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22-ORD-146

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In re: Lisa Gannoe/Eastern Kentucky University

Summary: Eastern Kentucky University (“the University”) did not violate the Open Records Act (“the Act”) when it denied a request for student course comment sheets that were exempt from disclosure under KRS 61.878(1)(a).

Open Records Decision

On May 26, 2022, associate professor Lisa Gannoe (“Appellant”) submitted a request to the University to inspect “electronic or written comment sheets” from student evaluations of two courses taught in the spring 2022 semester. The University provided four individual student comments to the Appellant, but denied the remainder of the request on the grounds that disclosure of the comment sheets would constitute a “clearly unwarranted invasion of personal privacy” under KRS 61.878(1)(a). Additionally, the University asserted that the comment sheets were exempt because they were not “intended to give notice of final action of a public agency” under KRS 61.878(1)(i) and were “preliminary memoranda in which opinions are expressed” under KRS 61.878(1)(j). This appeal followed.

KRS 61.878(1)(a) exempts from disclosure “[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). This Office has long recognized that “an instructor has a substantial interest in the nondisclosure of anonymous student evaluations” under KRS 61.878(1)(a), whereas “[t]he public’s interest in knowing that the University is properly executing its

function is not []served by release of the evaluations.” *See* 93-ORD-17; *see also* 92-ORD-1375. Here, the Appellant has not attempted to show any heightened public interest in the disclosure of comment sheets for these particular course evaluations. Accordingly, the balance tilts in favor of nondisclosure under KRS 61.878(1)(a).¹

The Appellant argues, however, that she is entitled to inspect the comment sheets under KRS 61.878(3), which provides that “[n]o exemption in this section shall be construed to deny, abridge, or impede the right of a public agency employee, including university employees, . . . to inspect and to copy any record including preliminary and other supporting documentation that relates to him.” In response, the University states that the Appellant taught the two courses for the first half of the semester but was replaced halfway through the semester by two other instructors. Furthermore, in completing the evaluations, the students were specifically directed to evaluate only the second half of the semester. In one class, all students complied with this instruction. In the other class, four students submitted comments that related to the first half of the semester, and the University provided those four individual comments to the Appellant in accordance with KRS 61.878(4) (“If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.”). Therefore, the Appellant has not been denied access to any student comments that relate to her.

The Appellant also claims that the denial was improper because she has, in the past, been able to view student comment sheets relating to other instructors while serving in her capacity as a member of a tenure committee. Here, however, the Appellant is not seeking to review the records in that capacity, but merely as a private citizen. In making a request under the Act, the Appellant “enjoys no greater entitlement to the [records] than any other member of the public.” *See* 12-ORD-155. Accordingly, the University did not violate the Act when it denied the Appellant’s request for student comments that do not relate to her.

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 within 30 days from the date of this decision. 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. The Attorney General will accept notice of the complaint e-mailed to OAGAppeals@ky.gov.

¹ Because KRS 61.878(1)(a) is dispositive as to the exempt status of the records, it is not necessary to address the University’s arguments under KRS 61.878(1)(i) or (j).

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s/James M. Herrick
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Distributed to:

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