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25-ORD-078

March 24, 2025

In re: Stephanie Eng/Department of Corrections

Summary: The Department of Corrections (“the Department”) did not violate the Open Records Act (“the Act”) when it denied a request that did not state the manner in which the requester was a resident of the Commonwealth of Kentucky.

Open Records Decision

On February 6, 2025, Dr. Stephanie Eng (“the Appellant”), who is located in New York, made a request to the Department for the medication formularies of the Kentucky State Penitentiary and the Little Sandy Correctional Complex. In a timely response, the Department denied the request on the grounds that the requested records were “confidential and proprietary” under KRS 61.878(1)(c)1. This appeal followed.

On appeal, the Department asserts KRS 61.872(2)(a) as an alternative basis for denial of the request. Under KRS 61.872(2)(a), only a “resident of the Commonwealth” has the right to inspect public records. Further, “[t]he official custodian 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 as:

- (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.

KRS 61.870(10). Here, the Appellant did not provide a written statement of the manner in which she qualifies as a resident of the Commonwealth.¹ Accordingly, the Department did not violate the Act when it denied the Appellant's request.²

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 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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Distribution:

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¹ It is not apparent from the face of her request how any provision of KRS 61.870(10) applies to the Appellant.

² Because KRS 61.872(2)(a) is dispositive of this appeal, it is unnecessary to address the Department's alternative argument under KRS 61.878(1)(c)1.