COMMONWEALTH OF KENTUCKY
48TH JUDICIAL CIRCUIT
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 26-CI-00374

D1 DATA SOLUTIONS
D/B/A REFMED **PLAINTIFF**

v. **OPINION AND ORDER**

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF WORKERS' CLAIMS **DEFENDANT**

This matter is before the Court on Plaintiff D1 Data Solutions, LLC's ("REFMED") *Motion for Summary Judgment* (filed May 12, 2026). Upon review of the parties' briefs and being sufficiently advised, the Court hereby **GRANTS** the Plaintiff's *Motion for Summary Judgment*.

BACKGROUND

Plaintiff REFMED is a Florida Corporation that qualifies as a Kentucky resident under the Open Records Act. The Defendant, the Kentucky Department of Workers Compensation, ("the Department") is required by statute to adopt a Workers' Compensation Fee Schedule ("fee schedule") and update it every two years. *See* KRS 342.035(1). The fee schedule sets the allowable fee that may be charged by providers and covered by insurance carriers for services covered by a workers' compensation insurance plan for the treatment of a work-related injury or occupational disease. The fee schedule binds many parties, including insurance carriers, employers, and medical providers. The Department Commissioner is charged with enforcing compliance with the fee schedule and may impose penalties against those who fail to comply.

Under KRS 342.035(1), the Department may contract with a consultant to prepare the fee schedule. In 2024, the Department contracted with FAIR Health, Inc. to prepare the fee schedule. Under the terms of the contract, FAIR Health agreed to validate and update Current Procedural Terminology ("CPT") codes and descriptors. The contract specified that the Commonwealth secured its own independent licensing with the American Medical Association (AMA), which licenses the CPT codes. The contract also states that "[a]ny and all fee schedules generated under the contract award pursuant to this RFP, including drafts and the final Medical Fee Schedule, shall be the property of, and owned by, the Department of Workers' Claims." Pl. Ex. A, Fair Health Contract at 5.

803 KAR 25:089, Section 5(2) provides that the fee schedule "may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims." The Section also provides that the fee schedule may be obtained from FAIR Health, Inc. on FAIR Health's website, for a fee of $75 or $60 for each additional user.[1] Payment of the fee and use of the fee schedule from FAIR Health's website requires the user to submit to a licensing agreement with FAIR Health.

The Plaintiff submitted an Open Records Request to the Department in March 2026, seeking a copy of the 2024 fee schedule, which the Department denied, explaining that "DWC is unable to provide the medical fee schedule without redaction of the proprietary material" because "[t]he Current Procedural Terminology ('CPT') codes are proprietary to the American Medical Association ('AMA')." Pl. Ex. C, Denial. The Department cited KRS 61.878(k), which exempts from disclosure "all public records or information the disclosure of which is prohibited by federal law or regulation or state law." The Department's denial further informed the Plaintiff that it could obtain the fee schedule from FAIR Health's website. *Id.*

The Plaintiff alleges that the requirement to pay FAIR Health and to submit to its licensing agreement for the use of the fee schedule grants FAIR Health a monopoly over public records and is a

[1] *See* https://orders.fairhealth.org/

violation of the Open Records Act, and the Department violated the Act by denying its request for the fee schedule, which is not subject to a disclosure exemption.

DISCUSSION

I. Standard of Review

When considering a motion to dismiss, Civil Rule 12.02 requires the Court to construe the pleadings liberally "in a light most favorable to the plaintiff" and to take all factual allegations in the complaint to be true. *Gall v. Scroggy*, 725 S.W.2d 867, 869 (Ky. Ct. App. 1987) citing *Ewell v. Central City*, 340 S.W.2d 479 (Ky. 1960). "The court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim." *Mims v. W.-S. Agency, Inc.*, 226 S.W.3d 833, 835 (Ky. Ct. App. 2007) quoting *James v. Wilson*, 95 S.W.3d 875, 883-84 (Ky. Ct. App. 2002). Dismissal under Kentucky Rule of Civil Procedure 12.02(f) for failure to state a claim is compelled where the pleading party "would not be entitled to relief under any set of facts which could be proved in support of this claim." *Benningfield v. Pettit Envtl., Inc.*, 183 S.W.3d 567, 570 (Ky. App. 2005).

