



COMMONWEALTH OF KENTUCKY
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23-ORD-118

May 31, 2023

In re: Robert Flaherty/City of Crescent Springs

Summary: The City of Crescent Springs (“the City”) did not violate the Open Records Act (“the Act”) when it denied a request for a budget proposal before the proposal had been formally submitted under KRS 91A.030(7).

Open Records Decision

On April 19, 2023, Robert Flaherty (“Appellant”) requested to inspect the City’s proposed budget for fiscal year 2023–24. In a timely response, the City denied the request because a budget proposal had not yet been “finalized and presented to [the] Council,” and therefore, “the budget plans, if any, [were] still in a preliminary stage” under KRS 61.878(1)(i) and (j). This appeal followed.

KRS 61.878(1)(j) exempts from disclosure “preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended.” However, if a public agency takes final action and adopts such opinions or recommendations, the record loses its exempt status. *See Univ. of Ky. v. Courier-Journal & Louisville Times Co.*, 830 S.W.2d 373, 378 (Ky. 1992); *Univ. of Ky. v. Lexington H-L Services, Inc.*, 579 S.W.3d 858, 863 (Ky. App. 2018). The Appellant argues “the records [he] requested were proposed by the mayor and were presented to the [C]ity’s finance committee on April 18, 2023,” and are therefore no longer preliminary recommendations. The City, however, claims it has only held preliminary discussions about the budget, and the mayor has not formally submitted his budget proposal to the city council pursuant to KRS 91A.030(7).

Under KRS 91A.030(5), “[p]reparation of the budget proposal shall be the responsibility of the executive authority of the city,” in this case the mayor. KRS 91A.030(7) provides that “[t]he budget proposal together with a budget message

shall be submitted to the legislative body not later than thirty (30) days prior to the beginning of the fiscal year it covers.” In 10-ORD-103, this Office determined that a mayor’s formal submission of the budget proposal to the city council under KRS 91A.030(7) is the point at which “the budget forfeits the preliminary character it enjoyed while it was in preparation” because submission of the proposal in conformity with the statute is a final action of the executive authority. Here, that step in the process has not yet occurred. Accordingly, any written recommendations the council may have reviewed or discussed relative to the budget are still “preliminary recommendations” under KRS 61.878(1)(j), and thus, are exempt from disclosure. Therefore, the City did not violate the Act.¹

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

#171

Distributed to:

Mr. Robert Flaherty
Michael L. Baker, Esq.
April C. Robinson, Clerk
Hon. Mike Daugherty

¹ Because KRS 61.878(1)(j) is dispositive of the issues on appeal, it is unnecessary to address the City’s alternative argument under KRS 61.878(1)(i).