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Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000396-MR

THE COUNCIL ON DEVELOPMENTAL DISABILITIES, INC. — APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 10-CI-01325

CABINET FOR HEALTH AND FAMILY SERVICES — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, CHIEF JUDGE; MOORE AND VANMETER, JUDGES.

VANMETER, JUDGE: The Council on Developmental Disabilities, Inc. ("Council") appeals from the February 9, 2011, opinion and order of the Franklin Circuit Court denying its motion for declaratory judgment which sought to compel the Cabinet for Health and Family Services ("Cabinet") to produce certain

documents related to individuals who died in community placements. For the following reasons, we affirm.

The Council is a nonprofit corporation located in Kentucky that claims to advocate for "children and adults with mental retardation and their families and other interested persons in the community." In January 2010, April Duval, the Executive Director of the Council, requested from the Cabinet "copies of all investigative and follow-up activities completed on behalf of Richard Tardy[,]" a recipient of Cabinet services. The Cabinet denied the request, citing KRS[1] 209.140 as the basis for its refusal. KRS 209.140 provides that:

> All information obtained by the department staff or its delegated representative, as a result of an investigation made pursuant to this chapter, shall not be divulged to anyone except:
>
> > (1) Persons suspected of abuse or neglect or exploitation, provided that in such cases names of informants may be withheld;
> >
> > (2) Persons within the department or cabinet with a legitimate interest or responsibility related to the case;
> >
> > (3) *Other medical, psychological, or social service agencies, or law enforcement agencies that have a legitimate interest in the case*;
> >
> > (4) Cases where a court orders release of such information; and
> >
> > (5) The alleged abused or neglected or exploited person.

[1] Kentucky Revised Statutes.

(emphasis added). The Cabinet determined the Council was not a social service agency with a legitimate interest in the case in which it sought records, and thus, the Cabinet was not authorized to disclose the records. The Council appealed to the Office of the Attorney General ("OAG"), which affirmed the Cabinet's denial of the open records request. The Council did not appeal the OAG's decision.

The Council then submitted a second request to the Cabinet, seeking documents related to the death of Gary Farris, or the deaths of any other individuals who were transferred by the Cabinet and who died in a community placement. The Cabinet again denied the request, relying on KRS 209.140 and the prior OAG decision.[2] The Council did not appeal to the OAG, and instead filed the underlying action for declaratory judgment seeking an order requiring the Cabinet to disclose the requested records.[3] Agreeing with the OAG and the Cabinet, the trial court determined that the Council failed to prove it had a "legitimate interest" in the cases in which it sought otherwise confidential records, as required under KRS 209.140(3). This appeal followed.

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[2] In accordance with KRS 61.880(5)(b), if an OAG decision is not appealed to circuit court within thirty days, the decision has the force and effect of law and is enforceable in the circuit court where the public agency has its principal place of business or the county in which the records are maintained. Here, the Council sought documents related to any other individuals who died in a community placement. This request necessarily includes the documents related to Richard Tardy's death, and is barred under the principles of *res judicata*. *See Kentucky Bar Ass'n v. Harris*, 269 S.W.3d 414, 418 (Ky. 2008) (holding that "[d]ecisions of administrative agencies acting in a judicial capacity are entitled to the same res judicata effect as judgments of a court[]") (citation omitted).

[3] Persons alleging violations of the Kentucky Open Records Act are not required to exhaust their remedies under KRS 61.880 before filing for a declaration of rights in Circuit Court. KRS 61.882(2).

On appeal, the Council argues the trial court erred by holding the Cabinet records were exempt from disclosure under the Kentucky Open Records Act. We disagree.

Judicial review of an agency's decision to deny an open records request is approached on a case-by-case basis. *Palmer v. Driggers*, 60 S.W.3d 591, 597 (Ky. App. 2001) (citing *Kentucky Bd. of Exam'rs v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324 (Ky. 1992)). The trial court's decisions on questions of law are considered under *de novo* review. *Medley v. Bd. of Educ.*, 168 S.W.3d 398, 402 (Ky. App. 2004).

Kentucky's Open Records Act, KRS 61.871 *et seq.*, seeks to ensure the free and open examination of public records. KRS 61.871. Certain public records remain exempt from disclosure under KRS 61.878, including "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly[.]" KRS 61.878(1)(l).

