



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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20-ORD-063

April 27, 2020

In re: Shayla Kilburn/Kentucky State Police

Summary: Kentucky State Police (“KSP”) did not violate the Open Records Act (“Act”) by redacting a personal phone number from a responsive Computer Aided Dispatch (“CAD”) report under KRS 61.878(1)(a).

Open Records Decision

On March 6, 2020, Shayla Kilburn (“Appellant”) submitted an open records request to KSP seeking, “a copy of a CAD report for an auto accident called into the Perry County post on 2/18/2020[.]” In response, KSP provided a CAD report with the address and personal telephone number of the reporting caller redacted. KSP stated that the redaction was made under KRS 61.878(1)(a) and *Zink v. Commonwealth*, 902 S.W.2d 825 (Ky. App. 1994), and explained that releasing the personal identifying information of the caller, “may leave persons at risk for identity theft.”

On appeal, Appellant states that she requested the CAD report to complete a private investigation and that “[t]he phone number which was redacted is a necessary piece of investigative material,” which she needs to complete her investigation. KSP responded stating that the appeal was moot because it provided Appellant all existing responsive records and only redacted the address and telephone number of the caller. Under 40 KAR 1:030 § 6 “if the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter.” Here, the

request was for unredacted records. Because KSP did not provide the unredacted records, 40 KAR 1:030 § 6 does not apply and this Office must decide whether the redactions complied with the Act. On this issue, KSP argued that the categorical redactions made to the CAD reports are supported under *Zink v. Commonwealth*, 902 S.W.2d 825 (Ky. App. 1994). This Office agrees.

KRS 61.878(1)(a) excludes from inspection “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” When determining whether the exception applies, the courts must balance the privacy interests at stake against the public interest in disclosing the information. *See Ky. Bd. of Examiners of Psychologists v. Courier-Journal and Louisville Times Co.*, 826 S.W.2d 324 (Ky. 1992). In *Zink v. Commonwealth of Kentucky*, 902 S.W.2d 825 (Ky. App. 1994), the Court of Appeals weighed the privacy interest a person has in his telephone number against the requester’s commercial interest in obtaining the telephone number. Acknowledging that the purpose for the requested records is ordinarily irrelevant, the Court stated that the “public interest” the Act serves to promote is for the public to ensure government agencies are appropriately executing their duties. *See id.* at 828-829. Because the personal telephone numbers of persons suffering workplace injury would do little to serve the purpose the Act, the *Zink* court affirmed withholding the requested telephone numbers.

In *Kentucky New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 83 (Ky. 2013), the Kentucky Supreme Court affirmed the categorical redaction of personal information of private individuals contained in law enforcement records. In that case, a newspaper sought addresses and telephone numbers of crime victims, witnesses, and uncharged suspects, purportedly in the interest of assuring the public that the police department was “providing equal protection to all parts of the community.” *Id.* at 86. While the Court found this interest legitimate, it did not agree “that that interest can only be vindicated by sacrificing the privacy interests of all those with whom the police come in contact.” *Id.* at 86-87. The Court found that the privacy interest of the individual with regard to this type of information, “will almost always be substantial, and the public’s interest in disclosure rarely so.” *Id.* at 89. Here, the personal telephone number contained in the CAD report will do little to serve the public purpose of ensuring KSP is executing its statutory duties. Accordingly, KSP did not violate the Act.

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 Cameron
Attorney General

/s/ John Marcus Jones

J. Marcus Jones
Assistant Attorney General

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Distributed to:

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