

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION \_\_\_\_

CIVIL ACTION NO. 11-CI-\_\_\_\_\_

THE TODD COUNTY STANDARD, INC.

PLAINTIFFS

v.

CABINET FOR HEALTH AND FAMILY SERVICES

DEFENDANT

Serve: Hon. Jack Conway, Attorney General  
Office of the Attorney General  
Capitol Suite 118  
700 Capitol Avenue  
Frankfort, KY 40601-3449

Janie Miller, Secretary for Health & Family Services  
Cabinet for Health & Family Services  
Office of the Secretary  
275 E. Main St.  
Frankfort, KY 40621

**COMPLAINT**

Plaintiff, The Todd County Standard, Inc. (the "Standard"), by counsel and for its Complaint against Defendant Cabinet for Health and Family Services, hereby states as follows.

**PARTIES, JURISDICTION AND VENUE**

1. The Standard is a Kentucky corporation with its principal office in Elkton, Todd County, Kentucky. The Standard publishes a newspaper known as *The Todd County Standard*.

2. The Cabinet for Health and Family Services (the "Cabinet") is an executive branch agency of the Commonwealth of Kentucky created by KRS Chapter 194A. The Cabinet's principal office is located in Franklin County, Kentucky.

3. The Cabinet is a "public agency" as that term is defined in KRS 61.870(1).

4. This action is brought pursuant to KRS 61.880 and KRS 61.882 to enforce a

decision of the Attorney General under the Open Records Act.

5. Jurisdiction and Venue are proper in this Court pursuant to KRS 61.880 and KRS 61.882 because the Cabinet's principal office is located in Franklin County, Kentucky.

### **PRIOR LITIGATION IN THIS COURT**

6. This case relates to *Lexington H-L Services, Inc. and The Courier-Journal, Inc. v. Cabinet for Health and Family Services*, Franklin Circuit Court, Division I, Case No. 09-CI-1742. In that case, the Courier-Journal and the Herald-Leader challenged the Cabinet's longtime policy of non-disclosure of records relating to cases where abuse or neglect of children under the Cabinet's supervision resulted in a fatality or near fatality.

7. In that case, the Court held that the Cabinet is required by the Open Records Act to publicly disclose its records relating to a case where child abuse or neglect has resulted in a fatality or near fatality. A copy of the Court's May 3, 2010 Opinion and Order in that case is attached hereto as Exhibit 1.

8. Among other things, the Court held,

A foster care system that operates in secret, without public scrutiny or accountability, even in this extreme case where a child in foster care has lost his life, is a system that is operating outside the scope of the legislative mandate for public accountability that is codified in KRS 61.872 and KRS 620.050(12)(a). This reflects a systemic failure that will inevitably lead to covering up, rather than fixing, the problems in the state foster care system, to the detriment of the children who are dependent on the state for their protection and welfare.

(Id. at p. 11.)

9. The Cabinet did not appeal the Court's ruling in *Lexington H-L Services, Inc. and The Courier-Journal, Inc. v. Cabinet for Health and Family Services*, 09-CI-1742, that the Cabinet is required to publicly disclose its records relating to a case where child abuse or neglect

has resulted in a fatality or near fatality. Instead, the Cabinet only appealed an award of costs and attorneys' fees.

10. The Court's decision in *Lexington H-L Services, Inc. and The Courier-Journal, Inc. v. Cabinet for Health and Family Services*, 09-CI-1742, that the Cabinet must publicly disclose its records relating to a case where child abuse or neglect has resulted in a fatality or near fatality, is a binding decision upon the Cabinet, and it has the preclusive effect of *res judicata*.

11. Since the Court rendered its decision in *Lexington H-L Services, Inc. and The Courier-Journal, Inc. v. Cabinet for Health and Family Services*, 09-CI-1742, the Cabinet has deliberately evaded the Court's ruling and has continued to intentionally violate the Open Records Act by refusing to disclose its records relating to cases where child abuse or neglect has resulted in fatalities or near fatalities.

### **FACTS**

12. In February 2011, nine-year-old Amythz Dye ("Amy") resided in Todd County, Kentucky with her uncle and aunt, Thomas and Kimberly Dye, who had adopted Amy. Amy also resided with 17-year-old Garrett Dye, who was her cousin and adopted brother.

13. Prior to February 2011, the Cabinet had extensive involvement with Amy and with her family. The Cabinet had investigated, and had acted upon, multiple allegations of abuse or neglect involving the treatment of Amy by Thomas, Kimberly and/or Garrett Dye.

14. The Cabinet had substantiated allegations of abuse or neglect involving Amy and had imposed certain conditions upon the family.

15. The Cabinet possesses records that contain information about its involvement with Amy and her family and the Cabinet's efforts to protect Amy from abuse and neglect.

