



COMMONWEALTH OF KENTUCKY
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21-ORD-072

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In re: Stephanos Kyrkanides/University of Kentucky

Summary: The University of Kentucky (“University”) did not violate the Open Records Act (“the Act”) when it denied a request for copies of employee performance evaluations under KRS 61.878(1)(a).

Open Records Decision

On March 9, 2021, Dr. Stephanos Kyrkanides (“Appellant”) requested copies of all performance evaluations for faculty in the Division of Orthodontics within the University’s College of Dentistry. The University denied the Appellant’s request under KRS 61.878(1)(a). This appeal followed.

KRS 61.878(1)(a) creates an exception to the Act for “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” This exception requires a “comparative weighing of the antagonistic interests” between privacy and the public interest in disclosure. *Kentucky Bd. of Examiners of Psychologists v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324, 327 (Ky. 1992). The courts have recognized that public employees maintain a significant privacy interest in their performance evaluations.

The confidentiality of performance evaluations allows evaluators to speak more frankly about an employee than they might if the evaluations were known to be open to public disclosure. In addition, performance evaluations certainly can contain a great deal of personal information, and should not be subject to disclosure without the most pressing of public needs.

Cape Publications v. City of Louisville, 191 S.W.3d 10, 13 (Ky. App. 2006). One example of such a “pressing public need” is when the public employee is charged with “committing a criminal act made possible by his position at a public agency[.]” *Id.* at 14. In *Cape Publications*, the public employee was charged with such an offense, which also led to the administrative suspension, and eventual resignation, of his supervisor. *Id.* Therefore, the Court found that the employee had “to some extent forfeited his privacy interest” by engaging in criminal activity and both his evaluation and that of his supervisor were subject to disclosure. *Id.*

Here, however, the Appellant has presented no facts to support a claim that the public interest in disclosure of these evaluations outweighs the significant personal privacy interest in records containing frank discussions between employers and employees. *See id.* at 13. Therefore, this Office finds that the University did not violate the Act when it denied the Appellant’s request. *See, e.g.*, 16-ORD-185; 07-ORD-125 (both finding performance reviews were exempt from inspection under 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 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

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Distributed to:

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