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**22-ORD-280**

December 21, 2022

In re: Melissa Price/Fort Thomas Independent Public School District

**Summary:** The Fort Thomas Independent Public School District (“the District”) violated the Open Records Act (“the Act”) when it failed to explain the basis for its denial of a request to inspect records. However, the District did not violate the Act when it denied a request for its emergency response plan, which is exempt from disclosure under KRS 158.162(2)(e).

***Open Records Decision***

On November 28, 2022, Melissa Price (“Appellant”) requested a copy of the District’s “safety policy and procedures/protocols” relating to threats or acts of violence at Highlands High School. In a timely response, the District denied the request because the “safety protocol or emergency plans . . . are all protected from an open records request and shall not be disseminated beyond the school.” The Appellant then asked the District to further explain the basis for its denial. In response, the District listed three statutes it thought would be “helpful,” KRS 61.810, KRS 61.870, and KRS 158.162, stating only that it “shall not release any information, [sic] all public schools adopt while in closed session.” This appeal followed.

Under the Act, “[a]n agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and 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). “The agency’s explanation must be detailed enough to permit [a reviewing] court to assess its claim and the opposing party to challenge it.” *Kentucky New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76,

81 (Ky. 2013). Because the District’s response did not cite an exception to the Act or explain how it applied, the District violated the Act.

On appeal, the District states the requested “School Safety Plan” was adopted in compliance with KRS 158.162. The District further explains the School Safety Plan “is an emergency plan consisting of diagrams of school facilities and protocols establishing procedures and practices for lockdown of classrooms and school offices; evacuation routes in the event of an emergency; a detailed description of hardware, software, and other mechanisms for locking doors and controlling outside access to the school buildings, and specific strategic and operational plans for designated, trained school personnel to respond to threats within the school, including active shooters, terrorists, or hostage situations.”

Each local board of education must require each school council or principal to adopt an emergency plan establishing “procedures to be followed in case of fire, severe weather, or earthquake, or *if a building lockdown as defined in KRS 158.164 is required.*”<sup>1</sup> KRS 158.162(2)(a) (emphasis added). This emergency plan and the accompanying diagram of the facility are “excluded from the application of [the Act].” KRS 158.162(2)(e). As an “enactment of the General Assembly,” KRS 158.162(2)(e) is incorporated into the Act under KRS 61.878(1)(l). Because the School Safety Plan is an emergency plan adopted pursuant to KRS 158.162, the District did not violate the Act when it denied the Appellant’s request to inspect it.<sup>2</sup>

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 emailed to OAGAppeals@ky.gov.

**Daniel Cameron**  
**Attorney General**

s/ James M. Herrick  
James M. Herrick  
Assistant Attorney General

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<sup>1</sup> KRS 158.164(1) defines “building lockdown” as “restrict[ing] the mobility of building occupants to maintain their safety and care.”

<sup>2</sup> Because KRS 158.162(2)(e) is dispositive of the issue on appeal, it is not necessary to address the District’s alternative argument that the School Safety Plan is exempt from disclosure under KRS 61.878(1)(m).

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Distributed to:

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