KRS 209.140 details the confidential nature of information obtained by the Cabinet with respect to investigations it conducts in the furtherance of services it provides to certain adults in the Commonwealth. Of particular relevance to the case at hand is the provision of KRS 209.140 which provides that information obtained by the Cabinet as a result of an investigation "shall not be divulged to anyone" except certain persons and entities, including "medical, psychological, or social service agencies, or law enforcement agencies that have a legitimate interest in the case[.]" KRS 209.140(3). The Council claims to be a social service agency

with a legitimate interest in the cases of Farris, and other individuals transferred by the Cabinet to a community placement who subsequently died.

The trial court determined that the Council was most likely not a social service agency as contemplated by KRS 209.140(3); however, it did not address that issue in depth because it concluded the Council did not have a legitimate interest in the case. The trial court found that "legitimate interest" was ambiguous because the statute did not define it and the phrase can lend itself to more than one meaning. Under the rules of statutory construction, the trial court defined "legitimate" in accordance with Black's Law Dictionary[4] as "[t]hat which is lawful, legal, recognized by law or according to law . . . real, valid or genuine." Finding no law recognizing the Council's interest in the case, and finding it did not provide any social services to the persons whose records it requested, the trial court concluded that the Council failed to establish a legitimate interest in the case within the meaning of KRS 209.140(3).

The Council argues the trial court's interpretation of KRS 209.140(3) is unduly restrictive of the purpose of the Open Records Act. In support of its claim to have a legitimate interest in the case, the Council cites to KRS 209.030(11), which provides, in part, that the Cabinet "shall consult with local agencies and advocacy groups . . . to encourage the sharing of information, provision of training, and promotion of awareness of adult abuse, neglect, and exploitation, crimes against the elderly, and adult protective services." However, this provision merely

[4] Abridged 6th ed. 1991.

reinforces the Cabinet's duty "[t]o provide for the protection of adults who may be suffering from abuse, neglect, or exploitation, and to bring said cases under the purview of the Circuit or District Court[.]" KRS 209.010(1)(a). We read KRS 209.030(11) as encouraging the Cabinet to gather information from various agencies and other entities, rather than increasing the obligations of the Cabinet to disclose information under KRS 209.140(3). Simply put, KRS 209.030(11) does not grant the Council a legitimate interest in the Cabinet's case on Farris or other individuals.

The Council further argues that it has a legitimate interest in the case due to its general advocacy efforts such as monitoring and publicizing problems with community placement programs, though it concedes it did not provide any direct services to Farris or the other individuals whose records it seeks. Despite the Council's stated goal and efforts to achieve such, we are bound to construe KRS 209.140 in accordance with its plain language in order to effectuate the legislative purpose behind the statute. *Cabinet for Families & Children v. Cummings*, 163 S.W.3d 425, 430 (Ky. 2005) (citation omitted). We find the trial court's interpretation of legitimate interest to be sound. Since the Council has no legally-recognizable interest in this case, the Cabinet met its burden of proof for denying the Council's open records request.

The opinion and order of the Franklin Circuit Court is affirmed.

ACREE, CHIEF JUDGE, CONCURS IN RESULT ONLY AND FILES SEPARATE OPINION.

MOORE, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

ACREE, CHIEF JUDGE, CONCURRING: Respectfully, I concur in result only. I would not base the holding on the Council's failure to establish a legitimate interest in the circumstances surrounding Farris's death or other individuals similarly situated. My analysis does not reach this second hurdle; if it did, I likely would agree with the dissent.

However, I conclude that the Council cannot clear the first hurdle; it is not an "agency" as the term is used in KRS 209.140(3). For the following reasons, I believe the legislature intended that term to include only government agencies, not private entities such as the Council.

This is a case of pure statutory interpretation. KRS 209.140 is a restriction on the authority of the "department" to disclose information. The "department" is the Department for Community Based Services, KRS 209.020(3), and it is an agency of state government. KRS 12.020.II.8.(n). Within state government, there are several "[o]ther medical, psychological, or social service agencies[,]" KRS 209.140(3), including the Office of Health Policy, the Department for Public Health, the Department for Medicaid Services, the Department for Behavioral Health, Developmental and Intellectual Disabilities, and the Department for Aging and Independent Living, to name a few within the same Cabinet. KRS 12.020.II.8.(b), (j) - (m). I understand subsection (3) of KRS 209.140 to authorize disclosure of confidential information by that agency (the Department for Community Based Services) only to such "other medical,

psychological, or social service agencies" as the examples listed above – that is to say, government agencies.

