



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

21-ORD-013

January 28, 2021

In re: David Pennington/Big Sandy Regional Detention Center

Summary: The Big Sandy Regional Detention Center (“Center”) violated the Open Records Act (“the Act”) when it denied a request to inspect records because its response did not cite the applicable statutory exception or explain how such exception applied to the records being withheld.

Open Records Decision

On December 23, 2020, David Pennington (“Appellant”) requested from the Center copies of all inmate or employee grievances filed against Center staff as well as the personnel files of all Center employees. In a timely response, the Center denied the request because it sought “confidential information for jail personnel.” This appeal followed.¹

When a public agency denies a request to inspect records, its response 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.” KRS 61.880(1). Both in its initial response and on appeal, the Center has failed to cite the statutory exception upon which it relies to deny inspection of the records sought. Such conduct violates the Act.

¹ The Appellant also sought other records, which the Center provided. The Appellant does not challenge the Center’s response as it pertains to those records.

According to the Center, the requested records contain confidential information about its employees. Presumably, the Center is withholding these records under KRS 61.878(1)(a). Under that exception, a public agency may deny inspection of records that contain “information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” KRS 61.878(1)(a). To determine whether a public record may be redacted or withheld under KRS 61.878(1)(a), this Office must weigh the public’s right to know that a public agency is properly executing its functions against the “countervailing public interest in personal privacy” when the records in dispute contain information that touches upon the “most intimate and personal features of private lives.” *Ky. Bd. of Examiners of Psychologists v. Courier-Journal and Louisville Times Co.*, 826 S.W.2d 324, 328 (Ky. 1992). But the Kentucky Supreme Court has found that some categories of information, such as personal addresses, phone numbers, social security numbers, and email addresses, may routinely be redacted from public records under KRS 61.878(1)(a). *Kentucky New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 89 (Ky. 2013).

At all times, the Center carries the burden to justify decision to deny a request to inspect records. KRS 61.880(2)(c). Here, however, the Center has failed to explain why grievances filed against Center employees may be withheld under the Act. Without any argument from the Center to the contrary, this Office perceives that grievances against Center employees touch upon the public interest in ensuring that the Center is appropriately executing its governmental function. Without some compelling privacy interest to balance against disclosure, this Office must conclude that the Center violated the Act in withholding the grievances.²

The Appellant’s request also sought employee resumes and job applications. The Center may redact such records if they contain personal addresses, phone numbers, email addresses, dates of birth, or social security numbers. *Kentucky New Era, Inc.*, 415 S.W.3d at 89. The Center does not explain what other personal information these records may contain that would tip the balance in favor of withholding the records in their entirety. *See* KRS 61.878(4)

² The Appellant asked for all grievances filed against all Center employees. He did not limit his request to current employees, nor did he limit the request in temporal scope. This Office has found such “any and all” requests to be unduly burdensome because they fail to precisely describe the records sought. *See, e.g.*, 20-ORD-025. Here, however, the Center has not claimed that the Appellant’s request for grievances, as framed, failed to precisely describe the records sought.

(requiring public agencies to separate exempt material from non-exempt material and produce the latter for inspection). Thus, the Center violated the Act.

The Appellant's request also sought employee performance reviews. The Kentucky Court of Appeals has found that such reviews may be withheld under KRS 61.878(1)(a), depending on the rank of the employee. In *Cape Publications v. City of Louisville*, 191 S.W.3d 10, 13 (Ky. App. 2006), the court considered whether such records could be withheld. To do so, the court weighed the public interest against the privacy interest at stake in performance reviews of lower-level employees. There, the court found that the public's interest in the job performance of a lower-level employee is minimal. *Id.*, On the other hand, the Court found that the public's interest in inspecting the performance reviews for a higher-ranking employee is greater. *Id.* Regardless, whether an employee performance review is subject to inspection is determined on a case-by-case basis. *Id.* at 14.

Here, the Center has provided no justification for its refusal to provide the requested performance reviews. The Center has thus failed to carry its burden that the performance reviews may be withheld.³

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/Marc Manley
Marc Manley
Assistant Attorney General

#404

³ Like his request for grievances, the Appellant has not narrowed his request to current employees or narrowed the temporal scope of his request. But here too, the Center has not claimed that such a request imposes an unreasonable burden.

21-ORD-013

Page 4

Distributed to:

David K. Pennington

Nelson T. Sparks