



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-062

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In re: Lawrence Trageser/Louisville Metro Police Department

Summary: Because the Louisville Metro Police Department (“Department”) failed to respond to an open records request within ten days, it violated the Open Records Act (“the Act”) as modified by Senate Bill 150. The Department did not violate the Act by making redactions consistent with KRS 61.878(1)(a).

Open Records Decision

On December 7, 2020, Lawrence Trageser (“Appellant”) requested a copy of the personnel file for former Jefferson County Police Officer Rick Sanders. The Department timely responded that it had no records for a former employee by that name. On December 17, 2020, the Appellant asked the Department to search for records under the name “Richard Sanders,” but the Department did not respond. This appeal followed.

Normally, a public agency must respond to an open records request within three business days. KRS 61.880(1). In response to the public health emergency caused by the novel coronavirus, however, the General Assembly modified that requirement when it enacted Senate Bill 150 (“SB 150”), which became law on March 30, 2020. SB 150 provides, notwithstanding the provisions of the Act, that “a public agency shall respond to the request to inspect or receive copies of public records within 10 days of its receipt.” SB 150 § 1(8)(a). The Department violated the Act by failing to respond to the Appellant’s renewed request within ten days.¹

¹ On appeal, the Department explains that it did not respond to the Appellant’s December 17 e-mail because his original request had already been “closed.” However, this does not excuse the Department’s failure to respond to the Appellant’s renewed request for records.

After the appeal was initiated, the Department provided the requested records to the Appellant. However, the Department relied on KRS 61.878(1)(a) to redact personal information, including “age, dates of birth, dependent information, gender, personal addresses, marital status, personal phone numbers, race, social security numbers, test scores, height, weight, hair color, eye color, blood type, birthplace, and names of victims/alleged criminals,” as well as the “[e]mergency contact form, tax forms, test scores and medical/health records or forms.” The Department also denied access to medical examinations as confidential under KRS 15.400(3).

KRS 61.878(1)(a) exempts “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy[.]” In reviewing an agency’s denial of an open records request based on the personal privacy exemption, the courts and this Office balance the public’s right to know what is happening within government against the personal privacy interest at stake in the record. *See Zink v. Commonwealth, Dept. of Workers’ Claims*, 902 S.W.2d 825, 828 (Ky. App. 1994). However, the Kentucky Supreme Court has held that certain categories of information about private individuals provide minimal insight into governmental affairs and may be categorically redacted under KRS 61.878(1)(a). *Kentucky New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 89 (Ky. 2013). These categories include personal phone numbers and addresses, birth dates, and Social Security numbers. *Id.* Accordingly, the Department properly redacted that information from the responsive records. *See* KRS 61.878(4).

Other categories of information, including dependent information, marital status, test scores, height, weight, hair color, eye color, blood type, and birthplace, are clearly of a personal nature and would provide minimal insight into government conduct. The same is true of other records, including emergency contact forms, tax forms, and records containing health information. As for race and gender information, this Office has held that a person has a privacy interest in such information, but that such privacy interest may be outweighed by the public interest in certain cases. *See, e.g.*, 21-ORD-48; 10-ORD-129. But here, the Appellant has not asserted that the officer’s race or gender is relevant to ensuring that the Department is complying with the law. Because there is no indication here that the public

See, e.g., 19-ORD-073; 15-ORD-099 (finding that agencies violated the Act by not responding to a clarified version of an original request).

interest in disclosure of this information would outweigh the privacy interests involved, the Department properly withheld those records and categories of information under KRS 61.878(1)(a).

Under KRS 61.878(1)(a), a law enforcement agency may also redact the identities of crime victims and uncharged suspects in the interest of personal privacy. *See Lawson v. Office of Attorney General*, 415 S.W.3d 59, 69 (Ky. 2013) (collecting cases). Therefore, to the extent that the Department is referring to uncharged suspects when it uses the phrase “alleged criminals,” the Department did not violate the Act by redacting such names.² Likewise, the Department did not violate the Act by redacting the names of victims.

Finally, KRS 61.878(1)(a) authorized the Department to withhold the requested medical examinations. Such records contain medical information that is clearly personal, and inspection of the medical examinations would not provide any insight into whether the Department is carrying out its statutory function. Accordingly, the Department did not violate the Act in withholding the medical examination.³

In sum, the Department violated the Act when it failed to respond to the Appellant’s renewed request within ten days. It did not, however, violate the Act when it made redactions that are consistent with KRS 61.878(1)(a).

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

² However, the Department may not redact the identities of suspects who have been charged with a crime but have not been convicted. *See generally Lexington H-L Services, Inc. v. Lexington-Fayette Urban County Government*, 297 S.W.3d 579, 584 n.6 (Ky. App. 2009) (noting that the identity of a person “arrested, charged and indicted for a sexual offense . . . would clearly be subject to public disclosure” under the Act, although the identity of an uncharged suspect would not). *See also Zink*, 902 S.W.2d at 828 (noting that “when an individual enters on the public way, breaks a law, or inflicts a tort on his fellow man he forfeits his privacy to a certain extent”).

³ The Department claimed that the medical examinations were exempt under KRS 15.400(3). Under that provision, “[t]he Open Records Act notwithstanding, the . . . medical examination . . . conducted for any person seeking certification [as a peace officer] pursuant to KRS 15.380 to 15.404 shall not be subject to disclosure.” However, according to the record on appeal, Richard Sanders served as a Jefferson County Police officer between 1973 and 1983, whereas the certification process established in KRS 15.380 to 15.404 was not enacted by the General Assembly until 1998. We decline to decide whether KRS 15.400(3) applies retroactively to these records since KRS 61.878(1)(a) clearly makes them exempt.

in circuit court, but shall not be named as a party in that action or in any subsequent proceeding.

Daniel Cameron
Attorney General

/s/ James M. Herrick

James M. Herrick
Assistant Attorney General

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Distributed to:

Lawrence Trageser
Paul V. Guagliardo, Esq.
Alice Lyon, Esq.
Stephonn Bunton