



Commonwealth of Kentucky
Finance and Administration Cabinet
OFFICE OF THE SECRETARY
Office of the Inspector General
200 Mero Street, 5th Floor
Frankfort, KY 40622
(502) 564-4240
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Andy Beshear
Governor

Holly M. Johnson
Secretary

Barbara Dickens
Inspector General

October 31, 2024

Via Email to: Auditor.ORR@ky.gov and Maira.Gomez@ky.gov

Auditor of Public Accounts
Attn. Records Custodian
209 St. Clair Street
Frankfort, KY 40601

RE: Open Records Request

Dear Records Custodian:

Pursuant to KRS 61.870 to 61.884, I am requesting copies of the following records:

1. A copy of all policies and procedures of the Auditor of Public Accounts from January 1, 2024 to present.
2. A copy of all complaints the Auditor of Public Accounts has received, from January 1, 2024 to present, regarding children in foster care, as administered by the Cabinet for Health and Family Services, including but not limited to, complaints mentioning or referencing foster children and teenagers sleeping in office buildings.
3. A copy of all communications or other records from the Auditor of Public Accounts, or any employee of the Auditor of Public Accounts, from January 1, 2024 to present, directing the Commonwealth Office of the Ombudsman to take action on any matter, including, but not limited to investigating a matter or complaint.
4. A copy of all communications or other records from the Auditor of Public Accounts, or any employee of the Auditor of Public Accounts, from January 1, 2024 to present, to the Commonwealth Office of the Ombudsman related to foster care.
5. A copy of all complaints sent by the Auditor of Public Accounts or any employee of the Auditor of Public Accounts, to the Commonwealth Office of the Ombudsman or any employee of the Commonwealth Office of the Ombudsman from January 1, 2024 to present.

6. A copy of all organizational charts for the Commonwealth Office of the Ombudsman from January 1, 2024 to present.

Please be advised that I am an individual who both resides and works within the Commonwealth pursuant to KRS 61.870 (10)(a) and (d). The requested records are for a noncommercial purpose. If there is a reasonable fee imposed for records produced for a noncommercial purpose, please advise.

Sincerely,

A handwritten signature in blue ink, appearing to read "Barbara Dickens". The signature is written in a cursive style with a large initial "B".

Barbara Dickens
Inspector General
Finance & Administration Cabinet



ALLISON BALL
AUDITOR OF PUBLIC ACCOUNTS

November 8, 2024

Barbara Dickens
Inspector General
Finance and Administration Cabinet
200 Mero Street, 5th Floor
Frankfort, KY 40622
Email: barbara.dickens@ky.gov

Re: Open Records Request

Dear Ms. Dickens:

The Auditor of Public Accounts (“APA”) acknowledges receipt of your open records request received on October 31, 2024. Responses to each of your requests are outlined below.

Request 1: A copy of all policies and procedures of the Auditor of Public Accounts from January 1, 2024 to present.

Responsive documents are attached. Part of the APA’s HIPAA policy has been redacted, as it contains information revealing the location of stored HIPAA information. KRS 61.878(1)(m). Note that the APA is currently in the process of updating its policies and procedures.

Request 2: A copy of all complaints the Auditor of Public Accounts has received, from January 1, 2024 to present, regarding children in foster care, as administered by the Cabinet for Health and Family Services, including but not limited to, complaints mentioning or referencing foster children and teenagers sleeping in office buildings.

All documents responsive to this request are exempt from disclosure.

First, complaints are documents and records that are considered exempt “correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency.” KRS 61.878(1)(i); *see also* Ky. Op. Atty. Gen. 22-ORD-144.

Second, complaints are considered APA audit, examination, or investigation workpapers, which are exempt from disclosure. KRS 61.878(1)(i), (j); OAG 78-816; OAG 79-470; Ky. Op. Atty. Gen. 10-ORD-164.

Third, the APA is subject to a duty of confidentiality. KRS 61.878(1)(k); KRS 325.440; 45 KAR 1:060. As set forth more fully in 45 KAR 1:060, the confidential information that APA must





ALLISON BALL
AUDITOR OF PUBLIC ACCOUNTS

maintain “means originals, copies, and recordings of all workpapers, documents, notes, and other written or unwritten information related to the official business of the Office of the Auditor of Public Accounts.” Consequently, confidential information includes not only internally developed documents, but all documents related to APA official business, including those sent by the APA to, or received by the APA from, outside parties as part of the audit process. *See also* AU-C 230.06. Moreover, the protection of confidential information by the APA encourages cooperation by outside parties, who might be reluctant to cooperate if there was a risk that the APA would release documents to the public. Indeed, there would be a chilling effect on public cooperation with audits if the APA was required to release documents provided by, or to, outside entities as part of the audit process. In addition, the APA is bound by professional accounting standards that mandate the confidentiality of auditor workpapers. American Institute of Certified Public Accounts Code of Professional Conduct 1.700; AU-C 230.19. The Attorney General has highlighted the deference agencies receive when interpreting their confidentiality provisions:

