



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

ANDY BESHEAR
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

March 14, 2016

Mr. William E. Thro
University of Kentucky
Office of Legal Counsel
301 Main Building
Lexington, KY 40506-0032

Re: Open Records Appeal - Log Number 201600045

Dear Mr. Thro:

As you know, Dr. Lachin Hatemi has appealed the University of Kentucky's denial of his January 29, 2016, request for "[a]ll meeting minutes for UK Healthcare Faculty Compensation Planning Committee (currently chaired by Dr. David Moliterno) between January 2010 and December 2015." The University advised Dr. Hatemi that "there are no documents responsive to your request." In response to Dr. Hatemi's subsequent appeal, the University asserts that it "made a good faith search for the records and concluded the records do not exist." Additionally, the University argues that "Dr. Hatemi has not identified any duty on the part of the University [sic] to keep minutes," disputing the application of the Open Meetings Act KRS 61.835 requirement to the UK Healthcare Faculty Compensation Planning Committee.

Pursuant to KRS 61.880(2)(c), and to facilitate our review of the issue on appeal, we ask that the University respond to the following request for documentation for substantiation of its position.

1. Please describe the efforts that were made, i.e., each step of the search that was conducted, for minutes of the UK Healthcare Faculty Compensation Planning Committee.

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2. As noted in the University's response, in *Bowling v. Lexington-Fayette Urban City Gov't.*, 172 S.W.3d 333, 341 (Ky. 2005), the Kentucky Supreme Court expressed the belief that "the existence of statute, regulation, or case law directing the creation of the requested record creates a presumption of the record's existence." KRS 61.805(2)(g) defines the term "public agency" as "[a]ny board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff or a committee formed for the purpose of evaluating the qualifications of public agency employees, established, created, and controlled by a 'public agency' as defined in paragraph (a), (b), (c), (d), (e), (f), or (h) of this subsection." KRS 61.835 directs "[t]he minutes of action taken at every meeting of any such public agency, setting forth an accurate record of votes and actions at such meetings, shall be promptly recorded and such records shall be open to public inspection at reasonable times no later than immediately following the next meeting of the body." On what legal basis does the University maintain that the UK Healthcare Faculty Compensation Planning Committee is not a public agency, within the meaning of KRS 61.805(2)(g), and therefore not required to create minutes of its meetings by KRS 61.835? Please identify, and provide copies of, supporting authorities.
3. Please identify the members of the committee, their titles, and how they came to serve on the committee. Were any or all of the members appointed, and, if so, by whom? From whence does the committee derive its authority and what are the parameters of that authority?
4. Has the UK Healthcare Faculty Compensation Planning Committee adopted by-laws, or governing policies/procedures, for the conduct of its meetings? If so,

please provide this office with a copy of the by-laws or policies/procedures.

5. Is it the University's position that the UK Healthcare Faculty Compensation Planning committee is "a committee of a hospital medical staff?" If so, please explain.

We ask that the University respond to our request on or before March 25, 2016, and that it provide Dr. Hatemi with a copy of its written response and any attachments. We appreciate the University's cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Amye L. Bensenhaver", with a long horizontal flourish extending to the right.

Amye L. Bensenhaver
Assistant Attorney General

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cc: Lachin Hatemi
Bill Swinford