



COMMONWEALTH OF KENTUCKY
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22-ORD-037

March 7, 2022

In re: Lawrence Trageser/Spencer County Clerk's Office

Summary: The Spencer County Clerk's Office ("the Clerk's Office") violated the Open Records Act ("the Act") when it failed to give written notification of redactions to public records and the exception to the Act on which it relied. The Clerk's Office also violated the Act when it redacted the addresses of candidates for public office and their cosigners from notification and declaration forms filed with the Clerk's Office. Because residency in the district is a legal qualification for both candidates and their cosigners, the privacy interest in address information does not outweigh the public interest in disclosure under KRS 61.878(1)(a).

Open Records Decision

On January 26 and 31, 2022, Lawrence Trageser ("Appellant") requested to inspect the Notification and Declaration forms filed with the Clerk's Office by three candidates in the primary election for the office of Spencer County Magistrate. The Clerk's Office granted inspection, but redacted the addresses of the three candidates and the addresses of the two cosigners on each form. The written response to the request did not advise the Appellant that any redactions had been made, nor did it state any exception to the Act or explain how the exception applied to the redacted material. This appeal followed.

When a public agency denies a request under the Act, in whole or in part, it must "notify in writing the person making the request . . . of its decision," cite the applicable exception to the Act, and give "a brief explanation of how the exception applies to the record withheld." KRS 61.880(1). The

agency's explanation must "provide particular and detailed information," not merely a "limited and perfunctory response." *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). Here, the Clerk's Office merely stated that it was granting inspection of the records. The Clerk's Office did not notify the Appellant that anything had been redacted, nor did it cite an exception to the Act or explain how the exception applied to the redacted material. Thus, the Clerk's Office violated the Act. *See, e.g.*, 21-ORD-099.

On appeal, the Clerk's Office argues that the addresses of the candidates and cosigners are personal information exempt from the Act under KRS 61.878(1)(a). KRS 61.878(1)(a) exempts "[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).

The Kentucky Supreme Court has held that in routine cases, certain categories of information about private individuals, including home addresses, provide minimal insight into governmental affairs and may be categorically redacted under KRS 61.878(1)(a). *Kentucky New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 89 (Ky. 2013). However, the Court also noted that "in cases that are not routine an otherwise categorical rule may not apply." *Id.* (citing *The Nation Magazine, Washington Bureau v. United States Customs Service*, 71 F.3d 885 (D.C. Cir. 1995)).

Here, the Appellant's request for the addresses of candidates and cosigners is not a mere attempt "to turn the state's agencies into clearing houses of personal information about private citizens." *Kentucky New Era*, 415 S.W.3d at 89. Rather, a candidate's address information is essential for the public to monitor compliance with election laws.¹ Any candidate in a primary election must file a Notification and Declaration form "signed by the candidate and by not less than two (2) registered voters of the same party *from the district*

¹ The office of county magistrate, also known as "justice of the peace," is created under Section 99 of the Kentucky Constitution. *See* OAG 85-30 (noting that the terms "magistrate" and "justice of the peace" are "synonymous"); *see also Brown v. Read*, 223 S.W.2d 592, 593 (Ky. 1949); *Allen v. McClendon*, 967 S.W.2d 1, 5 (Ky. 1998) (Cooper, J., concurring). Under Section 100 of the Kentucky Constitution, "[n]o person shall be eligible" for the office of magistrate who has not resided for one year "in the county and district in which he is a candidate."

or jurisdiction from which the candidate seeks nomination.” KRS 118.125(2) (emphasis added). Thus, in terms of a candidate’s eligibility for office, it is essential that both the candidate and the cosigners reside in the appropriate district.

In prior decisions, this Office has recognized a strong public interest “in assessing the qualifications . . . of a candidate for public office.” *See* 93-ORD-42. Accordingly, in 11-ORD-046, this Office found that the heightened public interest in assessing candidates’ qualifications outweighed any privacy interest in résumés they had submitted for appointment to a vacant elective office. Furthermore, with regard to home addresses, this Office has found that the “strongly substantiated public interest in the regulation of elections” compelled the disclosure of address information on voter assistance forms because “the voter’s privacy interest in selective nondisclosure of his or her home address . . . is outweighed by the public interest” in ensuring that election officials “are properly discharging their statutorily assigned duties and thereby preventing voter fraud.” *See* 03-ORD-034. Thus, for both candidates and voters, this Office has found the privacy interest in their home addresses insufficient to overcome the substantial public interest in ensuring election integrity.

Moreover, the privacy interests at stake here are further diminished by the fact that the information sought is accessible to the public by other means.² Voter registration records, which include addresses, are available for inspection and copying under KRS 116.095; and, as the Appellant has demonstrated in the record before this Office, the candidates’ residential addresses are available to the public from the Kentucky Registry of Election Finance. Given this reduced privacy interest weighed against a substantial public interest, the Clerk’s Office has failed to meet its burden under KRS 61.880(2)(c) that the disclosure of the candidates’ and cosigners’ addresses “would constitute a clearly unwarranted invasion of personal privacy” under KRS 61.878(1)(a.) Therefore, the Clerk’s Office violated the Act when it redacted that information.

² In *Zink*, the Court found that the public retained a privacy interest in other governmental records notwithstanding the fact that the addresses could be obtained by other means, including from “voter registration lists.” *Zink*, 902 S.W.2d at 828. By recognizing that the public could obtain address information from “voter registration lists,” the *Zink* court hinted that these records are different in kind from routine government records that happen to capture the addresses of private citizens.

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

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Distributed to:

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