“[T]his office will generally defer to the public agency in its interpretation of confidentiality provisions which are binding upon it.” Thus, in 10-ORD-164, we recognized the authority of the State Board of Accountancy’s administrative regulation requiring accountants to “comply with the requirements of KRS 325.440 relating to the disclosure of confidential client information [and] KRS 325.420 relating to the ownership of accountant’s working papers – client records.”

Ky. Op. Atty. Gen. 13-ORD-127 (citations omitted).

Fourth, constituent complaints regarding children in foster care are exempt from disclosure pursuant to KRS 61.878(1)(a) because they are “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” The disclosure of the records you request is “likely to cause serious personal embarrassment or humiliation” to the “persons who would be substantially affected by the disclosure” and “touches upon the personal features of private lives.” Thus, disclosure would constitute a clearly unwarranted invasion of personal privacy. *Cape Publications, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 821-22 (Ky. 2008).

Note also that almost all of the complaints the APA has received have been made verbally, as complainants fear retaliation by the Cabinet for Health and Family Services and others.

Request 3: A copy of all communications or other records from the Auditor of Public Accounts, or any employee of the Auditor of Public Accounts, from January 1, 2024 to present, directing the Commonwealth Office of the Ombudsman to take action on any matter, including, but not limited to investigating a matter or complaint.





ALLISON BALL
AUDITOR OF PUBLIC ACCOUNTS

The APA has no responsive documents to this request because no APA employee has the authority to direct the Commonwealth Office of the Ombudsman to take action on any matter. And when Auditor Ball communicates with Ombudsman Grate, they do so verbally. “The Attorney General has consistently recognized that a public agency cannot provide a requester with access to nonexistent records or those which it does not possess.” Ky. Op. Atty. Gen. 17-ORD-136 (citations omitted).

Request 4: A copy of all communications or other records from the Auditor of Public Accounts, or any employee of the Auditor of Public Accounts, from January 1, 2024 to present, to the Commonwealth Office of the Ombudsman related to foster care.

All would-be responsive documents to your request are exempt from disclosure.

To start, your request “is an ‘open-ended any-and-all-records-that-relate type of request[]’ which does not precisely describe the records sought.” Ky. Op. Atty. Gen. 22-ORD-054. The Attorney General’s Office “has consistently held that ‘blanket requests for information on a particular subject need not be honored,’” and so the APA is “not obligated to comply” with your request. *Id.* (citations omitted). That is so because such a vague request places an unreasonable burden on the APA, as any communication whatsoever from the APA to the Commonwealth Office of the Ombudsman could arguably be deemed to “relate[] to” foster care. *See* KRS 61.872(6); Ky. Op. Atty. Gen. 23-ORD-006. The Attorney General has opined that “[a]s a precondition to inspection, a requesting party must identify with ‘reasonable particularity’ those documents which he or she wishes to review.” OAG 92-56; OAG 91-58; OAG 89-81. So “if a public agency is to provide access to public documents, the requester must identify them with sufficient clarity to enable the agency to locate and make them available. If the requester cannot describe the documents he wishes to inspect with sufficient specificity, there is no requirement that the public agency conduct a search for documents.” Ky. Op. Atty. Gen. 05-ORD-248.

Second, your request encompasses documents and records that are considered “[p]reliminary drafts, notes, [and] correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency” and/or “preliminary recommendations, and preliminary memoranda in which opinions are express or policies formulated or recommended,” all of which are exempt from disclosure. KRS 61.878(1)(i), (j); *see also* Ky. Op. Atty. Gen. 22-ORD-144.

Third, your request encompasses APA audit, examination, or investigation workpapers, which are exempt from disclosure. KRS 61.878(1)(i), (j); OAG 78-816; OAG 79-470; Ky. Op. Atty. Gen. 10-ORD-164. Simply because the APA chooses to share information with a fellow investigatory office does not mean that any would-be responsive documents lose this workpaper privilege; the pre-final-investigation referrals that the APA makes retain their protected nature.





ALLISON BALL
AUDITOR OF PUBLIC ACCOUNTS

Fourth, your request encompasses communications involving interpretations of law, requests for legal counsel, and confidential legal advice provided with respect to APA matters, including audits, inquiries from the public, and inquiries from public officials. Therefore, they are exempt from disclosure pursuant to KRS 61.878(1)(l) because the records are subject to the lawyer-client privilege pursuant to KRE Rule 503. Ky. Op. Atty. Gen. 22-ORD-144.

