



COMMONWEALTH OF KENTUCKY
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22-ORD-240

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In re: Gaye Ballard/City of Bardstown

Summary: The City of Bardstown (“the City”) violated the Open Records Act (“the Act”) when it withheld public records without identifying them and explaining how a statutory exemption applies. The City did not violate the Act when it withheld W-4 forms under KRS 61.878(1)(a) or when it did not provide records that were not clearly within the scope of the request.

Open Records Decision

On September 15, 2022, Gaye Ballard (“Appellant”) requested the City provide “payroll records for all elected officials by month from January 1, 2022 to present” and “a copy of all payroll checks written to” the Mayor during the same time period. In a timely response, the City stated it had “determined that there is one [1] payroll record responsive to this request and available for inspection . . . that contains the amounts paid monthly to each elected official during the requested time period.” The City provided the Appellant with a payroll report showing each official’s gross pay by month during 2022. In response to her request for copies of payroll checks, the City further stated that no “checks [were] written” to the Mayor because payroll was distributed by direct deposit, so no written checks existed. In an amended response issued the same day, the City added that “[a]dditional records may be available that are subject to exemption under KRS 61.878(1)(a) because they may contain information of a personal nature such as, but not limited to, addresses, phone numbers, social security numbers, and medical information.” This appeal followed.

Under KRS 61.880(1), a public agency denying inspection of public records must not only cite an exception under the Act, but also give “a brief explanation of how the exception applies to the record withheld.” An agency violates KRS 61.880(1) when it fails to identify the record withheld and explain how a statutory exemption

applies. *See, e.g.*, 22-ORD-141. Here, the City stated additional records *may* exist and the privacy exemption *may* apply to them because they *may* contain personal information. The City does not state it has actually reviewed these “additional records” because it has not identified them and determined that they do contain exempt personal information. Therefore, the City violated the Act when it did not adequately explain how the privacy exemption applied to the unidentified records it withheld.

On appeal, the City claims that it possesses W-4 forms that may be responsive to the Appellant’s request but are exempt under KRS 61.878(1)(a). KRS 61.878(1)(a) creates an exception to the Act for “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” However, the Appellant argues that the City cannot withhold responsive records in their entirety. She argues the City must redact exempt information and provide the remainder. *See* KRS 61.878(4) (“If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.”). This Office has found that W-4 forms and other records pertaining to payroll deductions are generally exempt from disclosure under KRS 61.878(1)(a) because the privacy interest in such information outweighs the public’s interest in disclosure. *See, e.g.*, 07-ORD-056; 03-ORD-141; 96-ORD-274. Because W-4 forms are exempt from disclosure in their entirety, the City was not required to provide those records in redacted form. Therefore, the City did not violate the Act by not providing copies of W-4 forms to the Appellant.

With regard to her request for copies of “payroll checks written to” the Mayor, the Appellant argues that “the records, whether prepared electronically or in physical form should be made available for inspection.” In response, the City states the Appellant may request copies of the Mayor’s direct deposit records, but claims that she has not done so. The Appellant made two requests, one for “payroll records for all elected officials” and one for “checks written to” the Mayor. Although the request for “payroll records for all elected officials” could be construed broadly enough to include checks or electronic deposit records for those officials, the context here suggests otherwise, as the Appellant requested “payroll checks written” *only* to the Mayor. Therefore, the City reasonably construed the request for “payroll records” as not including checks or electronic deposits. *See generally* 20-ORD-153 (finding that a public agency did not violate the Act when it reasonably misconstrued an ambiguous request). Furthermore, “checks written” is an unambiguous term that does not, on its face, include direct deposits. *See Chestnut v. Commonwealth*, 250 S.W.3d 655, 661 (Ky. 2008) (noting that a request for public records should be “adequate for a reasonable person to ascertain [its] nature and scope”). Therefore, the City did not violate the Act by not providing copies of the Mayor’s electronic deposit records, as those records were not clearly within the scope of the Appellant’s request.

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

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Distributed to:

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