



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON  
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118  
700 CAPITAL AVENUE  
FRANKFORT, KENTUCKY 40601  
(502) 696-5300  
FAX: (502) 564-2894

**23-ORD-250**

September 19, 2023

In re: David Webster/Christian County Board of Education

**Summary:** The Christian County Board of Education (“the Board”) violated the Open Records Act (“the Act”) when it initially failed to explain how exceptions to the Act applied to certain records. However, the Board did not violate the Act when it denied a request for a draft agenda for a proposed special meeting that did not occur.

***Open Records Decision***

On August 14, 2023, David Webster (“Appellant”) requested “a copy of the agenda for [the August 15, 2023,] special called board meeting along with all attachments.” Alternatively, if no agenda existed, the Appellant requested “a list of action items that were to be placed on the agenda along with the attachments.” The Appellant stated he understood that the meeting would not in fact take place on August 15, 2023, although it had previously been proposed for that date. In a timely response, the Board denied the request under KRS 61.878(1)(i) and (j), explaining that the requested records were “preliminary in nature” because they “relate to a special meeting that was never noticed and never occurred” and “[n]one of the requested records have been adopted as the basis for any final agency action.” This appeal followed.

When a public agency denies inspection of public records, it must “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 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.” *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013). Furthermore, as this Office has

recognized, KRS 61.878(1)(i) and (j) are two separate exemptions, and public agencies must explain how each of those separate exemptions applies to the withheld records if an agency chooses to rely on both provisions. *See, e.g.*, 21-ORD-168; 21-ORD-169. Here, however, the Board's response was "limited and perfunctory" because it did not explain what records it was withholding or how either of the two claimed exemptions applied to those records. *See, e.g.*, 22-ORD-007; 21-ORD-202; 21-ORD-035. The Board therefore violated KRS 61.880(1).

On appeal, the Board explains that the only records responsive to the Appellant's request are preliminary drafts of an agenda for the proposed meeting. KRS 61.878(1)(i) exempts from disclosure "[p]reliminary drafts, notes, [and] correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency." A preliminary draft is "a tentative version, sketch, or outline" of a final document. 05-ORD-179. Here, no final version of the August 15 agenda exists because the proposed meeting on August 15, 2023, did not occur<sup>1</sup> and no official notice of such a meeting was given. Had the Board issued a special meeting notice, it would have been required to include a final version of the agenda. *See* KRS 61.823(3). However, because an August 15 agenda was never finalized, all versions of the proposed agenda remain preliminary drafts, and thus, are exempt from disclosure under KRS 61.878(1)(i).<sup>2</sup> Therefore, the Board did not violate the Act.<sup>3</sup>

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.

---

<sup>1</sup> Instead, the Board held a special meeting on August 24, 2023, and has provided a copy of the agenda for that meeting.

<sup>2</sup> Because KRS 61.878(1)(i) is dispositive as to the exempt status of the records, it is not necessary to consider the Board's argument that they also are exempt under KRS 61.878(1)(j).

<sup>3</sup> The Appellant also claims the Board improperly awarded a construction contract to a bidder prior to holding a public meeting on the subject, which the Board denies. Although the Appellant argues the alleged award of a contract would constitute "final action," that would not affect the outcome of this appeal, as preliminary drafts remain exempt even after the agency takes final action. *See, e.g.*, 21-ORD-089.

**Daniel Cameron**  
Attorney General

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

#369

Distributed to:

Mr. David K. Webster  
Jack N. Lackey, Jr., Esq.  
Christopher Bentzel, Superintendent