



COMMONWEALTH OF KENTUCKY
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23-ORD-091

April 18, 2023

In re: Tay Robinson/Kentucky Board of Social Work

Summary: The Kentucky Board of Social Work (“Board”) violated the Open Records Act (“the Act”) when it did not respond to a request to inspect records. The Board did not violate the Act when it withheld emails containing examination scores.

Open Records Decision

On March 14, 2023, Tay Robinson (“Appellant”) submitted a request to the Board to inspect “any contracts, agreements, and communications between the [Board] and the Association of Social Work Boards.” That same day, the Board acknowledged receiving the request, but did not otherwise respond to it. After receiving no further response from the Board by March 22, 2023, the Appellant initiated this appeal.

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request, or deny it and explain why. KRS 61.880(1). Here, the Board acknowledged it had received the Appellant’s request, but neither granted nor denied it within five business days. Therefore, the Board violated the Act when it did not fully respond to the Appellant’s request.

On appeal, the Board provides the Appellant with some responsive records, but is withholding emails from the Association of Social Work Boards (“Association”) that contain the scores of individuals who have taken the Association’s examination under KRS 61.878(1)(a). That statute exempts from inspection “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” *Id.* 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, Dep't of Workers' Claims*, 902 S.W.2d 825, 828 (Ky. App. 1994). This Office has consistently recognized the privacy interest in examination scores. *See, e.g.*, 06-ORD-145 (noting that the Attorney General “has long recognized a significant privacy interest in transcripts, GPA, and test scores that is superior to any public interest in disclosure previously articulated”). Therefore, the Board did not violate the act when it withheld emails that contained examination scores.

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.

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s/ Zachary M. Zimmerer
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Distributed to:

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