



COMMONWEALTH OF KENTUCKY
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23-ORD-209

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In re: Wayne Thompson/Department of Financial Institutions

Summary: The Department of Financial Institutions (“the Department”) did not violate the Open Records Act (“the Act”) when it redacted the names of mortgage licensees from examination spreadsheets under KRS 286.8-175(1).

Open Records Decision

On April 23, 2023, Wayne Thompson (“Appellant”) asked the Department to provide, “[f]or non-depositories only,” a “list of all mortgage examinations performed by the [Department] in the last five years,” including “date of exam, company name, and cost of the exam.” In response, the Department provided spreadsheets containing the requested information, but “redacted the names of the licensees to prevent disclosure of information that may reveal examination frequency” under KRS 61.878(1)(e). This appeal followed.

The Department cites KRS 286.8-175(1) as one of two bases in support of denial.¹ KRS 286-175(1) provides that, with limited exceptions that do not apply here, no “employee of the department, or employee of a state or federal regulatory authority[,] shall release any information contained in the examination” of a mortgage loan company or mortgage loan broker. This statute is incorporated into the Act under KRS 61.878(1)(l), which exempts “[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.” Presumably, the name of the licensee is “information contained in the examination” under KRS 286.8-175(1). Moreover, in considering a claim of confidentiality, the Office “will generally defer to the public

¹ Because the Office agrees that the Department properly relied on KRS 286.8-175(1), it is unnecessary to determine whether KRS 61.878(1)(e) also permits the redaction of the examinees’ names.

agency in its interpretation of confidentiality provisions which are binding upon it.”²
05-ORD-186.

The Appellant argues that the licensees’ names should not be considered confidential because “[a]ny findings of consequence from exams are handled through agreed orders which are posted publicly on the [Department’s] website.” But the fact that a financial institution may have entered into a public consent order does not negate the confidentiality of other records under KRS Chapter 286. *See* 14-ORD-025. Therefore, the Department did not violate the Act when it redacted the names of mortgage licensees.³

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
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Distributed to:

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² However, such an interpretation by the agency must be reasonable to be entitled to deference. *See, e.g.*, 21-ORD-006.

³ The Appellant claims he has made similar requests “in previous years and there was never an issue with disclosing the lenders who were examined.” However, the Appellant presents no evidence of such prior disclosures or the circumstances under which they allegedly occurred.