



KLC'S 2017 OAG OPINION REVIEW



Prepared by: Chris Johnson
KLC Member Legal Services

Table of Contents

Attorney General Opinions - - - - 2

Open Meetings - - - - - 4

Open Records - - - - - 5

Attorney General Opinions

OAG 17-001

January 6, 2017

Subject: Whether a public ambulance service may provide non-emergency transportation services, and whether those services may be funded in part by an ambulance service district tax.

Syllabus: A Class I public ambulance service may provide non-emergency transportation for medically necessary health services. Such non-emergency public ambulance services may be funded in part by an ambulance service district tax.

Statutes construed: KRS 67.083; KRS 108.080; KRS 108.090; KRS 108.100; KRS 108.105; KRS 108.175; KRS 311A.025; KRS 311A.030

OAGs cited: OAG 81-332

OAG 17-002

January 23, 2017

Subject: Who may remove members of the Board, pursuant to KRS 96.760(2), the Mayor or the City Council.

Syllabus: The Glasgow City Council, not the Mayor, has the authority to remove members of the Glasgow Electric Plant Board, pursuant to KRS 96.760(2) of the Little TVA Act, KRS 96.550 et. seq.

Statutes construed: KRS 83A.130; KRS 96.550; KRS 96.760

OAGs cited: OAG 80-63; OAG 82-138

OAG 17-003

March 3, 2017

Subject: Whether a proposed local ordinance that imposes a license tax to companies for the privilege of locating oil and gas wells would violate KRS 353.500(2), which states that the state government has responsibility for regulating all aspects of oil and gas exploration, production, development, gather and transmission.

Syllabus: The proposed ordinance would not violate KRS 353.500(2) because the Fiscal Court is authorized to levy taxes under KRS 67.083(2) and KRS 353.500(2) is subordinate to the basic powers of municipalities.

Statutes construed: KRS 353.500; c

OAGs cited: OAG 79-385; OAG 95-9

OAG 17-004

March 3, 2017

Subject: Whether the Northern Kentucky Independent District Health Department may fund a chemical dependency program at the Campbell County Detention Center with revenue generated by a special ad valorem public health tax.

Syllabus: The Northern Kentucky Independent District Health Department may fund a chemical dependency program because it is a public health program that will provide services for which a local health department is authorized to fund pursuant to KRS 212.240(2) and KRS 212.245.

Statutes construed: KRS 212.782; KRS 212.784; KRS 212.725; KRS 212.794; KRS 212.755; KRS 212.240; KRS 212.245; KRS 441.045; KRS 92.330; KRS 92.340; KRS 92.330

OAGs cited: OAG 76-753

Open Meetings

17-OMD-003

January 9, 2017

In re: Donald Fulton/Jefferson County Board of Assessment Appeals

Summary: The Jefferson County Board of Assessment Appeals violated the Open Meetings Act in not responding to a complaint within three business days, but did not violate the Open Meetings Act in deliberating in closed session with only board members and staff present.

17-OMD-021

February 8, 2017

In re: John Gray/City of Frankfort

Summary: City of Frankfort violated KRS 61.815(1)(a) with generic reference to “closed session per KRS 61.810(1)(c) litigation” as its entire notification for going into closed session regarding pending litigation. OAG 80-248 and OAG 83-377 are modified by this decision.

17-OMD-044

March 14, 2017

In re: Northern Kentucky Tribune/Northern Kentucky University

Summary: Northern Kentucky University did not violate the Open Meetings Act in discussing specific business proposals in closed session and in informing employees of matters to be discussed at a special meeting. Northern Kentucky University violated the Open Meetings Act in providing an insufficiently specific special meeting agenda, but did not further violate the Open Meetings Act in failing to indicate that a vote may be taken on the topics discussed in that executive session.

Open Records

17-ORD-001

January 5, 2017

In re: Gerald Kemper/City of Owenton

Summary: Pursuant to KRS 61.872(3), the City of Owenton may require a requester from the same county to inspect public records at City Hall.

17-ORD-002

January 5, 2017

In re: Andy McDonald/Frankfort Plant Board

Summary: Frankfort Plant Board established that contract price, relative risks assumed, and unique negotiated terms were confidentially disclosed information properly redacted from power purchase agreement under KRS 61.878(1)(c)1.

17-ORD-004

January 13, 2017

In re: Charles Wheatley/City of Covington

Summary: City of Covington did not excessively delay the inspection of 895 e-mails where terms of request were changed midway through the process, redaction was necessary for several reasons, and final disposition was made within 24 days of amended request. City met its burden of justifying various withheld and redacted e-mails on basis of KRS 61.878(1)(a), (i), (j), and (l), and attorney-client privilege. Ambulance run reports are confidential under KRS 311A.190(5). Any withheld information on fire department runs which do not qualify as "medical first response runs," except for information pertaining to private individuals, should be disclosed.

