



COMMONWEALTH OF KENTUCKY  
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**20-ORD-119**

August 11, 2020

In re: Linda Bartels/Kenton County Fiscal Court

**Summary:** The Kenton County Fiscal Court (“County”) did not violate the Open Records Act (“the Act”) by denying a request for gross tax receipts of an identified business.

***Open Records Decision***

Linda Bartels (“Appellant”) requested that the County provide copies of five years of gross tax receipts and payroll taxes paid by a certain company. In a timely written response, the County denied the request under KRS 61.878(1)(l) and KRS 67.790(8)(a). Appellant now appeals and this Office finds that the County did not violate the Act.

Under KRS 61.880(1), if an agency denies a request, it must “include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” *Id.* Here, the County denied the request under KRS 61.878(1)(l), which exempts all records made confidential by an enactment of the General Assembly, and KRS 67.790(8)(a), which provides:

No present or former employee of any tax district shall intentionally and without authorization inspect or divulge any information acquired by him or her of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the tax district or other proper officer, or any information

produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business.

In an unpublished opinion, the Kentucky Court of Appeals held that KRS 67.790(8)(a) did not apply to applications for occupational licenses filed with a county because those applications do not reveal "the affairs the person's business." *Kentucky County Fiscal Court v. Kentucky Enquirer*, 201 WL 890012 \*5 (Ky. App. March 12, 2010). According to the Court of Appeals, "profits, salaries, deductions, and taxes" can reveal the affairs of a person's business, but because occupational license applications do not contain that information, KRS 67.790(8)(a) did not apply. *Id.* Subsequently, the Court of Appeals cited this case with approval in a published opinion, *Department of Revenue v. Eifler*, 436 S.W.3d 530, 533 (Ky. App. 2013). In *Eifler*, the Court of Appeals held that the Department of Revenue was required to redact the personally identifying information from tax returns and produce the redacted records for inspection. *Id.* at 534. Once the personally identifying information was redacted, the requester could not ascertain the affairs of any specific business.

Under *Eifler* and *Kenton County Fiscal Court*, the County would ordinarily be required to redact the personal information of the taxpayer such that the requester could not ascertain "the affairs of the person's business." KRS 67.790(8)(a). However, Appellant requested the tax receipts of a specific company. Because the Appellant already knows the identity of the company associated with the tax receipts, no amount of redaction would enable the County to produce the tax receipts in a manner that would not reveal the affairs of the identified company's business. *See, e.g.*, 20-ORD-31 (finding that a public agency was not required to produce redacted records when the request identified the person to which the records relate because redaction would be futile). Accordingly, the County was not required to produce the records under KRS 67.790(8)(a), and it did not violate the Act in denying the request.

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.

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