



ALLISON BALL
AUDITOR OF PUBLIC ACCOUNTS

DEMAND LETTER

July 9, 2024

Secretary Eric Friedlander
Cabinet for Health and Family Services
275 E. Main St. 5W-A
Frankfort, Kentucky 40621

Secretary Friedlander:

The Auditor of Public Accounts and the Commonwealth Office of the Ombudsman, by law, are responsible for ensuring that the Cabinet for Health and Family Services is doing its job and doing it well. The Ombudsman does so, first and foremost, by investigating the Cabinet to see if it is effectively and efficiently serving Kentucky's most vulnerable: children, the elderly, and those in need, among others.

iTWIST is a database containing information vital to the well-being of Kentucky's children. Access to iTWIST is essential for the Ombudsman to fully do its job as required by law. Without full, direct, and real-time access to iTWIST, it is impossible for the Ombudsman to see if the Cabinet is effectively and efficiently serving Kentucky's children.

In numerous transition discussions, the Cabinet's top executives acknowledged the necessity of the Ombudsman's iTWIST access. But it was only until after the General Assembly closed its 2024 legislative session that the Cabinet began to oppose the Ombudsman's full, direct, and real-time access to iTWIST. Yet the Cabinet's rationale does not stand up to scrutiny. A straightforward application of Kentucky Supreme Court analysis on this issue reveals that the juvenile code does not prevent the Ombudsman from accessing iTWIST.

Recognizing the importance of protecting Kentucky's children and understanding the necessity of iTWIST access, the General Assembly ensured that the Ombudsman would have full, direct, and real-time access to iTWIST under Kentucky law. It did so in KRS

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43.035 and in Section 102 of 2023 Senate Bill 48. The General Assembly could not have been clearer. “[T]he Cabinet for Health and Family Services shall not willfully obstruct an investigation[or] restrict access to records.” KRS 43.035(1). And “[a]ll programmatic staff, personnel, records, files, equipment, resources, funding and administrative functions” shall be transferred to the Ombudsman. 2023 Senate Bill 48, § 102. The sponsoring legislators of Senate Bill 48 unequivocally expressed that their intention was to provide the Ombudsman with full, direct, and real-time access to iTWIST.

On multiple occasions, the Cabinet’s top officials have feared losing federal grant money as a result of providing the Ombudsman access to iTWIST. But a review of federal law indicates exactly the opposite. The General Assembly made sure when it passed SB 48 that Kentucky would remain eligible to receive federal grant money.

Federal law allows States to receive federal dollars to improve child protective services. 42 U.S.C. § 5106a(a). Part of that grant money should go toward developing and implementing procedures for collaboration among agencies in “investigations” for the benefit of such services. 42 U.S.C. § 5106a(a)(14).

Even more importantly, to be eligible for federal grant money, Kentucky must submit a plan to the federal government, *signed by the Governor*, with “provisions to *require* a State to disclose confidential information to any . . . State . . . entity . . . that has a need for such information in order to carry out its responsibilities under law to protect children from child abuse and neglect.” 42 U.S.C. § 5106a(b)(2)(B)(ix) (emphasis added). Not only that, but the plan must also ensure “cooperation” among “appropriate State agencies providing human services in the investigation, assessment, prosecution, and treatment of child abuse and neglect.” 42 U.S.C. § 5106a(b)(2)(B)(xi).

It is abundantly clear that both state and federal law require that the Cabinet give the Ombudsman full, direct, and real-time access to iTWIST. If the Cabinet continues to refuse to provide that access, then Kentucky is at risk of losing crucial federal dollars. More importantly, our Commonwealth’s children will be left vulnerable as accountability measures put in place to protect them are impeded by these roadblocks.





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Kentucky's children deserve to have public servants who will work with collaboration and goodwill for their benefit. There is only one question that remains: Will you join us in this cause?

There is no reason for the Cabinet to prohibit the Ombudsman's full, direct, and real-time access to iTWIST. With that, the Auditor and Ombudsman are now demanding that the Ombudsman have that access as clearly mandated by state and federal law.

Kentucky Auditor Allison Ball



Ombudsman Jonathan Grate



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Governor Andrew Graham Beshear
Office of the Governor
700 Capital Ave.
Frankfort, Kentucky 40601

Governor Beshear:

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LETTER TO ENSURE THE PRESERVATION OF INFORMATION

July 9, 2024

Secretary Eric Friedlander
Cabinet for Health and Family Services
275 E. Main St. 5W-A
Frankfort, Kentucky 40621

Secretary Friedlander:

By now you have received the Auditor of Public Accounts and the Office of the Ombudsman's letter demanding direct, full, and real-time access to iTWIST. In conjunction with that letter, the Ombudsman is also demanding that the Cabinet for Health and Family Services refrain from destroying, altering, or otherwise interfering with the preservation of data within iTWIST or the iTWIST system itself.

The Ombudsman will soon be conducting systemic investigations of CHFS. To ensure the integrity of these investigations, the Cabinet must preserve all data within iTWIST and refrain from destroying or altering it or the iTWIST system in any way. If the Cabinet refuses to comply with these demands, it will be, at the very least, willfully obstructing an investigation and restricting access to records in violation of KRS 43.035, KRS 522.030, and other applicable laws.

Thank you for your compliance.

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LETTER TO ENSURE THE PRESERVATION OF INFORMATION

July 9, 2024

Chief Information Officer Ruth Day
Commonwealth Office of Technology
101 Cold Harbor Dr.
Frankfort, Kentucky 40601

CIO Day:

As you are well aware of, in 2023, the General Assembly transferred the Office of the Ombudsman from the Cabinet for Health and Family Services to the Auditor of Public Accounts. That transfer just took effect on July 1 of this year.

When doing so, the General Assembly ensured that the Ombudsman would have full, direct, and real-time access to iTWIST. It did so in KRS 43.035 and in Section 102 of 2023 Senate Bill 48. The General Assembly could not have been clearer. “[T]he Cabinet for Health and Family Services shall not willfully obstruct an investigation[or] restrict access to records.” KRS 43.035(1). And “[a]ll programmatic staff, personnel, records, files, equipment, resources, funding and administrative functions” shall be transferred to the Ombudsman. 2023 Senate Bill 48, § 102.

Currently, the Cabinet is refusing to provide the Ombudsman with the access to which the Ombudsman is entitled. That is preventing the Ombudsman from complying with its KRS 43.035 duties. Those duties include conducting systemic investigations of the Cabinet to root out and help solve problems that are hurting Kentuckians, especially Kentucky’s children, elderly, and those in need.

To ensure the integrity of those investigations, the Ombudsman has this day sent a letter to the Cabinet demanding that it preserve all data within iTWIST and refrain from destroying or altering it or the iTWIST system in any way. If the Cabinet refuses to comply with these demands, it will be, at the very least, willfully obstructing an investigation and restricting access to records in violation of KRS 43.035.

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To the extent that the Commonwealth Office of Technology has any involvement in this, the Ombudsman would make the same demands of your Office. This way, the Ombudsman has ensured that your Office has not effectuated a violation of KRS 43.035, KRS 522.030, and other applicable laws.

Thank you for your compliance.

Kentucky Auditor Allison Ball



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