17-ORD-005

January 17, 2017

In re: Uriah Pasha/Kentucky State Reformatory

Summary: Kentucky State Reformatory did not violate Open Records Act by not permitting an inmate to inspect sign-in sheets that did not contain a specific reference to him, as provided in KRS 197.025(2); facility's initial response was deficient under KRS 197.025(7) in that it did not clearly state records were unavailable.

17-ORD-006

January 17, 2017

In re: Uriah Pasha/Kentucky State Reformatory

Summary: Kentucky State Reformatory complied with the Open Records Act by questioning Internal Affairs Officers about the existence of alleged records; determining that the requested records did not exist; determining that there was no requirement for the records to exist; and promptly responding in writing to the requester with that information.

17-ORD-007

January 17, 2017

In re: Robin Vessels/Cabinet for Health and Family Services

Summary: Cabinet for Health and Family Services did not subvert the intent of the Open Records Act by issuing workplace restrictions on the conduct of an employee when it provided copies of requested records, but did violate KRS 61.876(2) in failing to display the agency's rules and regulations pertaining to access to public records in a prominent location accessible to the public.

17-ORD-008

January 17, 2017

In re: Michael Cooper/Kentucky State Penitentiary

Summary: A selection of medical records provided to an attorney as a confidential communication by a representative of a client for the purposes of rendering legal services is protected under the attorney-client privilege and exempt from disclosure pursuant to KRS 61.878(1)(I).

17-ORD-009

January 18, 2017

In re: Kathy Harris/Kentucky State Police

Summary: Kentucky State Police violated the Open Records Act in denying the request for a copy of the bodycam video of an officer-involved shooting that resulted in the death of the perpetrator, on the basis of KRS 61.878(1)(a), based on the specific facts presented.

17-ORD-010

January 24, 2017

In re: Betty A. Pendergrass/City of Bardstown

Summary: Because the requester's "residence or principal place of business" is located within the county where the responsive documents are located, the City of Bardstown acted in accordance with KRS 61.872(3) by agreeing to provide requester with an opportunity to inspect responsive documents during regular business hours and provide copies upon requester's advance payment of the copying fee.

17-ORD-011

January 24, 2017

In re: Matthew Smith/Kentucky State University

Summary: Records relating to university's investigation(s) into allegations of sexual misconduct were not shown to be protected by exceptions relied upon by the university where Attorney General was not given records to review under authority of KRS 61.880(2)(c).

17-ORD-012

January 24, 2017

In re: Ralph Dunlop/Office of Attorney General

Summary: The Office of Attorney General (OAG) properly relied upon KRS 61.878(1)(h) in denying requested records that were compiled and maintained by the OAG pertaining to criminal litigation where the OAG was acting as Special Prosecutor.

17-ORD-013

January 24, 2017

In re: Ralph Dunlop/Office of Attorney General

Summary: The Office of Attorney General (OAG) properly relied upon KRS 61.878(1)(h) in denying requested records that were compiled and maintained by the OAG pertaining to criminal litigation where the OAG was acting as Special Prosecutor.

17-ORD-014

January 26, 2017

In re: Matthew Smith and Nicole Ares/Western Kentucky University

Summary: Records relating to university's investigations into allegations of sexual misconduct were not shown to be protected by exceptions relied upon by the university where Attorney General was not given records to review under authority of KRS 61.880(2)(c).

17-ORD-015

February 2, 2017

In re: Christopher Hopper/Kentucky State Reformatory

Summary: Insofar as the request is properly characterized as a request for information, which Kentucky State Reformatory is not statutorily required to honor, as opposed to a request for public records, the agency's denial is affirmed. KSR also properly relied upon KRS 197.025(2), incorporated into the Open Records Act by operation of KRS 61.878(1)(l), as the basis for denying the inmate's request as records containing the information sought do not contain a specific reference to him.

17-ORD-016

February 2, 2017

In re: Steve Fitzgerald/Commonwealth's Attorney, 50th Judicial Circuit

Summary: Decision adopting 00-ORD-116 and holding that Commonwealth's Attorney did not violate Open Records Act in denying request for records pertaining to criminal litigation on the basis of KRS 61.878(1)(h).

17-ORD-017

February 7, 2017

In re: Leonel Martinez/Kentucky State Penitentiary

Summary: Kentucky State Penitentiary did not violate the Open Records Act by denying an inmate's request for the names of nurses and a doctor because the Open Records Act addresses the inspection of records and does not require public agencies to provide or compile information to conform to the parameters of a given request.

