy reasons, the Appellant explained she worked from a “home office” located in Kentucky. In response, the Board denied the request because Acme was a Kentucky corporation with its principal office in Texas; therefore, the Board claimed Acme did not qualify as a resident because it was not a “domestic business entity with a location in the Commonwealth” under KRS 61.870(10)(b). This appeal followed.

Under KRS 61.872(2)(a), “[a]ny resident of the Commonwealth shall have the right to inspect public records.” A public agency “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.* “Resident of the Commonwealth” is defined in KRS 61.870(10) as follows:

- (a) An individual residing in the Commonwealth;
- (b) A domestic business entity with a location in the Commonwealth;
- (c) A foreign business entity registered with the Secretary of State;
- (d) An individual that is employed and works at a location or locations within the Commonwealth;
- (e) An individual or business entity that owns real property within the Commonwealth;
- (f) Any individual or business entity that has been authorized to act on behalf of an individual or business entity defined in paragraphs (a) to (e) of this subsection; or
- (g) A news-gathering organization as defined in KRS 189.635(9)(b)1. a. to e.

On appeal, the Appellant asserts her request qualifies under any of five subsections of KRS 61.870(10). First, the Appellant is an “individual residing in the Commonwealth” under KRS 61.870(10)(a). Second, Acme is a “foreign business entity registered with the Secretary of State” under KRS 61.870(10)(c). Third, the Appellant “is employed and works at a location or locations within the Commonwealth” under KRS 61.870(1)(d). Fourth, the Appellant asserts her request is from an “individual or business entity that owns real property within the Commonwealth” under KRS 61.870(10)(e). Finally, she claims she “has been authorized to act on behalf of” Acme, which she says qualifies her under KRS 61.870(10)(f).

A request from any person or entity qualifying under any one paragraph of KRS 61.870(10) is a request from a “resident of the Commonwealth” under KRS 61.872(2)(a). Here, the Appellant informed the Board she “is employed and works at a location or locations within the Commonwealth” under KRS 61.870(1)(d). This alone was sufficient to satisfy the Board’s requirement that the Appellant state “the manner in which [she] is a resident of the Commonwealth.” KRS 61.872(2)(a); *see, e.g.,* 22-ORD-120. Thus, it is immaterial whether, as the Board argues, Acme is a domestic corporation or a foreign corporation with or without a location in the Commonwealth. The Act does not disqualify an individual “resident of the Commonwealth” from submitting a request for public records on behalf of any other person or entity, even if that other person or entity is not a resident of the Commonwealth. Therefore, the Board violated the Act when it denied the Appellant’s request.¹

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to KRS 61.880(3), the Attorney General shall

¹ Because the Office finds the Appellant qualifies as a “resident of the Commonwealth” under KRS 61.870(1)(d), it need not consider the Appellant’s other residency arguments.

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/ James M. Herrick
James M. Herrick
Assistant Attorney General

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