Black's defines "agency" as follows: "3. A *governmental* body with the authority to implement and administer particular legislation. – Also termed (in sense 3) government agency; administrative agency; public agency; regulatory agency." Black's Law Dictionary (9th ed. 2009), agency (emphasis added). While I recognize that non-governmental entities sometimes call themselves "agencies," (*i.e.*, travel agencies, employment agencies), we are wise to use the more generally understood definition in our interpretation of statutes, unless there is clear legislative intent to also include non-governmental entities in the definition. And, historically, that is how the legislature has acted in crafting statutes.

For example, one of Kentucky's statutes makes specific reference to "*public and private* social service agencies." KRS 190.010(29)(emphasis added). Another, in describing the duties of boards of community mental health programs, says that one duty is to implement working agreements with "social service agencies, *both public and private* . . . ." KRS 210.400(3)(emphasis added). And yet another refers to "social service organizations, *including* . . . *nonprofit human services agencies*." KRS 194A.001(1)(c)(emphasis added); *see also* KRS 630.050(2) (regarding referring juvenile status offenders to "a *public or private* social service agency"; emphasis added). KRS 209.140 does not contain any language such as these statutes utilize to indicate a clear intent to include non-government entities.

Closer to home, KRS 200.585 identifies the Department for Community Based Services, the very agency regulated by KRS 209.140, as "the lead administrative agency for family preservation services[.]" The statute authorizes the department to "contract with *a private, nonprofit* social service agency to provide these services." KRS 200.585(2)(emphasis added). The legislature chose to use this inclusive language when it enacted the statute in 1990, but it did not add similar qualifying language to KRS 209.140 which was ten years old at the time. KRS 200.585 has been amended three times since its enactment, keeping the same qualifying language regarding private social service agencies, but passing on the opportunity to amend KRS 209.140(3) with the same kind of language. I believe these decisions were intentional.

So, is the reverse true? Can we find a statute in which the unqualified reference to "social service agency" is clearly intended to apply only to a government entity? The answer is yes.

KRS 335.010 is part of the statutory scheme regulating social workers. Subsection (4) of that statute exempts from the requirement of licensure "persons employed by the Commonwealth of Kentucky, the director or administrative head of a *social service agency* or division of a city, county or urban-county government, or applicants for such employment." KRS 335.010(4) (emphasis added). There is no qualifier to the term "social service agency." But it is clear from the context, including the subsequent subsection, that the phrase is intended to apply only to government agencies. Subsection (5) separately

addresses non-government entities and exempts from licensure "persons employed by an organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code[.]" KRS 335.010(5).

The rule of statutory construction we should take from these statutes is clear to me – when the legislature means to include non-government entities in legislation referring to "agencies," it will say so; otherwise, we should interpret the unqualified use of the term as referring exclusively to government agencies.

For this reason, I concur with the majority's result only.

MOORE, JUDGE, DISSENTING: Respectfully, I must dissent.

I am absolutely in disagreement with the majority opinion for a number of reasons.

In setting this case up for review, I am very mindful that "the Act presumes a public interest in the 'free and open examination of public records.'" *Central Kentucky News-Journal v. George*, 306 S.W.3d 41, 45 (Ky. 2010) (quoting KRS 61.882(4)). Indeed, the purpose behind the Kentucky Open Records Act (KORA) is: "*the free and open examination of public records is in the public interest* . . . even though such examination may cause inconvenience or embarrassment to public officials or others." KRS 61.879 (emphasis added). As to the nature of the public interest involved, the Kentucky Supreme Court has explained:

> The public's "right to know" under the Open Records Act is premised upon the public's right to expect its agencies properly to execute their statutory functions. In general, inspection of records may reveal whether the public servants are indeed serving the public, and the policy of disclosure provides impetus for an agency steadfastly to pursue the public good.

Id. at 45, n. 4 (quoting *Kentucky Bd. of Examiners of Psychologists v. Courier–Journal & Louisville Times Co*., 826 S.W.2d 324, 328 (Ky.1992)). "Because of [the] presumption favoring open disclosure, the agency opposing disclosure has the burden of establishing that a record sought is exempt from release." *Cabinet for Health and Family Services v. Lexington H-L,* 382 S.W.3d 875, 883 (Ky. App. 2012) (citing *Medley v. Bd. of Educ., Shelby County*, 168 S.W.3d 398, 402 (Ky.App. 2004)). Consequently when an agency receives a request, it should review the request with a presumption of disclosure. Adding to this bias and presumption of disclosure is the legislative intent, spelled out precisely that KORA "*shall be strictly construed*." KRS 61.871. Likewise, exemptions are to be *strictly construed*. *Central Kentucky News-Journal*, 306 S.W.3d at 47.