17-ORD-018

February 7, 2017

In re: Uriah Pasha/Kentucky State Reformatory

Summary: Kentucky State Reformatory did not violate the Open Records Act where the record requested did not exist.

17-ORD-019

February 7, 2017

In re: Carlton Tucker Freeman, Jr./Department of Corrections, Division of Probation and Parole

Summary: Department of Corrections, Division of Probation and Parole properly referred the requester to the custodial agency for those records it does not maintain per KRS 61.872(4) and was authorized to withhold the remaining documents responsive to his request under KRS 439.510, incorporated into the Open Records Act by operation of KRS 61.878(1)(l). Any issues relating to records that the Division ultimately agreed to release are moot per 40 KAR 1:030, Section 6.

17-ORD-020

February 7, 2017

In re: Carlton Freeman/Dismas Charities, Inc.

Summary: Because Dismas Charities, Inc. is a private, not-for-profit company that derived only 13.5% of the funds it expended in the Commonwealth of Kentucky from state or local authority funds, it cannot properly be characterized as a public agency within the meaning of KRS 61.870(1)(h) and so did not violate the Open Records Act in its disposition of requests for public records.

17-ORD-022

February 9, 2017

In re: Carlton Freeman/ Division of Probation and Parole, District 18

Summary: Decision adopting 01-ORD-120 and 05-ORD-265; Division of Probation and Parole, District 18, properly denied inmate's request for records containing information obtained by parole officer in discharging his official duties, on the basis of KRS 439.510, incorporated into the Open Records Act by operation of KRS 61.878(1)(l). Records not containing a specific reference to the inmate were properly denied under KRS 197.025(2). Agency did not violate the Act regarding requests for information and for telephone records that did not exist.

17-ORD-023

February 10, 2017

In re: Leonel Martinez/Kentucky State Penitentiary

Summary: A public agency such as Kentucky State Penitentiary is not required to honor a request seeking information rather than existing public records. Nor is KSP required to provide inmate requester with an opportunity to inspect responsive public records, if any, unless those records contain a specific reference to him under KRS 197.025(2), incorporated into the Open Records Act by operation of KRS 61.878(1)(l). The denial is affirmed.

17-ORD-024

February 14, 2017

In re: Donald Moore/Kentucky State Reformatory

Summary: Kentucky State Reformatory's initial response was deficient in failing to notify the requester of the nonexistence of the requested record, but Kentucky State Reformatory remedied that error on appeal. Having affirmatively indicated to requester that no such record exists and explained why in a written response, Kentucky State Reformatory has discharged its duty under the Open Records Act.

17-ORD-025

February 14, 2017

In re: Lawrence Trageser/City of Audubon Park

Summary: City of Audubon Park's improper attempt to charge for an outside contractor's fees to retrieve stored records and to charge excessive copying fees, in violation of KRS 61.874(3), subverted the intent of the Open Records Act short of a denial of inspection within the meaning of KRS 61.880(4). Timely access to records was not given, nor was a complete response, due to significant records management issues.

17-ORD-026

February 14, 2017

In re: Lawrence Trageser/Louisville Metro Government

Summary: Louisville Metro Government cannot produce nonexistent investigative records for inspection or copying nor is the agency required to "prove a negative" in order to refute appellant's claim that such records were created or must exist. Having conducted a reasonable search for such records and notified the requester that any such records would have been properly destroyed in accordance with applicable records retention requirements, even assuming that any investigation was ever conducted, LMG discharged its duty under the Open Records Act.

17-ORD-027

February 14, 2017

In re: Damon McCall/Administrative Office of the Courts

Summary: Administrative Office of the Courts is not subject to provisions of the Open Records Act and, therefore, cannot be said to have violated the Open Records Act in denying the request.

17-ORD-028

February 14, 2017

In re: Christian Walker/Northpoint Training Center

Summary: Northpoint Training Center properly relied on KRS 197.025(1) in denying inmate request for prison video footage.

17-ORD-029

February 20, 2017

In re: Laura Glasscock/Fayette County Public Schools

Summary: Fayette County Public Schools failed to timely provide records and to notify requester when remainder of records would be provided.

17-ORD-030

February 24, 2017

In re: Steve Givan/Kentucky State University

Summary: Kentucky State University violated the Open Records Act by failing to respond to a request for records relating to an agreement concerning a digital textbook program.

17-ORD-031

February 27, 2017

In re: Steve Givan/Kentucky State University

Summary: Kentucky State University violated the Open Records Act by failing to respond to a request for records relating to an agreement concerning a digital textbook program.

17-ORD-032

February 27, 2017

In re: Chris Hawkins/Kentucky State Reformatory

Summary: Kentucky State Reformatory does not possess the Property Inventory Form sought by inmate. Kentucky State Reformatory redacted information it deemed the disclosure of which would constitute a security threat within its discretion afforded under KRS 197.025(1). This appeal is moot as to the inmate's request for case notes because Kentucky State Reformatory has made those records available to the inmate.

