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23-ORD-342

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In re: Armando Arrastia/Energy and Environment Cabinet

Summary: The Energy and Environment Cabinet (“the Cabinet”) did not violate the Open Records Act (“the Act”) when it redacted private home addresses, telephone numbers, and email addresses under KRS 61.878(1)(a).

Open Records Decision

On November 17, 2023, Armando Arrastia (“Appellant”) requested copies of sign-in sheets completed by members of the public attending a meeting concerning an application to modify a mining permit. The Appellant indicated he wanted “all information provided by participants (name, address, email, phone, etc.)” In a timely response, the Cabinet provided the requested copies but advised the Appellant that “[c]ertain information (personal addresses, telephone number, & email addresses) contained within the documents has been redacted in accordance with KRS 61.878(1)(a), as disclosure would constitute an unwarranted invasion of personal privacy.” This appeal followed.

KRS 61.878(1)(a) exempts “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” In reviewing an agency’s denial of an open records request based on the personal privacy exemption, the courts and the Attorney General balance the public’s right to know what is happening in government against the personal privacy interest at stake in the record. *See Zink v. Commonwealth, Dep’t of Workers’ Claims*, 902 S.W.2d 825, 828 (Ky. App. 1994). However, the Supreme Court of Kentucky has held that certain categories of information about private individuals provide minimal insight into governmental affairs and may be categorically redacted under KRS 61.878(1)(a). *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 89 (Ky. 2013). These categories include home addresses,

personal phone numbers, driver's license numbers, and Social Security numbers. *Id.* Personal email addresses may likewise be redacted under KRS 61.878(1)(a), as they ordinarily shed no light on government conduct. *See, e.g.*, 16-ORD-205. However, in exceptional circumstances where disclosure of the information would substantially advance the interests of the Act, the public interest may be found to outweigh the privacy interest. *See, e.g.*, 22-ORD-037 (finding residential addresses of candidates for office and their cosigners were directly relevant to whether election officials were properly performing their duties to prevent voter fraud).

The Appellant makes four arguments in support of his appeal. First, he claims the Cabinet's response was defective because it only stated the invasion of personal privacy was "unwarranted," rather than "clearly unwarranted." However, when a public agency denies a request for records, KRS 61.880(1) only requires the agency to state the exception on which it relies and explain how it applies to the withheld records. It does not require the agency to quote the exact statutory language. Because the redacted information is subject to KRS 61.878(1)(a), under the reasoning of *Kentucky New Era*, the Cabinet's response was sufficient.

Next, the Appellant argues, disclosure would not constitute a clearly unwarranted invasion of personal privacy because the individuals provided the information "voluntarily" when they filled out the sign-in sheets. But KRS 61.878(1)(a) is not limited to circumstances in which individuals provide personal information under compulsion.¹ The question, rather, is whether the information sheds any substantial light on how the agency performs its duties. Under *Kentucky New Era*, the personal addresses, phone numbers, and email addresses of private citizens do not.

The Appellant also claims the home addresses must be disclosed because some of the individuals stated their addresses while speaking at a public meeting and because some of the addresses "were included in the public disclosure of the permit application." However, personal information in public records "is no less private simply because that information is available someplace." *Zink*, 902 S.W.2d at 828. The Act "is not meant to turn the state's agencies into clearing houses of personal information about private citizens readily available to anyone upon request." *Ky. New Era*, 415 S.W.3d at 89. Thus, the fact that the information the Appellant seeks could be found elsewhere does not override the personal privacy interest in that information under KRS 61.878(1)(a).

Finally, the Appellant claims he needs the personal contact information of the citizens who attended the public meeting because "there is a greater public interest in [his] being able to communicate with dozens if not hundreds of neighbors who will

¹ In contrast, KRS 61.878(1)(c) is expressly limited to "[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it." KRS 61.878(1)(a) contains no such limitation.

be adversely affected if the permit application is approved.” In short, the Appellant seeks a list of mailing addresses, phone numbers, and email addresses of persons he wishes to contact. However, the Appellant’s interest in contacting private citizens is not the public interest in disclosure contemplated by the Act. “At its most basic level, the purpose of disclosure focuses on the citizens’ right to be informed as to what their government is doing. That purpose is not fostered however by disclosure of information *about* private citizens that is accumulated in various government files that reveals little or nothing about an agency’s own conduct.” *Zink*, 902 S.W.2d at 829 (emphasis added). Although the Appellant is free to communicate his opinions regarding the permit application to anyone he chooses, the Act “does not entitle [him] to a ready-made subscriber list.” 14-ORD-197. Accordingly, the Cabinet did not violate the Act when it redacted personal information under KRS 61.878(1)(a).

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.

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s/ James M. Herrick
James M. Herrick
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Distributed to:

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