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21-ORD-044

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In re: Brandon Voelker/Cabinet for Health and Family Services

Summary: The Cabinet for Health and Family Services (“Cabinet”) did not violate the Open Records Act (“the Act”) when it denied a request for an employee’s personal records stored on a state issued computer.

Open Records Decision

Brandon Voelker (“Appellant”) requested from the Cabinet a copy of all of an employee’s personal records on his state issued computer. The Appellant specified that he sought “items on the computer, if any, that are not related to the function of the office.” In response, the Cabinet identified “personal bills, a few personal emails regarding benefits, two personal schedules, two documents regarding personal banking matters, and one tax document” that it was withholding under KRS 61.878(1)(a). The Cabinet also denied, under KRS 61.878(1)(i), inspection of a personal letter that appears to be addressed to the employee’s relative. This appeal followed.¹

Under KRS 61.878(1)(a), a public agency may withhold “information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” To determine whether a public record may be redacted or withheld under KRS 61.878(1)(a), this Office must weigh the

¹ The Appellant also sought other records through a series of requests submitted via email. The Cabinet provided those records, either initially or on appeal. Thus, any dispute about those records has been rendered moot. 40 KAR 1:030 § 6.

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). This balancing test requires a "comparative weighing of the antagonistic interests. Necessarily, the circumstances of a particular case will affect the balance [T]he question of whether an invasion of privacy is 'clearly unwarranted' is intrinsically situational, and can only be determined within a specific context." *Id.* at 327-28.

By its very terms, the Appellant's request does not seek public records that would shed light on whether the Cabinet and its employees are properly executing their functions. Rather, the Appellant claims that the employee's personal records contained on a state issued computer would shed light on the improper use of state equipment. But the Cabinet has identified and described the personal records it located. And the employee has a privacy interest in those records, which include financial information. *See, e.g.*, 20-ORD-120; 02-ORD-209. Whether the employee's actions violate the Executive Branch Code of Ethics, as the Appellant claims, is not a question for this Office to decide. However, we note that the General Assembly has also exempted from inspection "[c]ommunications of a purely personal nature unrelated to any governmental function." KRS 61.878(1)(p).² Therefore, the General Assembly has recognized that there may be times in which a public agency comes into possession of purely personal communications.

Here, the Appellant sought "items on the computer, if any, that are not related to the function of the office." The Appellant's asserted interest in uncovering the improper use of state equipment has been satisfied by the Cabinet identifying the existence of personal records and describing their contents. Actual disclosure of the records, on the other hand, would not further serve the asserted public interest. The employee has a privacy interest in his personal financial records in the Cabinet's possession. Thus, the Cabinet did not violate the Act in denying the request.

² Because this Office resolves this appeal under KRS 61.878(1)(a), it is unnecessary to determine whether KRS 61.878(1)(p) would also permit the Cabinet to withhold the records sought.

The Cabinet also denied inspection of a personal letter that appears to be addressed to the employee's spouse or other relative. Under KRS 61.878(1)(i), a public agency may deny inspection of "correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency." The letter is correspondence with a private individual, and it does not give notice of a final agency action. Thus, the Cabinet did not violate the Act when it denied inspection of the letter.

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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Distributed to:

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