Fifth, the APA is subject to a duty of confidentiality, and, again, the confidential nature of those communications is not lost simply because the APA chose to make a referral to a fellow investigatory body. KRS 61.878(1)(k); KRS 325.440; 45 KAR 1:060. As set forth more fully in 45 KAR 1:060, the confidential information that APA must maintain “means originals, copies, and recordings of all workpapers, documents, notes, and other written or unwritten information related to the official business of the Office of the Auditor of Public Accounts.” Consequently, confidential information includes not only internally developed documents, but all documents related to APA official business, including those sent by the APA to, or received by the APA from, outside parties as part of the audit process. *See also* AU-C 230.06. Moreover, the protection of confidential information by the APA encourages cooperation by outside parties, who might be reluctant to cooperate if there was a risk that the APA would release documents to the public. Indeed, there would be a chilling effect on public cooperation with audits if the APA were required to release documents provided by, or to, outside entities as part of the audit process. In addition, the APA is bound by professional accounting standards that mandate the confidentiality of auditor workpapers. American Institute of Certified Public Accounts Code of Professional Conduct 1.700; AU-C 230.19. The Attorney General has highlighted the deference agencies receive when interpreting their confidentiality provisions:

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Sixth, your request encompasses documents and records exempt from disclosure pursuant to KRS 61.878(1)(a) because they are “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” The disclosure of the records you request, is “likely to cause serious personal embarrassment or humiliation” to the “persons who would be substantially affected by the disclosure” and “touches upon the personal features of private lives.” Thus, disclosure would constitute a clearly unwarranted invasion of personal privacy. *Cape Publications, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 821-22 (Ky. 2008).





ALLISON BALL
AUDITOR OF PUBLIC ACCOUNTS

Request 5: A copy of all complaints sent by the Auditor of Public Accounts or any employee of the Auditor of Public Accounts, to the Commonwealth Office of the Ombudsman or any employee of the Commonwealth Office of the Ombudsman from January 1, 2024 to present.

Since the APA is interpreting your request to mean the complaints themselves that are relayed by complainants, all would-be responsive documents to this request are exempt from disclosure for the same reasons as stated in the APA's response to Request 2.

Request 6: A copy of all organizational charts for the Commonwealth Office of the Ombudsman from January 1, 2024 to present.

The APA is assuming you mistakenly asked for the Commonwealth Office of the Ombudsman's organizational chart here when you meant to ask for the APA's organizational chart. Attached is the APA's organizational chart.

To the extent that your request seeks to obtain any records falling within the exemptions enumerated above, your request is denied. The exemptions to disclosure cited here apply as to documents currently in the APA's possession and may not exempt those documents from open records disclosure in the hands of another public entity. Nothing in this letter shall be deemed to waive, or otherwise limit, the rights, privileges, immunities, and matters of defense, now available or hereafter made available, to the APA.

Sincerely,

/s/ Maira Gomez

Maira Gomez
Deputy General Counsel/ORR Custodian





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OFFICE OF THE SECRETARY
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October 31, 2024

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Commonwealth Office of the Ombudsman
Auditor of Public Accounts
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3. A copy of all communications or other records received by the Commonwealth Office of the Ombudsman, or any employee of the Commonwealth Office of the Ombudsman, from January 1, 2024 to present, from the Auditor of Public Accounts or any employee of the Auditor of Public Accounts, directing the Commonwealth Office of the Ombudsman to take action on any matter, including but not limited to investigating a matter or complaint.
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Please be advised that I am an individual who both resides and works within the Commonwealth pursuant to KRS 61.870 (10)(a) and (d). The requested records are for a noncommercial purpose. If there is a reasonable fee imposed for records produced for a noncommercial purpose, please advise.

Sincerely,



Barbara Dickens
Inspector General
Finance & Administration Cabinet



COMMONWEALTH OFFICE OF THE OMBUDSMAN

Allison Ball
AUDITOR OF PUBLIC ACCOUNTS

Jonathan R. Grate
OMBUDSMAN

Heather Wagers
DEPUTY OMBUDSMAN

November 8, 2024

Barbara Dickens
Inspector General
Finance and Administration Cabinet
200 Mero Street, 5th Floor
Frankfort, KY 40622
Email: barbara.dickens@ky.gov

Re: Open Records Request

Dear Ms. Dickens:

The Commonwealth Office of the Ombudsman (“COO”) acknowledges receipt of your open records request received on October 31, 2024. Responses to each of your requests are outlined below.

