



COMMONWEALTH OF KENTUCKY
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23-ORD-301

November 6, 2023

In re: Dan Holman/City of Georgetown

Summary: The City of Georgetown (“the City”) did not violate the Open Records Act (“the Act”) when it denied inspection of notes under KRS 61.878(1)(i).

Open Records Decision

On October 5, 2023, Dan Holman (“Appellant”) requested various records from the City regarding the former city attorney’s separation from employment. At issue in this appeal is the Appellant’s request for “all records that were generated or read [by] the HR director, and the mayor . . . that reference conditions of employment [the attorney] failed to meet.” In a timely response, the City provided some records but withheld others “under KRS 61.878(1)(i) based on their classification as notes serving as ‘an aid to memory’ that were not adopted as part of a final action.” This appeal followed.

KRS 61.878(1)(i) exempts from public 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.” Notes may be characterized as records “created as an aid to memory or as a basis for a fuller statement, as are, for examples, written or shorthand notes taken at a meeting.” 05-ORD-179. Here, the City explains the notes in question were created by its Human Resources director “after her conversations with the counsel for the City, the Mayor and [the] Chief Administrative Officer” and contain “pertinent information about the timing of various events, as well as personal health information and other personal private matters.” The City states the Human Resources director “did not share this document with the Mayor or anyone else but used it as an aid to memory when she gave the Mayor her oral report regarding her conversations with the City employee, his breach

of the conditions of employment, and her conversation with legal counsel.” Thus, the records are clearly “notes” within the meaning of KRS 61.878(1)(i).

The Appellant, however, argues the notes must be open to public inspection because they constitute a “final comprehensive . . . document as [it] relates to the firing action.” Similarly, in 21-ORD-150, the requester merely asserted “that the [agency] must have relied on some written record in support of its final action, and that by default it must have been the [disputed] notes.” But here, as in 21-ORD-150, the record on appeal indicates the notes were used only to aid the Human Resources director’s memory while presenting an oral report to the Mayor. The Mayor did not personally review the notes or rely on them when taking final action. *See also* 10-ORD-034 (concluding final agency action was based solely on oral interviews). Accordingly, the City did not violate the Act when it withheld the notes under KRS 61.878(1)(i).¹

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
James M. Herrick
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Distributed to:

Mr. Dan Holman
M. Todd Osterloh, Esq.
Hon. Burney Jenkins

¹ Because KRS 61.878(1)(i) is dispositive of the issues on appeal, it is unnecessary to address the City’s alternative arguments relating to KRS 61.878(1)(a) or the attorney-client privilege.