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24-ORD-238

November 14, 2024

In re: Jack Elsner/City of Paducah

Summary: The City of Paducah (the “City”) violated the Open Records Act (“the Act”) when it failed to respond to a request within five business days of receiving it. The City did not violate the Act when it denied a request for public records on the basis of residency.

Open Records Decision

On September 25, 2024, Jack Elsner (“Appellant”) submitted a request to the City for records related to a “development of a hotel on city-owned property.” The Appellant identified himself as a “news-gathering organization” as defined in KRS 189.635(9)(b) and stated the request was “for news gathering purposes and is not for commercial purposes.” The Appellant listed “Lodging Development Report” in the signature line of his request. On October 10, 2024, the City denied the request because “a Trade Association, and its related publications, is not considered a news agency.” The Appellant initiated this appeal, claiming his organization “is not a trade association” and “is a private news-gathering organization as defined by KRS 189.635.”

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request, or deny the request and explain why. KRS 61.880(1). If the agency denies all or any portion of the request, it must cite the specific exception authorizing nondisclosure of the requested records, and briefly explain how the exception applies to the record withheld. Here, on September 25, 2024, the Appellant sent a request to the City for records. However, the City did not respond until October 10, 2024.¹ Thus, the City’s response was untimely and violated the Act.

¹ The City does not indicate, on appeal, when it received the request or assert that its response was timely issued.

Under KRS 61.872(2)(a), “[a]ny resident of the Commonwealth shall have the right to inspect public records.” Under KRS 61.870(10)(g), a “resident of the Commonwealth” includes a “news-gathering organization,” defined as follows:

- a. A newspaper or periodical if it:
 - i. Is published at least fifty (50) of fifty-two (52) weeks during a calendar year
 - ii. Contains at least twenty-five percent (25%) news content in each issue or no more than seventy-five percent (75%) advertising content in any issue in the calendar year; and
 - iii. Contains news of *general interest* to its readers that can include news stories, editorials, sports, weddings, births, and death notices;
- b. A television or radio station with a valid broadcast license issued by the Federal Communications Commission;
- c. A news organization that broadcasts over a multichannel video programming service as defined in KRS 136.602;
- d. A website published by or affiliated with any entity described in subdivision a., b., or c. of this subparagraph; [and]
- e. An online-only newspaper or magazine that publishes news or opinion of interest to a *general audience* and is not affiliated with any entity described in subparagraph 2. of this paragraph[.]

KRS 189.635(9)(b)1. (emphasis added).² The Appellant does not specify the subparagraph under which his organization qualifies. Thus, the Office will consider each subparagraph.

To start, the Appellant states that his organization “publish[es] a weekly, subscriber-based report with a national circulation that covers development and construction activity in the lodging industry.” However, the Appellant does not claim to publish “news of general interest” or of “interest to a general audience.” Rather, the Appellant claims his organization “report[s] a very specific type of news about the lodging industry.” Accordingly, the Appellant’s organization cannot be a news-gathering organization under KRS 189.635(9)(b)1.a. or e., which require the publishing of “news of general interest” or “of interest to a general audience.”

Next, the Appellant does not claim his organization is a “television or radio station with a valid broadcast license issued by the Federal Communications

² KRS 189.635(9)(b)1.f. includes in the definition of “news-gathering organization” “[a]ny other entity that publishes news content by any means to the general public or to members of a particular profession or occupational group.” However, such entities are not included in the definition of “resident of the Commonwealth” under the Act. KRS 61.870(10)(g).

Commission,” or that it “broadcasts over a multichannel video programming service.” Thus, the Appellant’s organization cannot be a news-gathering organization under KRS 189.635(9)(b)1.b. or c.

Finally, because the Appellant’s organization does not qualify as a news-gathering organization under KRS 189.635(9)(b)1.a., b., or c., it cannot be a “website published by or affiliated with” such an entity that qualifies as a news-gathering organization under KRS 189.635(9)(b)1.d.

Accordingly, because the Appellant’s organization does not qualify as a news-gathering organization under any provision of KRS 189.635(9)(b)1.a. to e., the City did not violate the Act when it denied the Appellant’s request on the basis of residency.

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
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/s/ Matthew Ray
Matthew Ray
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Distributed to:

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