



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

22-ORD-179

September 6, 2022

In re: Jamie Weddington/City of Vanceburg

Summary: The City of Vanceburg (“the City”) violated the Open Records Act (“the Act”) when it failed to respond to a request for records within five business days. The City did not violate the Act when it denied a request for occupational tax information that is confidential under KRS 131.190(1).

Open Records Decision

On May 24, 2022, Jamie Weddington (“Appellant”) requested that the City provide “[t]he annual or monthly amount of payroll/occupational tax received by” the City from eight private businesses since January 1, 2018, or, in the case of one business, since January 1, 2013.¹ On June 3, 2022, the City denied the request on the basis of KRS 61.878(1)(a), KRS 61.878(1)(c)1, KRS 131.190, and a city ordinance. This appeal followed.

Under the Act, a public agency has five business days after receiving a request for public records in which to fulfill or deny the request. KRS 61.880(1). Because the Appellant’s request was received on May 24, 2022, the City’s response was due on June 1, 2022. However, the City did not issue its response to the Appellant’s request until June 3, 2022. Thus, the City violated the Act when it failed to issue a timely response.

In the City’s response, the City denied the Appellant’s request, in part, under KRS 131.190. That statute is incorporated into the Act under KRS 61.878(1)(l), and

¹ The Appellant’s request contained two other parts, but the Appellant has withdrawn the portions of his appeal related to those two parts.

prohibits the disclosure of certain tax information. Specifically, it provides that “[n]o . . . person, shall intentionally and without authorization inspect or *divulge any information* acquired by him or her of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the department or other proper officer, or any information produced by a hearing or investigation, *insofar as the information may have to do with the affairs of the person’s business.*” KRS 131.190(1) (emphasis added). This Office has consistently found that KRS 131.190(1) prohibits a local government from disclosing the amount of occupational tax paid or owed by a business. *See, e.g.,* 08-ORD-143; 04-ORD-010; *see also* 10-ORD-183 (interpreting substantially similar language in KRS 67.790(8)(a)).² Accordingly, the City did not violate the Act when it denied the Appellant’s request.³

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
Attorney General

s/James M. Herrick
James M. Herrick
Assistant Attorney General

#279

Distributed to:

Mr. Jamie Weddington
R. Stephen McGinnis, Esq.
Hon. Dane Blankenship
Ms. Greta May

² The Appellant argues that he is entitled to know the amounts of occupational tax paid by the businesses in order to determine whether they are in compliance with local tax ordinances. However, KRS 131.190(1) does not prohibit a local government from disclosing whether a business is delinquent in paying its occupational taxes. *See, e.g.,* 08-ORD-143; 04-ORD-010.

³ The Appellant argues that there is a substantial public interest in disclosure of the requested information because some of the businesses are owned by, or are employers of, City officials. However, when information is made confidential by statute, it is not necessary to balance competing public and private interests as under KRS 61.878(1)(a). *See, e.g.,* 18-ORD-099. Furthermore, because KRS 131.190(1) is dispositive of the issues on appeal, it is unnecessary to address the application of KRS 61.878(1)(a) or KRS 61.878(1)(c)1.