Summary judgment is appropriate when there is "no genuine issue as to any material fact and…the moving party is entitled to a judgment as a matter of law." CR 56.03; *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 484 (Ky. 1991). "[A] party opposing a properly supported summary judgment motion cannot defeat that motion without presenting at least some affirmative evidence demonstrating that there is a genuine issue of material fact requiring trial." *Hubble v. Johnson*, 841 S.W.2d 169, 171 (Ky. 1992). Interpretation of the Open Records Act is a question of law, and summary judgment is appropriate for cases involving a dispute over whether the Act has been violated. See, *e.g., University Medical Center, Inc. v. American Civil Liberties Union of Kentucky, Inc.*, 467 S.W.3d 790, 793 (Ky. App. 2014); *University* *of Louisville Foundation, Inc. v. Cape Publications, Inc*., 2003 WL 22748265, at *2 (Ky. App. Nov. 21, 2003). That is appropriate, because "questions of statutory interpretation are purely matters of law" *Rushin v. Cmmw.*, 701 S.W.3d 293, 298 (Ky. 2024).

II. Analysis

Under the Open Records Act ("ORA"), all public records "shall be open for inspection by any resident of the Commonwealth." KRS 61.872. A "public record" means "all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency." KRS 61.870(2).

The ORA allows public agencies to "prescribe a reasonable fee for making copies of nonexempt public records requested for noncommercial purposes which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required." KRS 61.874(3).

1. *The fee schedule is a public record, and the Department cannot effectively grant FAIR Health a monopoly to monetize a public record by refusing to produce the fee schedule to requesters.*

The Plaintiff argues first that the fee schedule is a public record belonging to the Department and not subject to copyright by FAIR Health. In support, it points first to the Department's contract with FAIR Health, which states that the Department owns the fee schedules. ("Any and all fee schedules generated under the contract award pursuant to this RFP, including drafts and the final Medical Fee Schedule, shall be the property of, and owned by, the Department of Workers' Claims." Pl. Ex. A, Fair Health Contract at 5).

The Plaintiff next contends that even if the contract had given FAIR Health an ownership or copyright interest for the schedule, the government edicts doctrine "would have voided such interest and made the Fee Schedule the property of the public." Mot. at 8. The Plaintiff points to *Georgia v. Public.Resource.Org, Inc*., in which the Supreme Court held that the doctrine reaches any document prepared by or on behalf of lawmaking officials. 590 U.S. 255, 269 (2020). Under the doctrine, "officials empowered to speak with the force of law cannot be the authors of—and therefore cannot copyright—the works they create in the course of their official duties." *Id.* at 259. In *Public.Resource.Org,* annotations to the Georgia Code were prepared by a private company pursuant to an agreement with a governmental body, "on behalf of and for the benefit of" the state legislature and the state of Georgia. *Id.* at 268. The plaintiff sued when the public was not granted free access to the annotated version of the code, arguing that it could not be copyrighted under the government edicts doctrine.

The Department responds that the Supreme Court's holding in *Public.Resource.Org* does not apply here, because it only extended the doctrine to apply to legislative bodies vested with the authority to make laws. Resp. at 4. But the Supreme Court's application of the government edicts doctrine is applicable in this case as well, where the fee schedule is statutorily required to be published by the Department and is incorporated by reference into regulation, and has the force and effect of law. The statute allows the Department to contract with a consultant to update the fee schedule, but the Department retains ownership of the fee schedule, and the fee schedule remains a public record, because it is "prepared, owned, used, in the possession of or retained by a public agency." KRS 61.870(2).

The Supreme Court's reasoning in *Public.Resource.Org* supports this conclusion. The Supreme Court held that works constituting "the authentic exposition and interpretation of the law, which *binding every citizen,* is free for publication to all." *Id.* at 264 (emphasis added). The Supreme Court recognized a limiting principle, which is that the doctrine does not apply to those "who lack authority to make or interpret the law, such as court reporters." *Id.* at 265. That limiting factor plainly does not apply here, where the Department is charged with developing and promulgating a fee schedule that is incorporated by reference into the regulation and has the force and authority of law. "The animating principle behind this rule is that no one can own the law. 'Every citizen is presumed to know the law,' and 'it needs no argument to show…that all should have free access' to its contents." *Id.,* quoting *Nash v. Lathrop*, 142 Mass. 29, 6 N.E. 559 (1886). The Court sees no reason why the government edicts doctrine, as applied in *Public.Resource.Org*, should not also apply to the contract between the Department and FAIR Health, and by extension, the fee schedule sought by the Plaintiff.

