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24-ORD-028

February 6, 2024

In re: Whitney Marion/Kentucky Education and Labor Cabinet

Summary: The Kentucky Education and Labor Cabinet (“Cabinet”) did not violate the Open Records Act (“the Act”) when it denied inspection of notes under KRS 61.878(1)(i).

Open Records Decision

Whitney Marion (“Appellant”) submitted a request to the Cabinet for “[h]earing documentation, notes, question[s] and answers recorded by the hearing referee” related to a specific unemployment compensation hearing. In response, the Cabinet provided some responsive records but withheld “internal notes” under KRS 61.878(1)(i) and KRS 341.190(4).¹ This appeal followed.

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.” Notes may be characterized as records “created as an aid to memory or as a basis for a fuller statement,” such as “shorthand notes taken at a meeting.” 05-ORD-179. Here, the Cabinet explained that the requested notes were “intended to aid the [hearing] officer in making a final determination following the hearing.” The Cabinet also explains that the hearing was continued to January 31, 2024, and the requested notes were “written down as an aid to memory” to assist the hearing officer in making a final determination following the hearing. Thus, the records are clearly “notes” within the meaning of KRS 61.878(1)(i). Accordingly, the Cabinet did not violate the Act when it withheld the notes under KRS 61.878(1)(i).²

¹ The Cabinet redacted parts of the responsive records under KRS 61.878(1)(a). The Appellant has not challenged the redactions the Cabinet made. Rather, she asserts only that the Cabinet’s “internal notes” should have been produced.

² Because KRS 61.878(1)(i) is dispositive of the issues on appeal, it is unnecessary to address the Cabinet’s alternative argument relating to KRS 341.190(4).

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.

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/s/ Zachary M. Zimmerer
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Distributed to:

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