



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

25-ORD-080

March 25, 2025

In re: David Webster/Christian County Public Schools

Summary: Christian County Public Schools (“CCPS”) did not violate the Open Records Act (“the Act”) when it withheld communications between staff and Board members that were exempt from disclosure under KRS 61.878(1)(a), (k), or (s).

Open Records Decision

On November 22, 2024, David Webster (“Appellant”) submitted a request to CCPS seeking “the group text message thread, including attachments, exchanged between” the Superintendent of CCPS, “Board members of Districts 1 through 5,” the Superintendent’s secretary, and the CCPS board attorney from the date the Superintendent assumed office to the date of the request. CCPS initially stated it would need additional time to provide responsive records.¹ Subsequently, CCPS provided responsive records with redactions made under KRS 61.878(1)(a), (k),² and (s). This appeal followed.³

To determine whether CCPS properly invoked the claimed exemptions, the Office asked it to provide unredacted copies of the records. *See* KRS 61.880(2)(c). Of

¹ CCPS’s initial response was previously the subject of 25-ORD-012, in which the Appellant challenged the delayed response to his request. That decision did not address the adequacy of CCPS’s production because the appeal was initiated before CCPS provided any responsive records.

² Specifically, CCPS invokes the Federal Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, incorporated into the Act by KRS 61.878(2)(k).

³ CCPS alternatively argues that the requested records “do not qualify as public records under the [Act] because they are not in the possession of, or retained by,” CCPS. However, despite that assertion, the record before the Office shows clearly that CCPS took possession of the records, conducted an extensive review for exempted information, redacted the records, and provided redacted copies to the Appellant. As such, CCPS has waived any argument that the records requests are not “public records” because it does not possess or retain them.

course, the Office cannot disclose the contents of these records. *Id.* But having reviewed them, it is clear they all are exempt under KRS 61.878(1)(a), (k), and (s).

Most of the redactions were made under KRS 61.878(1)(s), which exempts from disclosure “[c]ommunications of a purely personal nature unrelated to any governmental function.” The messages redacted by CCPS are related to individuals’ birthdays, celebratory holidays messages, and notices of death of family members. Those types of messages do not relate to any governmental function of CCPS or its board. Accordingly, CCPS did not violate the Act by withholding these records.

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 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, Dep’t of Workers’ Claims*, 902 S.W.2d 825, 828 (Ky. App. 1994). Here, CCPS describes the withheld communications as “private student health information” and “private employee health information.” The Office has long recognized that “medical information is information in which a person has a privacy interest and the disclosure of records containing such information would constitute an unwarranted invasion of privacy.” *See, e.g.*, 22-ORD-144; 06-ORD-209. The Office’s review of the communications confirms CCPS’s description of them. Accordingly, the CCPS did not violate the Act when it withheld them.

Finally, FERPA is incorporated into the Act by KRS 61.878(1)(k). FERPA provides that “[n]o funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information . . .) of students without the written consent of their parents to any individual, agency, or organization, other than to” specified individuals under conditions not relevant here. 20 U.S.C. § 1232g(b)(1) (emphasis added). CCPS explains that the redacted information includes “confidential student information.” The Office has previously affirmed the withholding of videos and photographs of students that would reveal those students’ identities as “education records” exempt under FERPA. *See, e.g.*, 24-ORD-196; 22-ORD-273; 99-ORD-217. Here, the Office’s review of the communications confirms they include photographs

of students. As such, they constitute education records and are exempt under FERPA. Accordingly, the CCPS did not violate the Act when it did not produce them.⁴

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
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

David Webster

Jessica Addison, Assistant Superintendent, Christian County Public Schools

Christopher Bentzel, Superintendent, Christian County Public Schools

Jack N. Lackey, Jr., Board Attorney, Christian County Board of Education

⁴ The Appellant argues that CCPS should not be allowed to redact the records under the cited exemptions because they previously produced similar records without redaction. However, nothing in the Act renders an exemption permanently waived because it was not raised in response to a prior request. Moreover, the Office notes that it has previously upheld CCPS's denial of similar requests from the Appellant that relied on the same exemptions. *See, e.g.*, 22-ORD-144.