Finally, agencies can neither impose conditions on recipients of public records under the Act nor allow private intermediaries to impose conditions on the use of public records. *See* 95-ORD-77 ("[N]othing in the statutes…permits an agency to restrict a person to whom records have been released from reproducing those records or sharing them with others. Accordingly, the Madison County Board of Education cannot restrain Ms. Carswell from reproducing the records with which she has been furnished.") In 17-ORD-157, the Attorney General found that the Kentucky State Police violated the ORA when it denied Carfax's request for collision reports from its database. Prior to Carfax's ORR, KSP provided collision reports to Carfax via a contracted private vendor, which charged Carfax a fee for the reports. When LexisNexis took over the contract, it raised the fee and required Carfax to submit to its licensing agreement. Carfax refused LexisNexis' terms and filed an ORR. The Attorney General found that LexisNexis's attempt to impose additional conditions on Carfax's use of the collision data was "legally unjustified," because Carfax had the same right to access the data as LexisNexis. *Id.* at 9.

In other words, an agency may contract with a private vendor to provide public records, but that vendor may not require the public to submit to additional licensing agreements to obtain and use public records not otherwise exempt from disclosure to the public, or to pay fees in excess of the statute's imposition of "reasonable." This is precisely what the Department has allowed FAIR Health to do. Among other requirements and limitations, FAIR Health's licensing requirement prohibits users from making copies of the fee schedule, limits the use and access of the fee schedule to one user, and imposes liability for unauthorized disclosure of the fee schedule to another party. Pl. Ex. E, FAIR Health License Agreement. For the cheapest package of the fee schedule, FAIR Health charges $75 per user and $60 for each additional user at a single location. Like KSP's agreement with LexisNexis, the Department's grant of a monopoly to FAIR Health allows it to impose conditions and thereby monetize public records, and violates the ORA. The fee schedule is a public record, and the Department may not grant FAIR Health a monopoly over a public record by requiring requesters to purchase FAIR Health's fee schedule for the fee charged by FAIR Health and to submit to its licensing requirements.

2. *The Department violated the ORA by denying the Plaintiff's request, because the fee schedule is not exempt from disclosure.*

In its denial of the Plaintiff's request, the Department cited KRS 61.878(k), which "exempts from disclosure 'all public records or information the disclosure of which is prohibited by federal law or regulation or state law.'" Pl. Ex. C, ORR Denial. But the Department did then not specify what law prohibited the disclosure of the fee schedule. The Department's response seemed to suggest that because the CPT codes were copyrighted by the AMA, release of the fee schedule would somehow violate a law, but it did not make this assertion explicitly or explain how disclosure would violate any specific law.

The General Assembly placed the burden of proving that a record is exempt from disclosure on the agency asserting the exemption. *Kentucky New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013), citing KRS 61.882(3). "Typically, the agency will attempt to carry that burden by identifying, by affidavit or otherwise, the record or information withheld, the exemption or exemptions claimed, and the reasons why the withheld information falls within the claimed exemption. The agency's explanation must be detailed enough to permit the court to assess its claim and the opposing party to challenge it." *Id.*

The Department's bare assertion that the fee schedule could not be provided because its disclosure was prohibited by law or regulation, without any explanation as to *how* disclosure would violate any law or regulation, or even what law or regulation would be violated, violated the Open Records Act. Nor (assuming the argument) does its assertion that it would violate copyright laws make sense, because the fee schedule itself is incorporated into the regulation and has the force of law. But even granting the Department's assertion that it could not release the fee schedule because of the copyrighted CPT codes, the *Plaintiff certified that it had its own license for these codes*. Pl. Ex. B, ORA Request. Thus, there was no basis for the Department to withhold the fee schedule when it was requested by the Plaintiff, and the Department violated the ORA by failing to provide the Plaintiff with the fee schedule.

In its response to the Plaintiff's motion for summary judgment, the Department abandoned its initial disclosure exemption provision and points to a different exemption provision. KRS 61.878(1)(c)1. protects from disclosure "[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records."

