



COMMONWEALTH OF KENTUCKY  
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**20-ORD-166**

October 26, 2020

In re: Jessica Cheatham/City of Danville

**Summary:** City of Danville (“City”) violated the Open Records Act (“the Act”) when it denied a request for payroll change forms on the grounds of personal privacy.

***Open Records Decision***

On September 17, 2020, Jessica Cheatham (“Appellant”) requested “payroll change forms” for four City employees for the months of August and September 2020. The City denied the request under KRS 61.878(1)(a), claiming that the forms “contain information of a personal nature and disclosure would constitute a clearly unwarranted invasion of privacy.” This appeal followed.

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.” To determine whether an agency may apply this exception requires a “comparative weighing of the antagonistic interests” between an identified privacy interest and the public interest in disclosure. *Ky. Bd. of Examiners of Psychologists v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324, 327 (Ky. 1992). This Office has recognized that the public has great interest in inspecting public employees’ salaries because those records document the expenditure of public funds. *See, e.g.*, 10-ORD-226. Thus, KRS 61.878(1)(a) will not apply to deny total access to employee payroll records. *See, e.g.*, OAG 90-30.

Here, the City has not sufficiently explained the contents of the payroll change forms, or the alleged privacy interest at stake in determining whether to permit or deny their inspection. In fact, the City failed to respond to this appeal at all. Therefore, this Office is unable to weigh the competing interest under KRS 61.878(1)(a). Some information, such as the private addresses of public employees, dates of birth, and Social Security numbers, may be redacted as a matter of course. *See Kentucky New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 89 (Ky. 2013). But this Office refuses to speculate about what fields of information may be contained in the forms because the City bears the burden of proof at all times in an open records appeal. KRS 61.880(2)(c). And to meet that burden the City must, at a minimum, give “a brief explanation of how the exception applies to the record withheld.” KRS 61.880(1). *See also Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. App. 1996) (holding that KRS 61.880(1) “requires the custodian of records to provide particular and detailed information” when denying a request). The City failed to meet its burden and thus violated the Act because it did not identify or explain what personal privacy interest precluded disclosure in response to 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.

Daniel Cameron  
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/s/ James M. Herrick

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