



COMMONWEALTH OF KENTUCKY
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23-ORD-185

July 25, 2023

In re: Jason Moncer/Jessamine County School District

Summary: The Jessamine County School District (“the District”) did not violate the Open Records Act (“the Act”), or subvert the intent of the Act within the meaning of KRS 61.880(4), when it charged a copying fee of ten cents per page.

Open Records Decision

On May 24, 2023, Jason Moncer (“Appellant”) requested email records of a District employee containing certain terms between February 1 and May 24, 2023. The District provided him with 922 emails¹ but withheld 491 emails under KRS 61.878(1)(h), (i), and (j).

On May 25, 2023, the Appellant requested email records of another District employee containing certain terms between November 1, 2021, and May 25, 2023. The District provided him 4,766 emails but withheld 255 emails on the same grounds it asserted in its previous denial.

On June 19, 2023, the Appellant requested email records of a third District employee containing certain terms between September 1, 2022, and June 10, 2023. The District provided him six emails but withheld two emails on the same grounds it asserted in its previous denials. These consolidated appeals followed.

On appeal, the District states its investigation is now completed and all of the withheld emails have been provided to the Appellant. Accordingly, the denials are

¹ In its response to each of the Appellant’s requests, the District made certain redactions under the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, and its state equivalent, KRS 160.700, which are incorporated into the Act under KRS 61.878(1)(k) and 61.878(1)(l), respectively. The Appellant has not questioned these redactions.

now moot. *See* 40 KAR 1:030 § 6. However, the Appellant complains that he was improperly charged for copies at the rate of ten cents per page.

Under KRS 61.880(4), a person may appeal to this Office if he “feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees.” However, under KRS 61.874(3), a “public agency may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes.” It has long been held that ten cents per page is a reasonable fee for copies. *Friend v. Rees*, 696 S.W.2d 325, 326 (Ky. App. 1985); *see also* 22-ORD-002 n.3; 01-ORD-136. Therefore, the District did not violate or subvert the intent of the Act when it charged a fee of ten cents per page.²

A party aggrieved by this decision may appeal it by initiating an 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

#277/278/279

Distributed to:

Mr. Jason Moncer

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Mr. Steven Scrivner

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² The Office notes, however, that the Appellant did not ask for electronic copies of the records. If he had, and the only reason the District printed them was to facilitate redactions, then the District could not charge a copying fee. That is because an agency may not pass on to a requester the cost of reproducing electronic records in hard copy format for the sole purpose of making redactions. *See Commonwealth, Dep't of Ky. State Police v. Courier Journal*, 601 S.W.3d 501, 508 (Ky. App. 2020); *see also* 23-ORD-173.