

RENDERED: August 13, 1999; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001237-MR
AND
CROSS-APPEAL NO. 1998-CA-001305-MR

CITY OF LOUISVILLE

APPELLANT/CROSS-APPELLEE

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
ACTION NO. 96-CI-002372

BRIAN L. CULLINAN

APPELLEE/CROSS-APPELLANT

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JOHNSON, MCANULTY, AND MILLER, JUDGES.

MILLER, JUDGE: The City of Louisville (the City) brings this appeal from an April 22, 1998, summary judgment of the Jefferson Circuit Court. Ky. R. Civ. P. (CR) 56. Brian L. Cullinan (Cullinan) cross-appeals. We affirm on appeal and cross-appeal.

On May 22, 1995, appellee/cross-appellant, Cullinan, made an open records request to the City pursuant to the Kentucky Open Records Act, codified in Ky. Rev. Stat. (KRS) 61.870-61.884. The request was for documentation of legal expenses billed to the City by its contract attorneys--the firm of Lynch, Cox, Gilman & Mahan (the law firm). The request included documentation for

consulting expenses, travel expenses, and miscellaneous costs relating to expert witnesses hired on the City's behalf in defense of certain litigation. The City responded on May 31, 1995, stating that it was not in possession of the items requested. Given this response, Cullinan directed a similar request to the law firm. The law firm responded that it would not produce the records because (1) the firm was not subject to the Kentucky Open Records Act and (2) the firm was not granted permission by its client--the City--to furnish the records in question. Pursuant to this response, Cullinan made another request. The City responded that the expense documents in question were not public records. In addition, the City claimed it was not "custodian" of same as defined by KRS 61.870(6). Finally, Cullinan requested that the City reconsider its position. The City did not reconsider, contending that the records were not public and that they had never been custodian thereof.

Pursuant to KRS 61.880(2), Cullinan asked the Attorney General of the Commonwealth of Kentucky to review the City's denial. On March 21, 1996, the Attorney General rendered a decision agreeing with the City and stating that the records were not public and that the custodian law firm was not a "public agency" within the meaning of KRS 61.870(1). The net effect was that the City would not be required to furnish the requested information. On April 25, 1996, Cullinan filed an appeal in the Jefferson Circuit Court pursuant to KRS 61.882. Therein he sought the court to order a production of the records according to his request and to assess damages in the form of a sanction

together with attorney fees and court costs. The parties filed cross-motions for summary judgment. On April 22, 1998, the circuit court entered judgment in Cullinan's favor and ordered production of the records; it denied, however, the request for sanctions, attorney fees, and costs. From this order, the City prosecuted the instant appeal. Cullinan cross-appealed from a denial for his prayer for damages, costs, and attorney fees.

On appeal, the City makes but a single argument: the circuit court committed reversible error by identifying private records requested by Cullinan as public records. The City contends the records are not public records within the purview of the statute and that the City's right of access to the records does not make the material "public" within the meaning of the statute.

The facts of this matter are not in dispute. Wherefore, we are of the opinion that the resolution of the controversy is a matter of law. CR 56; Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991). We review matters of law *de novo*. See Louisville Edible Oil Products, Inc. v. Revenue Cabinet, Commonwealth of Kentucky, Ky. App., 957 S.W.2d 272 (1997). We are therefore required to determine whether the documents requested come within the purview of KRS 61.870. That section provides in relevant part as follows:

"Public record" means all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation . . . **which are prepared, owned, used, in the possession of or retained by a public agency.** (Emphasis added.)

There is no doubt that the records requested were prepared, owned, and used at the instance of the City. The records are nothing more than the routine billing documents generated by a law firm in representation of a client. Here, they are essentially the City's documents supporting fees to be billed and paid by the City for legal services rendered. Certainly, the City would not have been authorized to pay money to the contract law firm without the benefit of such records.

We are of the opinion that the question as to custody and possession of the these records was answered by the contract law firm when it stated, "[w]e have not been granted permission by our clients to disclose to you the records in question." It is clear from this response that the law firm was holding the documents at the instance of and as custodian on the City's behalf, thus conforming to KRS 61.870(6). In the end, it is the nature and purpose of the document, not the place where it is kept, that determines its status as a public record. 66 Am. Jur. 2d Records and Recording Laws, §3 (1973).

The cross-appeal is without merit as the City's denial was predicated upon an opinion of the Attorney General.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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