17-ORD-033

February 27, 2017

In re: Matthew Smith /Northern Kentucky University

Summary: Northern Kentucky University (NKU) refused to provide records of sexual misconduct investigations to requester, but upon appeal, determined that some records would be provided with appropriate redactions. NKU violated the Open Records Act by withholding nonwork-related emails between employees using NKU email addresses, and committed a procedural violation of KRS 61.872(5) by extending the time period it had initially committed to for providing responsive records.

17-ORD-034

February 28, 2017

In re: James Caldwell/City of Burgin

Summary: City of Burgin violated the Open Records Act by failing to respond fully to portions of a request for public records and to respond in writing within three days after receiving the records request.

17-ORD-035

March 2, 2017

In re: Scotty Hedgespeth/Taylor County Judge/Executive

Summary: Decision adopting 16-ORD-176; records relating to bridge construction were not exempt merely because they were related to pending litigation between requester and fiscal court.

17-ORD-036

March 2, 2017

In re: Robert McKinney/Northpoint Training Center

Summary: Because inmate requester failed to provide this office with copies of Northpoint Training Center's timely written responses to first two of his three January 2017 requests in accordance with KRS 61.880(2)(a) and 197.025(3), the Attorney General declines to render a decision addressing the merits of those responses per 40 KAR 1:030, Section 1. The denial by NTC of the third request is affirmed; NTC cannot provide nonexistent records for inspection or copying.

17-ORD-037

March 2, 2017

In re: Uriah Pasha/Kentucky State Reformatory

Summary: Kentucky State Reformatory did not violate Open Records Act by not permitting an inmate to inspect inmate pay sheets that did not contain a specific reference to him, as provided in KRS 197.025(2).

17-ORD-038

March 2, 2017

In re: Donna Hale/Powell County Clerk

Summary: Powell County Clerk violated the Open Records Act by failing to respond to request for records within three business days. Clerk also failed to timely notify the applicant that it does not possess some of the requested records, and failed to timely direct the requesters to the appropriate agency for records it does not possess.

17-ORD-039

March 6, 2017

In re: Clarence Hixson/Louisville Metro Police Department

Summary: Louisville Metro Police Department did not timely fulfill request for records relating to an incident, but eventually provided all existing responsive records.

17-ORD-040

March 6, 2017

In re: Freddie Hayes/Kentucky State Reformatory

Summary: Inmate requester failed to provide a copy of the complete January 23, 2017, denial by Kentucky State Reformatory of his January 20, 2017, request; requester also failed to include a copy of his January 9, 2017, request and the agency's January 20, 2017, response thereto. Accordingly, requester failed to perfect his appeal under KRS 61.880(2)(a) relative to either of his requests and the Attorney General therefore declines to review the merits of his appeal per KRS 197.025(3) and 40 KAR 1:030, Section 1.

17-ORD-041

March 6, 2017

In re: David Caldwell/City of Burgin

Summary: City of Burgin was not required to create a record that did not yet exist, but was required to make a written response to an open records request.

17-ORD-042

March 6, 2017

In re: Jeremy Henley/Kentucky State Penitentiary

Summary: Kentucky State Penitentiary's denial of inmate's open records request did not violate the Open Records Act where request was not directed to the Open Records Coordinator, and where open records request did not have inmate's signature.

17-ORD-043

March 14, 2017

In re: Brandon Bruin/Kentucky State Penitentiary

Summary: Kentucky State Penitentiary provided timely responses to inmate's open records request. Kentucky State Penitentiary did not violate the Open Records Act by providing an inmate with all responsive records to original open records request rather than a smaller sample of those records that the inmate sought in a subsequent letter.

17-ORD-045

March 16, 2017

In re: Thomas Fox/City of West Buechel

Summary: City of West Buechel violated the Open Records Act by requiring requester to use a preprinted request form. The form was not in compliance with the Act as it required requesters to certify that they are not involved in litigation with the City.

17-ORD-046

March 16, 2017

In re: Charlie Dorris/Kentucky State Police

Summary: Decision adopting 16-ORD-084; Kentucky State Police failed to state the harm caused to the agency in releasing laboratory test results that are part of an ongoing prosecution, pursuant to KRS 61.878(1)(h), and failed to justify withholding the records with specificity, pursuant to KRS 17.150(3).

17-ORD-047

March 17, 2017

In re: Shannon Leary/Jefferson Circuit Court Clerk

Summary: Decision adopting 98-ORD-6 and holding that because he is not bound by the provisions of the Open Records Act, Jefferson Circuit Court Clerk did not violate the Act in the disposition of request for records.