



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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22-ORD-159

August 1, 2022

In re: Lisa Gannoe/Eastern Kentucky University

Summary: Under 40 KAR 1:030 § 4, the Attorney General shall not reconsider a prior decision rendered under the Open Records Act (“the Act”). This Office will not reconsider 22-ORD-146, in which it found that Eastern Kentucky University (“the University”) did not violate the Act when it denied a request for student course comment sheets that were exempt from disclosure under KRS 61.878(1)(a).

Open Records Decision

On July 5, 2022, associate professor Lisa Gannoe (“Appellant”) submitted a request to the University to inspect student comment sheets from evaluations of two courses taught in the spring 2022 semester. These are the identical records the Appellant previously sought in her prior request to the University, which this Office considered in 22-ORD-146. Because this Office had affirmed the University’s denial in that decision, the University again denied the request. This appeal followed.

Under 40 KAR 1:030 § 4, “[t]he Attorney General shall not reconsider a decision rendered under the Open Records Law.” In 20-ORD-148, this Office found that a second appeal between the same parties concerning the exempt status of a record would amount to a reconsideration when “the facts and issues [were] identical to those in the previous decision.” In 22-ORD-146, this Office found that the comments withheld from the Appellant were exempt because their disclosure “would constitute a clearly unwarranted invasion of personal privacy” under KRS 61.878(1)(a) and that she was not entitled to inspect them under KRS 61.878(3) because the records withheld did not relate to her.¹

¹ However, the University, pursuant to KRS 61.878(3), had allowed the Appellant to inspect the specific student comments that related to her. Because the Appellant has already been granted inspection of those comments, they are not at issue in this appeal.

In an attempt to distinguish 22-ORD-146 from this appeal, the Appellant argues that she more clearly identifies herself as an employee of the University in her new request.² She further argues that her new request was made for a different purpose. However, neither of these arguments changes the facts or legal analysis in 22-ORD-146. The requested comments were properly denied under KRS 61.878(1)(a) because the comments implicated the privacy interests of the students and the comments did not relate to the Appellant. Thus, the facts and issues are identical to those in 22-ORD-146.

Parties who are aggrieved by the Office's decision may appeal those decisions to a circuit court with competent jurisdiction. *See* KRS 61.880(5); KRS 61.882. They may not, however, seek this Office's reconsideration, or submit a duplicate request to avoid 40 KAR 1:030 § 4. Accordingly, this Office declines to reconsider its decision in 22-ORD-146.

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/James M. Herrick
James M. Herrick
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Distributed to:

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² The Appellant also questions some factual assertions made by the University in 22-ORD-146 concerning the instructions given to students in completing the course evaluations. However, the Office does not decide factual disputes or assess the credibility of witnesses.