



COMMONWEALTH OF KENTUCKY
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In re: Robert B. Jones/Laurel County Schools

Summary: Laurel County Schools (“School”) properly withheld responsive records subject to ongoing investigations, pursuant to KRS 61.878(1)(i) and KRS 61.878(1)(j).

Open Records Decision

On November 8, 2019, Robert Brandon Jones (“Appellant”) requested from the School, “copies of any and all records... pertaining to any complaints or investigations into Brandon Jones,¹ assistant volleyball coach at South Laurel High School.” On November 13, 2019, the School denied the request, asserting numerous exemptions. On November 16, 2019, Appellant appealed to this Office.

Based upon this Office’s review under KRS 61.880(2)(c), the responsive records consist of: parent complaints; student complaints; adult witness statements; School employee statements; South Laurel High School Principal Jeremy Kidd’s (“Principal Kidd”) emails; and an investigation report. The School stated that although it did not renew Appellant’s coaching contract, some records

¹ Appellant requested records pertaining to himself. KRS 61.878(3) permits “a public agency employee . . . to inspect and copy any record including preliminary and other supporting document that relates to him” notwithstanding the exemptions contained in KRS 61.878. Appellant did not argue that KRS 61.878(3) applies to him, but School preemptively argued it did not. Regardless if Appellant could be considered “a public agency employee” at the time of the request, KRS 61.878(3) states, “[a] public agency employee . . . shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.” (emphasis added).

were still “preliminary” because investigations into the parent’s complaints were still ongoing. The School also stated that some responsive records are educational records exempt under the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C § 1232g, and cannot be redacted to protect the identity of students.

Based on this Office’s confidential review of the responsive records, the School properly withheld the parent complaints, the adult witness statements, the investigation report, and Principal Kidd’s emails subject to the “preliminary records” exceptions under KRS 61.878(1)(i) and (j). Records that are part of an ongoing investigation of an administrative action, including the initiating complaint, are preliminary within the meaning of KRS 61.878(1)(i) and (j), and thus exempt from public inspection, until final action is taken on the matter. 10-ORD-065; 17-ORD-255. A public agency is not required to release records subject to an open records request prior to final disposition of a disciplinary action since “piecemeal disclosure along the path of the decision-making process is not mandatory.” *University of Louisville v. Sharp*, 416 S.W.3d 313, 315 (Ky. App. 2013).

The School no longer employs Appellant, but these records are nevertheless preliminary under KRS 61.878(1)(i) and (j). In *Palmer v. Driggers*, 60 S.W.3d 591 (Ky. App. 2001), the court found that an employee’s resignation from a position with a subsequent decision by the public agency to end the hearings against the employee constituted a final agency action. *Id.* at 596. However, the School does not concede that its investigation has ended. Appellant was not terminated due to discipline related to issues raised by the parents. Rather, his contract was not renewed. In addition, this Office’s confidential review shows that the records also address complaints related to other School employees. The investigation report itself contains interviews of those employees. As such, sufficient evidence exists in the record that these records are “preliminary” as part of a continuing and ongoing investigation. Accordingly, the School did not violate the Act.

Because this Office finds the School carried its burden in applying the “preliminary” exemptions under KRS 61.878(1)(i) and (j) to these records, this Office finds those exemptions dispositive of this appeal. Having resolved this appeal on this basis, the Office declines the School’s invitation to address the application of FERPA. This Office is mindful that preliminary records may lose their exempt status if an agency adopts the contents of those records when taking final action. See *Univ. of Ky. v. Lexington H-L Services, Inc., d/b/a Lexington Herald-*

Leader, 579 S.W.3d 858, 862-863 (Ky. App. 2018). But for now, a narrower ground exists to resolve this appeal because the responsive records are preliminary. For that reason, we leave for another day the determination of whether these records are exempt under FERPA.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. Pursuant to KRS 61.880(3), the Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings.

Daniel J. Cameron
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/s/ John Marcus Jones

J. Marcus Jones
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Distributed to:

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