



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

24-ORD-029

February 6, 2024

In re: Linzey Lewis/Morgan County Fiscal Court

Summary: The Morgan County Fiscal Court (“the Fiscal Court”) did not violate the Open Records Act (“the Act”) when it denied inspection of purchase order notebooks that were “preliminary drafts” or “notes” under KRS 61.878(1)(i).

Open Records Decision

On January 4, 2024, Linzey Lewis (“Appellant”) requested to inspect “all purchase order books dating from 2019 to the present.” In a timely response, the Fiscal Court agreed to provide the “digital information . . . contained in the Orders on the FiscalBooks Software System maintained by the [Fiscal Court] as its official records in regard to purchase orders.” The Fiscal Court added that, to the extent the Appellant sought “any other documents that are not contained in the actual FiscalBooks Software System,” the request was denied under KRS 61.878(1)(i), “as such are considered to be preliminary drafts and are not intended to give notice of final action of a public agency, as only such final orders are demonstrated by Orders contained in the FiscalBooks Software System.” This appeal followed.

On appeal, the Fiscal Court claims the “purchase order books” requested by the Appellant are preliminary drafts or notes. 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.” A preliminary draft is “a tentative version, sketch, or outline” of a final document. 05-ORD-179. Notes are “created as an aid to memory or as a basis for a fuller statement.” *Id.* Records of these types do not lose their preliminary status when the agency takes final action. *See* 21-ORD-089.

Here, the Fiscal Court asserts the “[o]fficial records” of its purchase orders are maintained in the software system known as FiscalBooks, whereas the only physical “purchase order books” that exist are “notebooks where information pertaining to purchase orders may have been written down prior to being entered into

FiscalBooks.” The Fiscal Court further states these notebooks are documents it is not required to create or maintain,¹ but “were merely used to assist in creating purchase order and vendor claims registers in FiscalBooks, which are the final written products pertaining to [the] purchase orders.”

As the Court of Appeals has said, “Not every paper in the office of a public agency is a public record subject to public inspection. Many papers are simply work papers which are exempted because they are preliminary drafts and notes. . . . Yellow pads can be filled with outlines, notes, drafts and doodlings which are unceremoniously thrown in the wastebasket or which may in certain cases be kept in a desk drawer for future reference. Such preliminary drafts and notes and preliminary memoranda are part of the tools which a public employee or officer uses in hammering out official action within the function of his office. They are expressly exempted by the Open Records Law and may be destroyed or kept at will and are not subject to public inspection.” *Courier-Journal v. Jones*, 895 S.W.2d 6, 8 (Ky. App. 1995) (quoting OAG 78-626). Here, the Fiscal Court’s description of the purchase order notebooks is sufficient to establish that they are the equivalent of “preliminary drafts” or “notes” because they are tentative versions of information used as a basis for the fuller statement that appears in the final and official purchase orders contained in FiscalBooks. Accordingly, the Fiscal Court did not violate the Act when it denied the request for these books under KRS 61.878(1)(i).

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.

Russell Coleman
Attorney General

/s/ James M. Herrick
James M. Herrick
Assistant Attorney General

¹ The Appellant claims the Fiscal Court is entitled to maintain such notebooks under the Local Governments General Records Retention Schedule, “Purchase Order/Requisition Reference and Tracking Instruments,” Series L5013, available at <https://kdla.ky.gov/records/RetentionSchedules/Documents/Local%20Records%20Schedules/LocalGovernmentGeneralRecordsRetentionSchedule.pdf> (last accessed Feb. 6, 2024). However, the generic description of this record series is applicable to a software system and does not require documentation to be kept on paper.

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Distributed to:

Ms. Linzey Lewis
D. Barry Stilz, Esq.
Hon. Jim Gazay