



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

25-ORD-075

March 24, 2025

In re: Tiffany Aikin/Office of Medical Cannabis

Summary: The Office of Medical Cannabis (“the Agency”) violated the Open Records Act (“the Act”) when it denied a request as unreasonably burdensome.

Open Records Decision

On December 6, 2024, Tiffany Aikin (“the Appellant”) submitted a request to the Agency related to certain applications for the medical cannabis lottery, in which she sought, “[f]or each accepted application, the business entity legal name, if applicant is a business, or the individual name, if the applicant applied as an individual, along with the applicant mailing address.” In response, the Agency provided responsive records but advised “that the records being produced do not contain all the information [the Appellant] requested,” and that “[t]his is the only format in which [the Agency] creates and maintains a record responsive to [her] request.” The Agency further stated that, “to the extent” the Appellant requested copies of the actual license applications that had been accepted for the lotteries, the request was “unduly burdensome” because it would require the Agency “to pull and redact” between 150,000 and 750,000 pages of documents, which would take “thousands of hours.” The Appellant appealed the Agency’s denial, and the Office determined that the Agency had not violated the Act.¹

While that appeal was pending, the Appellant submitted a second, narrower request to the Agency. Her request sought, “[f]or each application accepted into the medical cannabis lotteries for tier one, tier two, and tier three cultivator licenses, processor licenses, and dispensary licenses . . . a copy of the full ‘primary contact’ person page submitted as part of the application,” and “[i]f the ‘primary contact’ page does not already have an application identifier on it, . . . the ‘general information’

¹ See 25-ORD-021.

page of the application.” The Appellant further specified that the pages she sought were defined in the Agency’s “business application guide” with the names she used and attached a copy of those pages as shown in the guide. The Appellant further stated, “No other pages of the applications are being requested at this time.”

In response, the Agency referenced its denial of the Appellant’s first request, stating it “is not required to compile information or create a record in response” to a request, and the “only records responsive to [the Appellant’s] request are the full applications.” The Agency further stated that it would be unreasonably burdensome under KRS 61.872(6) to pull and redact 4,285 applications which could contain between 150,000 and 750,000 pages of material exempt under KRS 61.878(1)(a), (c)2.d., (i), and (j). This appeal followed.

On appeal, the Agency asserts that the issues in this appeal are identical to those in the Appellant’s first appeal and incorporated by reference its response in the first appeal. There, the Appellant “complain[ed] that the Agency has not provided, as she asked, a database containing all the specific information she identified in her request.” 25-ORD-021. Here, however, the Appellant did not request information. Instead, she requested a specific page from each application. Thus, the Office considers the Agency’s argument that the request was unreasonably burdensome.

Under KRS 61.872(6), “[i]f the application places an unreasonable burden in producing public records” on the agency, then the agency can deny the request. However, an agency denying a request under KRS 61.872(6) must support its denial by “clear and convincing evidence.” *Id.* In addition to claiming the request is too imprecise, the Agency also claims the Appellant’s request is unreasonably burdensome. When determining whether a particular request places an unreasonable burden on an agency, the Office considers the number of records implicated, whether the records are in a physical or electronic format, and whether the records contain exempt material requiring redaction. *See, e.g.,* 97-ORD-088 (finding that a request implicating thousands of physical files pertaining to nursing facilities was unreasonably burdensome, where the files were maintained in physical form in several locations throughout the state, and each file was subject to confidentiality provisions under state and federal law). In addition to these factors, the Office has found that a public agency may demonstrate an unreasonable burden if it does not catalog its records in a manner that will permit it to query keywords mentioned in the request. *See, e.g.,* 96-ORD-042 (finding that it would place an unreasonable burden on the agency to manually review thousands of files for the requested keyword to determine whether such records were responsive).

Here, the Agency estimates that it possesses “4,285 applications” containing “between 150,000 and 750,000 pages” of exempt material. However, this estimate was provided in response to the Appellant’s first request, which sought information. Here, the Appellant made clear that she only seeks one specific page from each application. Despite this fact, the Agency has incorporated by reference its response to a wholly distinct and less specific request. The Office need not determine whether the Agency met its burden to show by “clear and convincing evidence” that providing the complete applications would be unreasonably burdensome because the Appellant did not seek the complete applications. At bottom, the Agency has not explained why the Appellant’s narrowed request was unreasonably burdensome. Thus, the Agency violated the Act when it denied the Appellant’s request.

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

#017

Distributed to:

Ms. Tiffany Aikin
Matthew P. Lynch, Esq.
Sam Flynn, Esq.