



COMMONWEALTH OF KENTUCKY
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20-ORD-078

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In re: Sarah Durand/Office of the Governor

Summary: The Office of the Governor (“Governor’s Office”) violated the Open Records Act (“Act”) by failing to timely and fully respond to an open records request relating to the Governor’s mansion.

Open Records Decision

On April 13, 2020, Sarah Durand (“Appellant”) emailed a request to the Governor’s Office seeking, “timesheets and hours worked by the entire Kentucky Governor’s Mansion staff between the dates of March 1, 2020 to April 10, 2020 including all full-time, part -time, and special event staff excluding state troopers.” Having received no response by April 29, 2020, Appellant initiated this appeal.

On appeal, the Governor’s Office admits that it did not respond to the request timely because a telecommuting employee failed to log the request properly. The Governor’s Office states that it contacted Appellant on April 29, 2020, “and informed her it would provide her with responsive records as soon as possible with any necessary redactions for personal information pursuant to KRS 61.878(1)(a).” The Governor’s Office states that it forwarded Appellant’s request to the Finance and Administration Cabinet (“Finance”) to obtain the responsive records, and provided Appellant the records it obtained on April 30, 2020.

Upon receipt, Appellant informed the Governor’s Office it had not provided records covering March 1 through March 9, as requested. The

Governor's Office then contacted Finance to obtain the missing records and forwarded them to Appellant. The Governor's Office redacted employee personnel numbers from all of the records it provided.

The Governor's Office argues that the appeal is moot because it provided all responsive records to Appellant, but Appellant argues that the appeal is not moot because the records included redactions. "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." 40 KAR 1:030 § 6. Here, the appeal is not moot because the Governor's Office did not provide all of the "requested" documents to Appellant – she did not request redacted documents. *See, e.g.*, 19-ORD-037.

The Governor's Office admits that it failed to respond to the request timely. Typically, an agency has three days to respond to an open records request under KRS 61.872 and 61.880. But in response to the Covid-19 epidemic, the General Assembly passed Senate Bill 150 ("SB 150"), which became effective upon the Governor's signature on March 30, 2020, pursuant to an emergency clause. Section 1(8)(a) of SB 150 provides that "[n]otwithstanding KRS 61.872 and 61.880, a public agency shall respond to the request to inspect or receive copies of public records within 10 days of its receipt." Here, the Governor's Office failed to respond within the required ten days. Moreover, the Governor's Office failed to verify that Finance had provided records that met the full scope of Appellant's request, which resulted in additional delay. Therefore, the Governor's Office violated the Act.

However, the Governor's Office did not violate the Act in redacting employee personnel numbers under KRS 61.878(1)(a). "Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy" are exempt from the Act. KRS 61.878(1)(a). The underlying purpose of the Act is for the public "to be informed as to what their government is doing." *Zink v. Com., Dept. of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825, 828-29 (Ky. App. 1994). If the agency provides the "names of all adults involved in the requested records[,] additional personal identification such as "addresses, telephone numbers, social security numbers and driver's license numbers" do little to foster the purpose of the Act and "would constitute a clearly unwarranted invasion of personal privacy[.]" *Kentucky New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 88 (Ky. 2013). Here, the

employee personnel numbers are similar to driver's license numbers that the *Kentucky New Era* Court held were exempt under KRS 61.878(1)(a). The employee personnel numbers will not provide any additional insight into how the Governor is conducting public business, but their disclosure could provide access to the employee's human resources web-portal. That web-portal contains personal employee information that the disclosure of which would clearly invade the employee's personal privacy. Therefore, the Governor's Office did not violate the Act in redacting the employee personnel numbers.

A party aggrieved by this decision shall 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 proceeding.

Daniel Cameron
Attorney General

/s/ Marc Manley

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Distributed to:

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