Request 1: A copy of all policies and procedures of the Commonwealth Office of the Ombudsman from January 1, 2024 to present.

Responsive documents are attached. Part of the COO’s HIPAA policy has been redacted, as it contains information revealing the location of stored HIPAA information. KRS 61.878(1)(m). At the moment, the COO is operating pursuant to some of the policies and procedures that existed when the COO was under the umbrella of the Cabinet for Health and Family Services. The COO is in the process of amending its policies and procedures given its new organizational relationship. That is proving to be a difficult endeavor, as CHFS’s policies and procedures are scattered, outdated, and riddled with typographical errors.

Request 2: A copy of all complaints the Commonwealth Office of the Ombudsman has received, from January 1, 2024 to present, regarding children in foster care, as administered by the Cabinet for Health and Family Services, including but not limited to, complaints mentioning or referencing foster children and teenagers sleeping in office buildings.

All documents responsive to this request are exempt from disclosure. Complaints are considered “correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency,” which are exempt from disclosure. KRS 61.878(1)(i); *see also* Ky. Op. Atty. Gen. 22-ORD-144. Moreover, note that almost all of the complaints the

COO has received have been made verbally, as complainants fear retaliation by the Cabinet for Health and Family Services and others.

Finally, constituent complaints regarding children in foster care are exempt from disclosure pursuant to KRS 61.878(1)(a) because they are “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” The disclosure of the records you request is “likely to cause serious personal embarrassment or humiliation” to the “persons who would be substantially affected by the disclosure” and “touches upon the personal features of private lives.” Thus, disclosure would constitute a clearly unwarranted invasion of personal privacy. *Cape Publications, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 821-22 (Ky. 2008).

Request 3: A copy of all communications or other records by the Commonwealth Office of the Ombudsman, or any employee of the Commonwealth Office of the Ombudsman, from January 1, 2024 to present, from the Auditor of Public Accounts or any employee of the Auditor of Public Accounts, directing the Commonwealth Office of the Ombudsman to take action on any matter, including, but not limited to investigating a matter or complaint.

The COO has no responsive documents to this request because no APA employee has the authority to direct the COO to take action on any matter. And when Auditor Ball communicates with Ombudsman Grate, they do so verbally. “The Attorney General has consistently recognized that a public agency cannot provide a requester with access to nonexistent records or those which it does not possess.” Ky. Op. Atty. Gen. 17-ORD-136 (citations omitted).

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To start, your request “is an ‘open-ended any-and-all-records-that-relate type of request[]’ which does not precisely describe the records sought.” Ky. Op. Atty. Gen. 22-ORD-054. The Attorney General’s Office “has consistently held that ‘blanket requests for information on a particular subject need not be honored,’” and so the COO is “not obligated to comply” with your request. *Id.* (citations omitted). That is so because such a vague request places an unreasonable burden on the COO, as any communication whatsoever from the APA to the COO could arguably be deemed to “relate[] to” foster care. *See* KRS 61.872(6); 23-ORD-006. The Attorney General has opined that “[a]s a precondition to inspection, a requesting party must identify with ‘reasonable particularity’ those documents which he or she wishes to review.” OAG 92-56; OAG 91-58; OAG 89-81. So “if a public agency is to provide access to public documents, the requester must identify them with sufficient clarity to enable the agency to locate and make them available. If the requester cannot describe the documents he wishes to inspect with sufficient specificity, there is no requirement that the public agency conduct a search for documents.” Ky. Op. Atty. Gen. 05-ORD-248.

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Request 5: A copy of all complaints sent by the Auditor of Public Accounts or any employee of the Auditor of Public Accounts to the Commonwealth Office of the Ombudsman or any employee of the Commonwealth Office of the Ombudsman from January 1, 2024 to present.

Since the COO is interpreting your request to mean the complaints themselves that are relayed by complainants, all would-be responsive documents to this request are exempt from disclosure for the same applicable reasons as stated in the COO’s response to Requests 2 and 4.

Request 6: A copy of all organizational charts for the Auditor of Public Accounts from January 1, 2024 to present.

The COO is assuming you mistakenly asked for the APA’s organizational chart here when you meant to ask for the COO’s organizational chart. Attached is the COO’s organizational chart.

To the extent that your request seeks to obtain any records falling within the exemptions enumerated above, your request is denied. The exemptions to disclosure cited here apply as to documents currently in the COO’s possession and may not exempt those documents from open records disclosure in the hands of another public entity. Nothing in this letter shall be deemed to waive, or otherwise limit, the rights, privileges, immunities, and matters of defense, now available or hereafter made available, to the COO.

Sincerely,

/s/ Maira Gomez

Maira Gomez
Deputy General Counsel/ORR Custodian