The Act describes who is entitled to seek public information:

> (1) All public records shall be open for inspection by *any person*, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. . . .
>
> (2) *Any person shall have the right to inspect public records.* The official custodian may require written application, signed by the applicant and with his name printed legibly on the application, describing the records to be inspected. The application shall be hand delivered, mailed, or sent via facsimile to the public agency.

KRS 61.872 (emphasis added).

Pursuant to KRS 61.872 (2), the scope of those who have the right to inspect public records is very wide: *any person*. This Court recently highlighted the

perimeters of who "any person" is in *Taylor v. Barlow*, 378 S.W.3d 322, 325-26 (Ky. App. 2012) (internal citation omitted):

> Neither KORA, nor any other authority limits or amends KRS 61.871's categorical language of "any person" to mean only those whom the requested records concern; nor does KORA prevent an individual from seeking records at the request or on behalf of another person. To read the plain language of KRS 61.871 and 61.872 any other way is to subvert the express intent of the General Assembly as it is stated in that provision. . . . It is immaterial that Taylor seeks records pertaining to someone else. As the party requesting records held by a public agency, and as the sole plaintiff in the suit against the sheriff, Taylor has "a real, direct, present and substantial right" in the disclosure . . . of the records he seeks. Taylor is the "any person" envisioned and provided for under KORA.
>
> * * *
>
> As the party requesting records held by a public agency and as the sole plaintiff in the suit [seeking disclosure], Taylor has a "real, direct, and present and substantial right" in the disclosure. . . .

Admittedly *Taylor* is somewhat distinguishable from the Council's case. Nevertheless, the emphasis the Court placed on who "any person" encompasses should illuminate a review of this case punctuating that under the KORA, there is a strong bias toward disclosure to anyone--even if the person seeking disclosure is not the person directly impacted by the actions of the public agency.

KRS Chapter 209 governs the "Protection of Adults." Where there is "reasonable cause to suspect that an adult has suffered abuse, neglect, exploitation … [the Cabinet] shall report or cause reports to be made in accordance with the

provisions of this Chapter." KRS 209.030 (2). Under the Kentucky Adult Protection Act, KRS 209.080, the General Assembly stated its legislative intent as follows:

> The General Assembly of the Commonwealth of Kentucky recognizes that some adults of the Commonwealth are unable to manage their own affairs or to protect themselves from abuse, neglect, or exploitation. Often such persons cannot find others able or willing to render assistance. . . .

Importantly for review of the present case, "[d]eath of the adult does not relieve one of the responsibility of reporting the circumstances surrounding death." *Id.* Upon receiving a report of suspected abuse, neglect, exploitation, the Cabinet is required to act as follows:

> the cabinet shall conduct an initial assessment and take the following action:
>
> (a) Notify within twenty-four (24) hours of the receipt of the report the appropriate law enforcement agency. If information is gained through assessment or investigation relating to emergency circumstances or a potential crime, the cabinet shall immediately notify and document notification to the appropriate law enforcement agency;
> (b) Notify each appropriate authorized agency.[5] The cabinet shall develop standardized procedures for

[5] In reading the chapter and construing all the statutes therein together, it is necessary to understand that "authorized agency" was specifically defined by the Legislature as:

> (a) The Cabinet for Health and Family Services;
> (b) A law enforcement agency or the Department of Kentucky State Police;
> (c) The office of a Commonwealth's attorney or county attorney; or
> (d) The appropriate division of the Office of the Attorney General.

KRS 209.020 (17).

> notifying each appropriate authorized agency when an investigation begins and when conditions justify notification during the pendency of an investigation;
>
> (c) Initiate an investigation of the complaint; and
>
> (d) Make a written report of the initial findings together with a recommendation for further action, if indicated.

KRS 209.030(5).

The investigation which the Cabinet is to undertake is as follows:

> "Investigation" shall include but is not limited to:
>
> (a) A personal interview with the individual reported to be abused, neglected, or exploited. When abuse or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation;
>
> (b) An assessment of individual and environmental risk and safety factors;
>
> (c) Identification of the perpetrator, if possible; and
> (d) Identification by the Office of Inspector General of instances of failure by an administrator or management personnel of a regulated or licensed facility to adopt or enforce appropriate policies and procedures, if that failure contributed to or caused an adult under the facility's care to be abused, neglected, or exploited;

KRS 209.020(10).

The investigation is to be inclusive and allows for the inclusion of organizations such as the Council.

