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24-ORD-016

January 22, 2024

In re: Mike Doyle/Louisville Metro Government

Summary: Louisville Metro Government (“Metro”) did not violate the Open Records Act (“the Act”) when it withheld an email that was exempt from disclosure under KRS 61.878(1)(j).

Open Records Decision

Mike Doyle (“Appellant”) submitted to Metro a request for records related to the sale and purchase of a specific property. His request contained 13 subparts. The Appellant originally appealed Metro’s delay in providing responsive records, which resulted in this Office’s decision in 23-ORD-333. During the pendency of that appeal, Metro issued its final response informing the Appellant that it is withholding “one internal email discussing real estate prices” under KRS 61.878(1)(j). The Appellant now appeals Metro’s decision to deny his access to this email.¹

Among the types of records the Appellant requested were “any appraisals or other basis for what the highest price to be paid or bid for the[] property by [M]etro government or its agenc[ies].” In response, Metro informed the Appellant that it is withholding “one internal email discussing real estate prices” under KRS 61.878(1)(j) and stated that “preliminary information and work notes containing opinions, observations, advice, and recommendations of personnel within agency are exempt as preliminary, pre-decisional documents and retain their exempt status unless they are adopted as final agency action.”

¹ The Appellant previously attempted to insert Metro’s belated denial of this email into his first appeal. However, the Office declined to consider the issue at that time, informing the Appellant that he could initiate a new appeal by providing the Office with a copy of his original request and Metro’s final response. *See* 23-ORD-333 n.1.

KRS 61.878(1)(j) exempts from disclosure “[p]reliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended.” Metro asserts that the internal email contains research about the prices of property comparable to the property that would later go up for auction. The email’s author then offered an “opinion on what might be a reasonable price range.” The Appellant argues that Metro took final action in connection with the email when it entered its bid on the property. Once a record is adopted as part of a public agency’s final action, it loses its preliminary status and is subject to inspection, unless another exemption applies. *See Univ. of Ky. v. Courier-Journal & Louisville Times Co.*, 830 S.W.2d 373, 378 (Ky. 1992). Here, however, Metro did not “adopt” the recommendations in the email. Rather, it took final action when it authorized its agent to enter a bid on the property. Metro has provided the Office and the Appellant with the letter authorizing its agent to bid on the property and the authorization does not limit the agent’s authority to the price range contained in the withheld email. Because the email was not adopted as part of Metro’s final action, it did not lose its preliminary status. Accordingly, Metro did not violate the Act when it withheld this record.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:
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