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24-ORD-243

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In re: Andrea Janovic/Cold Spring Police Department

Summary: The Cold Spring Police Department (“the Department”) did not violate the Open Records Act (“the Act”) when it denied a request for a letter collected at the scene of a suicide under KRS 61.878(1)(a).

Open Records Decision

Andrea Janovic (“Appellant”) submitted a request seeking photos of evidence collected by the Department from the scene of a suicide and a copy of a “note” found by the decedent’s father. The Department withheld photos of the decedent’s medication and the note under KRS 61.878(1)(a). Regarding the note, the Department stated the decedent’s family have a privacy interest in a private letter, and they could suffer adverse consequences if it is disclosed due to the stigma associated with suicide. The Department produced all other photos in its possession with certain person information redacted under KRS 61.878(1)(a). This appeal followed.¹

The Appellant challenges the Department’s withholding of the Decedent’s suicide note. Under KRS 61.878(1)(a), a public agency may withhold “information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” To determine whether a public record may be redacted or withheld under KRS 61.878(1)(a), the Office must weigh the public’s right to know that a public agency is properly executing its functions against the “countervailing public interest in personal privacy” when the records in dispute contain information that touches upon the “most intimate and personal features of private lives.” *Ky. Bd. of Exam’rs of Psychologists v. Courier–Journal & Louisville Times Co.*, 826 S.W.2d 324, 328 (Ky. 1992). This balancing test requires a “comparative weighing of the antagonistic interests. Necessarily, the circumstances of a particular case will affect the balance. . . . [T]he question of whether an invasion

¹ The Appellant has not challenged the Department’s redactions or denial of photos of the decedent’s medication.

of privacy is ‘clearly unwarranted’ is intrinsically situational, and can only be determined within a specific context.” *Id.* at 327–28.

First, the Office “must initially determine whether such record or information contained therein is of a ‘personal nature.’” *Lexington H-L Servs., Inc. v. Lexington–Fayette Urb. Cnty. Gov’t*, 297 S.W.3d 579, 584 (Ky. App. 2009). Here, it is clear that the contents of a suicide note addressed to the decedent’s family are of a “personal nature.” Thus, the remaining question is whether production of the letter is a “clearly unwarranted invasion of personal privacy.”

To start, the Appellant makes clear that she does not seek public records that would shed light on whether the Department and its employees are properly executing their functions. Rather, the Appellant describes her interest solely in relation to possible litigation. She claims litigation might be filed related to this death and could be avoided if she is able to review the letter. The Appellant asserts that the public interest would be served by “avoiding litigation that may otherwise be brought if the contents of the document are not known.”²

For its part, the Department describes the privacy interest of the decedent’s family. Specifically, it describes the stigma associated with suicide and the negative public attention the family might face due to public disclosure of the suicide note. The Department further argues that the family’s privacy “interest becomes stronger with regard to personal information the dissemination of which could subject [them] to adverse repercussions.” *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 83 (Ky. 2013).

Here, balancing the dubious public interest in avoiding possible litigation against the obviously personal nature of the decedent’s final communication with his family, it is clear the Department has met its burden of demonstrating that inspection of the Decedent’s suicide note would “constitute a clearly unwarranted invasion of personal privacy.”³ Accordingly, the Department did not violate the Act when it withheld the suicide note.

² The Appellant does not state whether the potential litigation would involve the Department. But is unlikely that litigation that could be avoided by review of a private individual’s suicide note would relate to the proper execution of the Department’s functions.

³ The Office notes that KRS 61.878(1)(s) exempts from disclosure “[c]ommunications of a purely personal nature unrelated to governmental function,” which likely also is relevant here. The decedent’s suicide note, a private letter written to his family, is only in the possession of the Department as a result of their investigation into his death. But because the Department did not purport to rely on KRS 61.878(1)(s) in its response, the Office limits its analysis to the KRS 61.878(1)(a) issue.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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 emailed to OAGAppeals@ky.gov.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
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Distributed to:

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