16. On or about February 4, 2011, Amy was beaten to death by being repeatedly struck in the head with a hydraulic jack handle. Her body was found approximately 100 yards from the house where she resided with Kimberly, Thomas and Garrett Dye.

17. The Commonwealth of Kentucky charged Garrett Dye with Amy's murder. Garrett Dye's case has been transferred to Todd Circuit Court, where he will be tried as an adult.

18. Pursuant to KRS 620.050(12)(b), the Cabinet was required to conduct an internal review and prepare a summary of Amy's case because child abuse or neglect resulted in her fatality and the Cabinet had prior involvement with the child or family.

19. On February 15, 2011, the Standard's publisher and editor Ryan Craig submitted a request to the Cabinet under the Open Records Act. Mr. Craig requested, "access to public records in the Cabinet's discharge of its duties concerning Amythz (Amy) Rayne Dye, a deceased nine-year-old child."

20. The Cabinet did not respond to the request within the time period mandated by KRS 61.880(1), and the Standard initiated an appeal to the Attorney General pursuant to KRS 61.880.

21. After the appeal was taken, the Cabinet maintained that it did not possess any records responsive to the request.

22. During the course of the appeal, the Attorney General requested the Cabinet to provide information for the Attorney General's *in camera* review on the questions of whether the Cabinet had prior involvement with Amy, whether the Cabinet conducted an internal review and prepared a case summary pursuant to KRS 620.050(12)(b), and whether the Cabinet had conducted a search for records relating to Amy generated before her death.

23. The Cabinet refused to provide to the Attorney General any of the requested

information set forth in the preceding paragraph.

24. On May 17, 2011, the Attorney General rendered a decision on the appeal. That decision is 11-ORD-074, and a true and accurate copy of the decision is attached hereto as Exhibit 2 and is hereby incorporated by reference as if set forth fully herein.

25. The Attorney General found that the Cabinet procedurally violated the Open Records Act by failing to respond to the open records request as required by KRS 61.880(1).

26. The Attorney General also found that the Cabinet substantively violated the Open Records Act by failing to carry its burden of establishing that it did not have any responsive records. Specifically, the Attorney General held:

In the appeal before us, a nine-year-old child died under circumstances suggesting abuse and/or foul play. The child was alleged to have been under the Cabinet's care, and this allegation appeared in the record on appeal. KRS 620.050(12) requires the Cabinet "to conduct an internal review of any case where child abuse or neglect resulted in a child fatality or near fatality" if the Cabinet "had prior involvement with the child or family." Nevertheless, the record on appeal from the Cabinet's March 3 denial of Mr. Craig's February 15 request was devoid of any explanation for the nonexistence of responsive records. Under these circumstances, the Cabinet was obligated to provide such an explanation in its initial denial. Failing that, it was obligated to provide written responses to our KRS 61.880(2)(c) inquiries to substantiate its position. Because the Cabinet for Health and Family Services' response to Mr. Craig's request was, at best, "limited and perfunctory," we find that it was substantively, as well as procedurally, deficient.

27. The Cabinet did not appeal the Attorney General's decision within the 30-day period prescribed by KRS 61.880(5)(a). Therefore, pursuant to KRS 61.880(5)(b), the Attorney General's decision has the force and effect of law and is enforceable by this Court.

**FIRST CAUSE OF ACTION –  
ENFORCEMENT OF ATTORNEY GENERAL OPEN RECORDS ACT**

28. The Attorney General decision, 11-ORD-074, has the force and effect of law and is enforceable by this Court.

29. The Cabinet possesses records containing information about its involvement with Amy and her family.

30. Pursuant to KRS 61.882(4), this action should take precedence on this Court's docket over all other causes and should be assigned for hearing and trial at the earliest practicable date.

31. Pursuant to KRS 61.882(1), this Court has jurisdiction to enforce the provisions of KRS 61.870 to 61.884, including the Attorney General decision attached hereto as Exhibit 2, by injunction or other appropriate order compelling the Cabinet to provide the requested records.

32. Pursuant to KRS 61.882(5), the Standard is entitled to a finding that the requested records were willfully withheld by the Cabinet in violation of KRS 61.870 to 61.884, and is entitled to an award of costs, including reasonable attorney's fees, incurred in connection with the legal action as well as statutory penalties.

**WHEREFORE**, Plaintiff The Todd County Standard, Inc. respectfully prays for relief as follows:

- A. An expedited hearing on this matter at the earliest practicable date;
- B. A declaration that the Cabinet for Health and Family Services willfully withheld records in violation of KRS 61.870 to 61.884;
- C. An injunction ordering the Cabinet to disclose the requested records relating to the Cabinet's involvement with Amythz Dye and her family;

D. An award of costs, including reasonable attorney's fees, incurred in connection with this legal action;

E. An award of \$25 for each day that The Todd County Standard, Inc. has been denied the right to inspect the requested records; and

F. All other relief to which Plaintiff may be entitled.

Respectfully submitted,

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