



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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24-ORD-278

December 23, 2024

In re: Kurt Wallace/Department of Public Advocacy

Summary: The Department of Public Advocacy (“the Department”) did not violate the Open Records Act (“the Act”) when it denied a request seeking information without describing any public records to be inspected.

Open Records Decision

Kurt Wallace (“Appellant”) submitted a request to the Department seeking “the current record of [Employer identification Number] for” the Department and a Department employee.¹ In response, the Department denied the request, citing *Zink v. Commonwealth*, 902 S.W.2d 825, 828 (Ky. App. 1994) for its application of KRS 61.878(1)(a). This appeal followed.

On appeal, the Appellant reasserts that he seeks the employer identification number of the Department. This request does not describe public records to be inspected, but rather, seeks information. *See, e.g.*, 23-ORD-257 (denying a request for “the full names” of correctional officers on duty at a specific time); 22-ORD-054 (denying a request asking “who ordered” a letter to be written, how much the author was paid, and “why” the letter “was circulated”). The Act does not require public agencies to answer interrogatories or fulfill requests for information. Rather, it only requires public agencies to *produce public records* for inspection. *See* KRS 61.872(2)(a) (requiring a request to inspect records to include, *inter alia*, a description of “the records to be inspected”); *Dep’t of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013) (“The [Act] does not dictate that public agencies must gather and supply information not regularly kept as part of its records.”). Moreover, the Office has previously stated “[e]mployer identification numbers are not public

¹ The Appellant also instructed an employee of the Department to fill “out the W-9 for [the Department] and you.” The Act does not require a public agency to create a record to satisfy a request. *See, e.g.*, 24-ORD-229; 16-ORD-052.

records, but numbers issued by the United States Internal Revenue Service to identify employers.” 23-ORD-059 n.1. Accordingly, the Department did not violate the Act when it denied the Appellant’s request that did not describe any public records to be inspected.²

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

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Distributed to:

Kurt Wallace

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² Because the Appellant’s request did not describe public records to be inspected, the Office need not determine whether KRS 61.878(1)(a) exempts the Department’s employer identification number.