The Department argues that because the CPT codes are copyrighted by the AMA, the proprietary CPT codes are exempt from disclosure: "the AMA has a valid trademark and copyright over the CPT codes and descriptors…DWC therefore does not have the authority to disseminate the copyrighted material in perpetuity to anyone who requests them." Resp. at 4–5. But the AMA, the copyright holder of the CPT codes, is not required to "confidentially disclose" its codes to the Department, and, so far as the Court is aware, the AMA has no competitor in designating the national standard for billing medical procedures that would gain an unfair commercial advantage from the disclosure the CPT codes, which are in use by medical providers and insurance companies nationwide. In fact, the Plaintiff points to Kentucky's Department of Medicaid Services, which publishes Medicaid fee schedules on its website using CPT codes with a simple disclaimer: "CPT only copyright 2016 American Medical Association. All rights reserved."[2] It cannot be the case that the codes would cause the fee schedule to be exempt from disclosure in one state agency, while another state agency provides its fee schedule, which uses the same copyrighted CPT codes, for free on its website.

The Department's argument is completely unfounded. If the fee schedule was exempt from disclosure under the provisions of KRS 61.878(1)(c)1, as it asserts, the fee schedule would be "subject to inspection *only upon order of a court of competent jurisdiction*…" KRS 61.878(1) (emphasis added). This is absurd, where, as described above, the regulation requires that the fee schedule govern "**all** medical services provided to injured employees by physicians [and] other health care or medical services providers to whom a listed CPT…code is eligible." 803 KAR 25:089 Section 2 (emphasis added). The "unfair commercial advantage" exemption cited by the Department is meant to maintain market fairness among industry competitors and encourage government cooperation, not to act as a shield by which a public agency aids its contracted private consultant in profiting from end users, on top of what it has already been paid by the public from its contract with the agency. It is therefore clear that 1) the fee schedule sought by the Plaintiff is not subject to the disclosure exemptions asserted by the Department, and 2), the Department violated the ORA by denying the Plaintiff's request.

3. The Department's additional procedural arguments against summary judgment are unavailing.

The Department argues that summary judgment is inappropriate both because discovery is necessary and because FAIR Health and the AMA are necessary parties. The Court will briefly address

[2] KY Medicaid Fee for Service Behavioral Health Fee Schedule (eff. 4/1/2026), https://www.chfs.ky.gov/agencies/dms/DMSFeeRateSchedules/2026%20Behavioral%20 Health%20Fee%20Schedule.pdf

both assertions. First, the Department asserts that summary judgment is improper without an ample opportunity to conduct discovery. Resp. at 3. But the Department points to no factual issue that could be resolved through discovery. Whether the Department's denial of the Plaintiff's ORR pursuant to an exemption violated the ORA is a pure question of law and requires no discovery. As discussed in the section above, this Court finds that the Department violated the ORA because it asserted a disclosure exemption which did not apply to the public record sought.

Second, the Department argues that FAIR Health and the AMA are indispensable parties, because the matter "cannot be adjudicated without the Court deciding whether the AMA owns the property being sought or whether disseminating the information without the required licensing agreement from Fair Health reveals proprietary information that may provide an advantage to competitors." Resp. at 4. But as the Plaintiff points out, the parties to an appeal under the ORA are the requester and the agency, and the question presented is whether the denial violated the Act. Third parties whose rights may be implicated by the disclosure of public records are already adequately protected by the statutory exemptions. Where a third party seeks to enjoin the disclosure of what they believe to be protected information, they must raise the issue themselves. *Lawson v. Off. of Atty. Gen*., 415 S.W.3d 59, 68 (Ky. 2013) ("…[W]e understand the General Assembly to have mandated, in the absence of a waiver, the non-disclosure of exempt records, a mandate the person or entity whose interest the exemption protects may seek to enforce in the circuit court.").

When the court decides that a denial was unjustified because an exemption does not apply to the record sought, it necessarily makes a determination that the third party does not have a protected interest in nondisclosure. Here, the Court made exactly that determination: the AMA holds copyright of the CPT codes, but the unfair commercial advantage exemption does not apply to the fee schedule to preclude disclosure. FAIR Health has no interest in the nondisclosure of the fee schedule <u>at all</u>, because the very terms of its contract with the Department grants the Department ownership over the public record. FAIR Health was compensated $85,010.00 of the taxpayers' money to "analyze, revise, and update" the fee schedule. Pl. Ex. C. Nothing in the contract or statute grants it a proprietary interest that would allow it to impose a license agreement or a fee on users, and thus it also has no protected interest in the Department's disclosure of the fee schedule pursuant to the ORA.

