



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

20-ORD-148

September 15, 2020

In re: Robert Brandon Jones/Laurel County Schools District

Summary: Under 40 KAR 1:030 § 4, the Attorney General may not reconsider a prior decision rendered under the Open Records Act (“the Act”). This Office will not reconsider 20-ORD-021, in which it found that Laurel County Schools District (“District”) did not violate the Act by withholding public records that were part of an ongoing investigation under KRS 61.878(1)(i) and KRS 61.878(1)(j). The District violated the Act by denying a request for public records as “not timely” under KRS 161.011(5)(a) without citing an exemption from the Act.

Open Records Decision

On June 8, 2020, Robert Brandon Jones (“Appellant”) made a two-part request to inspect records, which the District denied. In the first part, Appellant requested “copies of any and all records . . . pertaining to any complaints or investigations into [Appellant], assistant volleyball coach at South Laurel High School.” This part of the request was identical to Appellant’s prior request to the District, which this Office considered in 20-ORD-021.

Under 40 KAR 1:030 § 4, “[t]he Attorney General shall not reconsider a decision rendered under the Open Records Law[.]” In 20-ORD-021, this Office affirmed the District’s denial of Appellant’s request on the basis of KRS 61.878(1)(i) and KRS 61.878(1)(j) because the records were part of an ongoing investigation. The District properly denied Appellant access to the records because his request

sought records “pertaining to any complaints or investigations.” To determine the scope of responsive records, the District was first required to determine which records actually pertained to the investigation – which is an inherently preliminary decision while the investigation is still ongoing. *Compare* 20-ORD-21 (holding the District properly relied upon KRS 61.878(1)(i) and (j) based upon the request made) *with* 20-ORD-146 (holding that the agency could not rely upon KRS 61.878(1)(i) and (j) to deny inspection of specifically identified records that may be used as evidence in an investigation but were not created in the course of the investigation). In the present appeal, the District states that the investigation is still continuing. Because the facts and issues are identical to those in the previous decision, a new decision regarding the first part of Appellant’s request would amount to a reconsideration. Accordingly, this Office declines to consider this appeal insofar as it relates to the records at issue in 20-ORD-021.

In the second part of his request, Appellant sought “any documents relating to [the District’s] decision to not renew [Appellant’s] employment as an assistant coach including any complaints or accusations.” The District asserted no exemptions from the Act in response to this part of the request, but instead declared Appellant’s request “not timely” under KRS 161.011(5)(a), a statute applying to classified employees of local school districts. KRS 161.011(5)(a) provides that contracts shall be renewed annually except a contract with:

An employee who has not completed four (4) years of continuous active service, upon written notice which is provided or mailed to the employee by the superintendent, no later than May 15, that the contract will not be renewed for the subsequent school year. Upon written request by the employee, within ten (10) days of the receipt of the notice of nonrenewal, the superintendent shall provide, in a timely manner, written reasons for the nonrenewal.

The District denied Appellant’s request as untimely because it was not made within the ten days provided by KRS 161.011(5)(a).

KRS 61.872(1) provides that “[a]ll public records shall be open for inspection by any person, except as otherwise provided by” the Act. KRS 161.011(5)(a) concerns requests for information (“reasons for the nonrenewal”), not requests for records. It creates no exception to the Act’s requirement that public

records be provided for inspection upon application by any person. And there is no provision in the Act that authorizes an agency to deny an open records request as untimely.

KRS 61.880(1) requires an agency's denial of an open records request to "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." The District violated the Act by denying the second part of Appellant's request without stating an applicable exception.¹

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/ James M. Herrick

James M. Herrick
Assistant Attorney General

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Distributed to:

Mr. Robert Brandon Jones
Larry G. Bryson, Esq.
Doug Bennett, Ed.D.

¹ The second part of Appellant's request may encompass records that were the subject of 20-ORD-021. To that extent, this Office declines to reconsider its prior decision affirming the District's denial of inspection.