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22-ORD-151

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In re: Randy Bayers/Louisville Metro Safe

Summary: Louisville Metro Safe ("Metro") violated the Open Records Act ("the Act") when it redacted the names of 911 callers who reported a specific incident. However, Metro did not violate the Act when it redacted the phone numbers of those callers under KRS 61.878(1)(a).

Open Records Decision

On May 31, 2022, Randy Bayers ("the Appellant"), an attorney, submitted a request on behalf of his client to Metro seeking copies of all 911 recordings and computer aided dispatch ("CAD") notes related to a specific motor vehicle accident. In a timely response, Metro invoked KRS 61.872(5) to delay inspection of records. Then, on June 10, Metro delivered all responsive records to the Appellant, but redacted the names and telephone numbers of the 911 callers under KRS 61.878(1)(a) and the Kentucky Supreme Court case *Kentucky New Era v. City of Hopkinsville*, 415 S.W.3d 76 (Ky. 2013). This appeal followed.[1]

KRS 61.878(1)(a) exempts from inspection "[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

[1] Metro also redacted information related to personal health information under KRS 61.878(1)(k) and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The Appellant does not challenge those redactions, or Metro's invocation of KRS 61.872(5) to delay production of responsive records.

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.*, 415 S.W.3d at 89. The "categorical" rule announced in *Kentucky New Era* did not replace the typical balancing test that Kentucky courts use when determining whether the privacy interest at stake outweighs the public's right to know what the government is doing. Rather, the Court in *Kentucky New Era* recognized that the Act must be "workable," and thus, "with respect to discrete types of information routinely included in an agency's records and routinely implicating similar grounds for exemption, the agency need not undertake an ad hoc analysis of the exemption's application to such information in each instance, but may apply a categorical rule." *Id*. The Court in *Kentucky New Era* held that the privacy interest in "address, phone number, social security number, or . . . other forms of personal information . . . will almost always be substantial, and the public interest in disclosure rarely so." *Id*. (emphasis added).

Because the *Kentucky New Era* Court held that phone numbers of those appearing in government records may be categorically redacted, Metro did not violate the Act by redacting the phone numbers of the 911 callers. However, *Kentucky New Era* did not give carte blanche to agencies to redact the names of individuals appearing in public records. Rather, the only names that the *Kentucky New Era* court found could be redacted were the names of juveniles appearing in the police records. *Id*. (among the types of permissible redactions were "all references to juveniles"). In fact, there are some instances where the public's right to know the identity of a private citizen is paramount to monitoring the propriety of public agency action. In *Cape Publications, Inc. v. Univ. of Louisville Foundation, Inc.*, 260 S.W.3d 818 (Ky. 2008), the Court found that the public had a legitimate interest in the names of private donors to public universities. *Id*. at 822. However, the determination of whether a particular name could be released depended upon what steps the private donor took to preserve his or her privacy. As a result, the names of those donors who sought anonymity could be properly withheld, but not the names of donors who failed to request anonymity. *Id*. at 824.

Here, this Office must weigh the public's interest in knowing the names of the 911 callers against the privacy interests at stake. On the one hand, the public interest in these individuals' names is not high. While the revelation of their names may provide a private interest to the Appellant's client in obtaining evidence for litigation involving other private individuals, these names would shed little light on what the government is doing, which is the purpose of the Act. *See Zink*, 902 S.W.2d at 828. But on the other hand, this Office long ago recognized that "a person's name is personal but it is the least private thing about him . . . [and] should not be deleted from a public record unless there is some special reason provided by statute or court order (i.e., adoption records)." OAG 82-234, p. 3. Nevertheless, this Office has also considered a request for anonymity as being critical in determining whether

KRS 61.878(1)(a) applies to a person's identity. *Compare* 12-ORD-149 (finding that the agency failed to demonstrate that the complainant sought anonymity) *with* 16-ORD-055 (finding that the agency met its burden because the complainant sought anonymity out of fear of retaliation). Moreover, a private individual's privacy "interest becomes stronger with regard to personal information the dissemination of which could subject him or her to adverse repercussions. Such repercussions can include embarrassment, stigma, reprisal, all the way to threats of physical harm." *Kentucky New Era*, 415 S.W.3d at 83.

Weighing the competing interests, the Office finds both interests at stake are small. The names of these individuals are not likely to provide insight into how the government is operating. But there is a strong preference to not redact names appearing in government records, absent evidence that the person sought anonymity or that revelation of the names would subject those individuals to stigma, reprisal, or physical harm. *See id*. Metro carries the burden of proof to sustain its actions, KRS 61.880(2)(c), but Metro has not produced any proof that these individuals sought anonymity when they called 911 to report a motor vehicle accident, or that these individuals are at risk of stigma, reprisal, or physical harm. Accordingly, Metro violated the Act when it redacted the names of the 911 callers. However, Metro did not violate the Act when it categorically redacted the phone numbers of those callers. *See Kentucky New Era*, 415 S.W.3d at 89.

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.

Daniel Cameron
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s/Marc Manley
Marc Manley
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Distributed to:

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