> (a) The cabinet *shall*, to the extent practicable, coordinate its investigation with the appropriate law

> enforcement agency and, if indicated, any appropriate *authorized agency or agencies*.[6]
>
> (b) The cabinet *shall*, to the extent practicable, support specialized multidisciplinary teams to investigate reports made under this chapter. This team may include law enforcement officers, social workers, Commonwealth's attorneys and county attorneys, representatives from other authorized agencies, medical professionals, and other related professionals with investigative responsibilities, as necessary.

KRS 209.030(6) (emphasis added).

And, importantly, the General Assembly stated that:

> *The cabinet **shall** consult with local agencies and advocacy groups*, including but not limited to long-term care ombudsmen, law enforcement agencies, bankers, attorneys, providers of nonemergency transportation services, and charitable and faith-based organizations, *to encourage the sharing of information, provision of training, and promotion of awareness of adult abuse, neglect, and exploitation, crimes against the elderly, and adult protective services*.

KRS 209.030(11) (emphasis added).

Both KRS KRS 209.030(6) and KRS 209.030(11) show clear legislative intent that the investigations should not be done under the veil of secrecy and that the Cabinet, *to the extent practicable*, should work with organizations such as the Council in both investigations of abuse and in an open exchange of information, in large part to prevent further acts of abuse. The Cabinet

[6] "Agencies" as it is used it goes beyond the scope of "authorized agencies" as set forth in n. 1. Thus, I believe it is beyond doubt that the General Assembly mandated that Cabinet should partner with organizations such as the Council when investigating allegations of abuse, *to the extent practicable.*

is required to coordinate with other local agencies, as compared with *authorized agencies*, to encourage the sharing of information. Where there are questions of abuse, particularly when the alleged abuse may have lead to the death of a disabled adult in the care of the Cabinet, the questions begs itself: is it appropriate for the Cabinet to do an investigation that will not be subject to review or scrutiny by outside organizations? I don't believe so under the circumstances in this case.

By adding language to the primary statute under review, the majority opinion construed KRS 209.140 as not requiring disclosure in the present case. Pursuant to KRS 209.140:

> All information obtained by the department staff or its delegated representative, as a result of an investigation made pursuant to this chapter, shall not be divulged to anyone except:
>
> (1) Persons suspected of abuse or neglect or exploitation, provided that in such cases names of informants may be withheld, unless ordered by the court;
>
> (2) Persons within the department or cabinet with a legitimate interest or responsibility related to the case;
>
> (3) Other medical, psychological, or social service agencies, or law enforcement agencies that have a legitimate interest in the case;
>
> (4) Cases where a court orders release of such information; and
>
> (5) The alleged abused or neglected or exploited person.

KRS 209.140.

I believe it is beyond question that in stating "[o]ther medical, psychological, or social service agencies," the General Assembly intended that agencies such as the Council would be included in the list of excepted entities that are entitled to disclosure of the investigative information. Of course, there is a qualifier added that the agency "have a legitimate interest in the case." A "legitimate interest" is not defined in the statutes so I agree with the majority opinion that we are required to give it a plain meaning. And, I agree that the definition of "legitimate" in accordance with Black's Law Dictionary is an appropriate meaning for the term: "[t]hat which is lawful, legal, recognized by law or according to law . . . real, valid or genuine." As stated in the majority opinion, the trial court found that the Council "did not provide any social services to the persons whose records it requested, the trial court concluded that the Council failed to establish a legitimate interest in the case within the meaning of KRS 209.140(3).... We find the trial court's interpretation of limitation interest to be sound." Consequently, on the very narrow finding that the Council did not provide direct services to Mr. Farris, the trial court held, as affirmed by the majority opinion, that the Council did not have a legitimate interest and therefore disclosure was not warranted. I believe this is patently wrong, as it adds unduly restrictive language to the statute; applies the plain meaning of "legitimate" much too narrowly; fails to take into account the strong presumption toward disclosures; fails to take into account that the burden is on the Cabinet to prove that disclosure is not warranted; and fails to strictly construe KORA and the exemption. Had the

General Assembly intended to so narrowly construe "legitimate interest" it could have easily included in the statutory language that disclosure was limited to social agencies that have provided direct services to a client. But, instead the legislature used the term "legitimate" to describe the interests for necessary for disclosure, *i.e.,* lawful, real, valid or genuine. The statutory language is much broader than criteria of a direct service provider and when construed in context of the chapter--particularly as it relates to investigations and the sharing of information--it is clear that the Council had a legitimate interest in the investigation surrounding Mr. Farris's death.

