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23-ORD-261

October 2, 2023

In re: Caleb Ballard/Christian County Board of Education

Summary: The Christian County Board of Education (“the Board”) did not violate the Open Records Act (“the Act”) when it denied requests for information that did not describe public records. The Board violated the Act when it failed to respond to a request to inspect records in person.

Open Records Decision

On August 25, 2023, Caleb Ballard (“Appellant”) requested “immediate live access to the originals and an electronic emailed copy” of the following:

1. Any and all costs associated with “Hopkinsville-Christian County academy” from 1/1/21 to 8/24/23.
2. Payment information for signs located at the new high school site that say “future location of Hopkinsville-Christian [C]ounty academy.”
3. Any and all specific costs associated with the branding of “Hopkinsville-Christian [C]ounty academy” or “Wolfpack.” This includes logos, proposed uniforms, signage, flyers, pamphlets, handouts, booklets, stickers, gym floor designs and proposed designs carrying that name.
4. A copy of the documents presented to [B]oard members with a cover page that says “Christian [C]ounty [B]oard of [E]ducation” presented by anyone from [A]lliance [C]orporation that was discussed at the 8/24/23 meeting.

In response, the Board provided an electronic copy of the records responsive to the last request but denied the other three requests “because the [Act] does not require public agencies to compile information or create a record in response to a request for information.” This appeal followed.

The Appellant claims the first three categories of requested records “are open public records because the items requested have been approved by the [B]oard and the [Board] has used taxpayer funds to purchase the tangible or proposed items listed.” In response, the Board asserts the first three requests “were properly denied . . . because these requests did not ask for any specific records and instead were requests for information that would have to be compiled by” the Board. The Act does not require public agencies to answer interrogatories or provide information in whatever form a requester demands. Rather, residents of the Commonwealth may only inspect identifiable “public records” after submitting a request “describing the records to be inspected.” KRS 61.872(2)(a). Here, the Appellant requested “costs” and “payment information.” These requests do not describe any public records, such as budgets, invoices, receipts of purchase, or billing statements documenting the purchases of specific items. Rather, the request asks the Board to compile information to obtain a number reflecting the total cost of running a school and various marketing decisions it has made. Accordingly, the Board did not violate the Act when it denied those requests.

With regard to his last request, the Appellant claims the Board possesses “a tangible item that had a professional binding and numbered pages,” but the Board merely provided “unlabeled electronic documents that were not presented in a logical order that corresponds with the material presented by the construction manager” at the Board’s meeting on August 24, 2023. In response, the Board states it has provided an electronic copy of “all responsive records in its possession” and does not have the “responsibility to organize requested records in a particular way.” It is true that the Act does not require a public agency to explain the contents of records, OAG 89-81, or to provide additional information not contained in the records themselves. *See, e.g.*, 23-ORD-234 n.1; 14-ORD-109. Here, however, the Appellant is not asking the Board to reorganize or number the electronic records. Rather, the Appellant has requested “access to the originals” as well as an electronic copy of the records. According to the Appellant, the original record of a presentation made at a Board meeting consists of a physical binder with numbered pages. The Board has not denied the existence of the binder, nor has it otherwise addressed the Appellant’s request to inspect the original records in person. A public agency cannot simply ignore portions of a request. *See, e.g.*, 21-ORD-090. Because the Board failed to address the Appellant’s request to inspect the original records, it violated the Act.

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
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s/ James M. Herrick
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Assistant Attorney General

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Distribution:

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