4. *The Plaintiff is entitled to attorney's fees and costs, because the Department willfully withheld the records sought by the Plaintiff.*

The Plaintiff asserts that it is entitled to attorney's fees and costs associated with the present action because its decision to allow FAIR Health to place the fee schedule behind a paywall constitutes willfulness. Reply at 1. The ORA contemplates an award of fees, costs, and penalties to a person who prevails against an agency in the courts for a violation of the ORA: "Any person who prevails against any agency in any action in the courts regarding a violation of KRS 61.870 to 61.884 may, upon a finding that the records were willfully withheld in violation of KRS 61.870 to 61.884, be awarded costs, including reasonable attorney's fees, incurred in connection with the legal action." KRS 61.882(5). "To be entitled to attorneys' fees, costs, and penalties under KRS 61.882(5), the circuit court must find that the public agency acted 'willfully' in denying a 'person' access to requested records under the Open Records Act. Willful action 'connotes that the agency withheld records without plausible justification and with conscious disregard of the requester's rights.'" *Cabinet for Health and Fam. Services v. Courier-J., Inc.*, 493 S.W.3d 375, 384 (Ky. App. 2016) (quoting *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 854 (Ky. 2013)). The factors examined in determining "willfulness" include "the extent of the agency's wrongful withholding of records; the withholding's egregiousness; harm to the requester as a result of the wrongful withholding, including the expense of litigating the matter; and the extent to which the request could be thought to serve an important public purpose." *Id*.

The Court finds that the Department willfully withheld these records, in violation of the ORA. The Department should have been on notice that allowing a private entity to exercise control and impose conditions on the production and use of public records violated the ORA. The Department knew that the fee schedule was a public record because the General Assembly imposed a duty on the Department to adopt the fee schedule to which all medical providers are statutorily required to conform. But the Department denied the Plaintiff's ORR and cited KRS 61.878(k) (disclosure prohibited by federal law or regulation or state law), without pointing to any federal or state law or regulation that prohibited it from disclosing the document. The Department should have been tipped off that the fee schedule was not subject to an exemption when it could not come up with a law that would be violated by disclosure, and yet it denied the request anyway. The Department therefore withheld the record "without plausible justification and with conscious disregard of the requester's rights." *Id.* The Court therefore finds that the Department willfully violated the ORA, and the Plaintiff, who was forced to bring an action in this Court and litigate the matter to vindicate the rights of all individuals and entities who must adhere to the fee schedule, is entitled to costs and fees. The Department essentially seeks to circumvent the requirements of the Open Records Act by privatizing an essential part of its public duties, and contracting with a private entity to perform a legislatively mandated public function. The Department is free to enter such contracts, but the contract cannot defeat or circumvent the requirements of the Open Records Act.

CONCLUSION

Summary judgment is appropriate when there is "no genuine issue as to any material fact and…the moving party is entitled to a judgment as a matter of law." CR 56.03; *Steelvest, Inc* at 484. The Department is required to adopt a fee schedule for use by medical providers and insurance carriers in the treatment of workplace injuries. The statute allows the Department to consult with a private company to update and validate the fee schedule, but it does not permit the Department to allow the consulting company, which received hundreds of thousands of taxpayer dollars to update the fee schedule over several years, to charge its own fee and subject the public to a license agreement which nets the consulting company even more of the public's money, to obtain and use a product to which members of the public are statutorily required to adhere. The Department willfully violated the ORA when it denied the Plaintiff's request for the fee schedule, and the Plaintiff is entitled to costs and fees.

WHEREFORE, the Plaintiff's *Motion for Summary Judgment* is **HEREBY GRANTED**, and attorney's fees and costs are awarded to the Plaintiff. The Defendant is further **ORDERED** to release the records requested by the Plaintiff within two weeks of this order. The Plaintiff shall submit a petition for attorneys with a verified affidavit and accurate, contemporaneous time records, within 10 days of the entry of this Order, and set that motion for hearing at a regular motion hour. The Court will enter a final and appealable judgment after adjudicating the attorney's fees issue.

This Order is not a final and appealable order.

SO ORDERED this 1st day of Sept. , 2026.

/s/ JUDGE PHILLIP J. SHEPHERD
electronically signed
9/1/2026 10:25:38 AM ET

PHILLIP J. SHEPHERD, JUDGE
Franklin Circuit Court, Division I

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