Moreover while there was not a statutory exception in *Taylor,* as the case *sub judice,* I believe *Taylor* is instructive as showing a person does not have to have been individually impacted by an agency's actions for disclosure under KORA. I believe that when this logic is applied to this case and reviewed under the light of the work the Council does, as discussed *infra*, it cannot seriously or rationally be argued that the Council does not have a legitimate interest in the investigation of death of Mr. Farris.

It cannot be disputed that the work of the Council is lawful, legal, recognized by law or according to law. Furthermore, it is highly disingenuous to say that an agency that has such a long-term investment in individuals with disabilities does not have a real, valid or genuine interest in what lead to Mr. Farris's death, regardless of whether the Council provided direct services to him or not.

The record illustrates that the Council is a Kentucky nonprofit corporation that advocates for "children and adults with mental retardation and their families and other interested persons in the community." According to the affidavit of April DuVal, the Executive Director of the Council, "It is the mission of the Council to initiate positive change on behalf of individuals with developmental disabilities by voicing their needs to the community; creating new choices for living, learning and participating; and ensuring the highest quality of life possible." Ms. DuVal points out in her affidavit, and there is no reason that this should be disputed, that the

> Cabinet, among other responsibilities, oversees the protection of adults with disabilities who have no personal or family resources. The Cabinet also oversees the provision of federal and state government-funded residential services for those adults. At one time, many of those adults lived in institutional settings generally called "ICF-MR/DDs." That term was an abbreviation for "Intermediate Care Facilities for people with Mental Retardation or Developmental Disabilities." In recent years, there has been a national and statewide effort to close large institutions and promote living arrangements in community settings that are the "most integrated setting appropriate" to receive housing service. *See* Americans with Disabilities Act, 42 U.S.C. sec. 12101, *et. seq*. The Council supports the placement of adults with disabilities in appropriate community settings. But the Council believes that community placements must be monitored carefully to be sure they provide adequate safety and medical protections.

In a second affidavit, Ms. DuVal averred that

> [i]n 1998, the Council took a leading role in organizing a coalition of people with disabilities, service providers and others to provide needed services to individuals with

> intellectual disabilities, especially new community residential services. . . . [F]ollowing the enactment of legislation by the 2000 General Assembly, the coalition succeeded in obtaining $50 million in additional state and federal funding representing "Kentucky's first major new initiative on behalf of people with mental retardation in over 30 years." . . . Much of this funding ultimately went toward the development of the Supports for Community Living (SCL) program.

According to the Council's webpage attached to its brief, it provides the following services:

> **Client Advocacy/Crisis Intervention** is available for individuals with developmental disabilities who are in crisis and need immediate assistance beyond that which direct service programs can provide. Services may include intervention and/or assistance with the legal system, medical care, protective services, residential services, guardianship, and other services that are needed to stabilize individual circumstances. Louisville Metro Government funds the Help Now portion of this program.
>
> **Citizen Advocacy** is a program that matches a competent, capable and interested volunteer with a person who has a developmental disability. The volunteer advocate looks out for the interests and concerns of the person with mental retardation as if they were his/her own. The relationships are individually and uniquely developed around the needs and desires of the person with mental retardation, range from friendship to adoption and guardianship, and often last for years.
>
> **The Self Advocacy Connection** invites adults with disabilities to work together, and in concert with other advocates in the community, to seek improved services and opportunities.
>
> * * *

> **Governmental Affairs & Disability Policy**: This program monitors public policies, legislation and regulations that impact persons with developmental disabilities. By negotiating with Executive Branch officials and communicating with legislators, the program seeks to amend and propose policies and legislation that best serve the interests of individuals and families. Primary goals include recruitment and training of advocates, building relationships with policymakers and establishing the Council as a trusted and influential resource.

Based upon the many years the Council has served disabled adults, it is simply disingenuous to hold that it does not have a legitimate interest in learning the events surrounding the death of Mr. Farris. Nonetheless, the Cabinet, the circuit court, and the majority conclude that despite the opportunities for wrongdoing --or the very real appearance of such-- that incubate in an environment that is hidden from the light are excepted from disclosure under KORA based on language that the Cabinet, circuit court and the majority have added to the term "legitimate interest." Disclosure is absolutely warranted in this case, and it only adds to the tragedy of Mr. Farris's death that the events leading to his death will not be exposed to public scrutiny. I firmly dissent.

BRIEFS FOR APPELLANT:

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