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24-ORD-237

November 12, 2024

In re: Alex Rib/Louisville Metro Government

Summary: The Louisville Metro Government (“Metro”) violated the Open Records Act (“the Act”) when it required the Appellant to complete a commercial purpose form even though the Appellant had stated each of his requests did not have a commercial purpose.

Open Records Decision

Alex Rib (“Appellant”) appeals Metro’s response to 17 requests submitted in early October. In accordance with KRS 61.876(4)(c), the Appellant stated each request was not for a commercial purpose. Metro, because the Appellant had requested records typically sought for commercial purposes, required the Appellant to complete a form stating whether the request was for a commercial purpose before it would fulfill the Appellant’s requests. This appeal followed.

Under KRS 61.874(4), if public records are requested for a commercial purpose, the public agency may impose certain requirements, including a reasonable fee to cover staff costs, a certified statement of the purpose for which the records will be used, and the establishment of a contract. Accordingly, KRS 61.876(4)(c) permits the agency to ask “[w]hether the request is for a commercial purpose.” The Act defines “commercial purpose” as “the direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee.” KRS 61.870(4)(a).

KRS 61.876(4)(c) allows a public agency to ask the requester whether the requested records will be used for a commercial purpose, and a public agency can deny the request if the requester refuses or fails to answer the question. *See, e.g.*, 24-ORD-021. However, nothing in the Act allows an agency to deny a request after the requester affirmatively states the records will not be used for a commercial purpose.

Rather, under KRS 61.874(5)(c), it is “unlawful for a person to obtain a copy of any part of a public record for a [n]oncommercial purpose, if the person uses or knowingly allows the use of the public record for a commercial purpose.” As a remedy for a violation of that provision, the public agency may bring a civil action to obtain treble damages, costs, and attorney’s fees under KRS 61.8745, along with any other penalty established by law. This is the only remedy the Act allows to an agency that disagrees with the requester’s assessment that his use of public records is noncommercial.

Here, the Appellant affirmatively stated that each of his requests do not have a commercial purpose. On appeal, Metro explains that it believed it was required to seek a certified statement from the Appellant before proceeding under KRS 61.8745, but it now understands this position was incorrect.¹ Accordingly, Metro violated the Act when it required the Appellant to complete a commercial purpose form after the Appellant had already stated his requests were not for commercial purposes.

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

¹ Metro has since abandoned this practice and will not require completion of a commercial purpose form when the Appellant states his request is not for a commercial purpose.

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Distributed to:

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