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24-ORD-087

April 1, 2024

In re: Kurt Hanscom/City of Edgewood

Summary: The City of Edgewood (the “City”) violated the Open Records Act (“the Act”) when its initial response failed to explain how the cited exception applied to the records it withheld.

Open Records Decision

Kurt Hanscom (“Appellant”) submitted a request to the City to inspect the bids it received for a storage building and the information packet it sent to its council members for its meeting on March 4, 2024. The City timely denied his request, stating only, “per KRS 61.878(1)(j)—preliminary recommendations in which opinions are expressed. This document could be available after the [March 4] meeting so long as the issue is resolved.” On March 4, before the City’s meeting occurred, the Appellant initiated this appeal.¹

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request, or deny the request and explain why. KRS 61.880(1). When a public agency denies inspection of public records, it must “include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” *Id.* The agency must “provide particular and detailed information,” not merely a “limited and perfunctory response.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). “The agency’s explanation must be detailed enough to permit [a reviewing]

¹ On appeal, the City asserts it already provided, in its response to a prior records request it received from the Appellant, the records responsive to the Appellant’s request for the bids to build the storage unit. The Appellant does not deny the City’s assertion that he was provided the responsive records. Accordingly, any dispute regarding the Appellant’s request for bid records is now moot. See 40 KAR 1:030 § 6. But the Appellant maintains his challenge to the City’s withholding of the City Council packets under KRS 61.878(1)(j) because the City relied on this exception to deny his prior request.

court to assess its claim and the opposing party to challenge it.” *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013).

Here, the City denied the Appellant’s request and merely quoted the text of KRS 61.878(1)(j), which exempts from disclosure “[p]reliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended.” The City’s response was “limited and perfunctory” because it did not explain what records it was withholding or how KRS 61.878(1)(j) applied to any of the records withheld. *See, e.g.*, 22-ORD-007; 21-ORD-202; 21-ORD-035. As a result, the City violated KRS 61.880(1).²

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/ Matthew Ray
Matthew Ray
Assistant Attorney General

² The City responded to this appeal on March 4, the same day the appeal was initiated and before its meeting occurred. It explained that it denied the second part of the Appellant’s request for the “entire counsel packet” because it “includes memos from CAO and Department heads along with draft minutes from the last meeting.” As such, the memos contained preliminary recommendations and opinions for the City to consider at the meeting and no action had been taken at the time of the Appellant’s request. If the City took final action at its meeting and adopted the recommendations contained in the withheld memos, then their preliminary status would be lost. *See Univ. of Ky. v. Courier-Journal & Louisville Times Co.*, 830 S.W.2d 373, 378 (Ky. 1992). However, the Office has previously held that packets containing meeting materials remain preliminary until after the meeting at which the recommendations are presented and acted upon. *See, e.g.*, 23-ORD-326. Further, the meeting minutes from the previous meeting remain a preliminary *draft*, exempt under KRS 61.878(1)(i), until approved at the next meeting. *See* KRS 61.835.

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Distributed to:

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