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24-ORD-116

May 9, 2024

In re: Michael P. Moore/Kentucky State Police

Summary: The Kentucky State Police (“KSP”) did not violate the Open Records Act (“the Act”), when it redacted or withheld information which is exempted from disclosure under KRS 61.878(1)(a), (k), and (q).

Open Records Decision

Michael P. Moore (“Appellant”) submitted a request to KSP for “a total copy of” KSP’s investigation file related to his criminal case. In a timely response, KSP partially denied his request under KRS 17.150(2) because it is “actively investigating” this case. This appeal followed.

On appeal, KSP states its investigation has concluded and it is making the previously withheld records available to the Appellant upon payment of a prescribed copying fee.¹ However, KSP further states it redacted the records under KRS 61.878(1)(a) and (k). It also withheld “graphic images depicting the deceased” under KRS 61.878(1)(q).

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 Office 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*

¹ KSP states it “will send the responsive records to [the Appellant] on a flash drive by U.S. mail upon receipt of payment.” Although the Appellant has not objected to this form of delivery, it is not clear whether the records can be delivered to the Appellant on a flash drive. The Appellant is currently incarcerated. Department of Corrections Policies and Procedures 9.6 § 2(A)6. defines contraband to include “any device capable of storing data for review” such as “unsupervised flash drives.”

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.*

Here, KSP states it redacted “personal information includ[ing] social security numbers, home addresses, personal telephone numbers, dates of birth, and driver's license numbers” from the records. Because *Kentucky New Era* holds this information may be categorically redacted under KRS 61.878(1)(a), KSP did not violate the Act when it made these redactions.

KSP also redacted “personal information obtained from the driver's license database in compliance with The Driver's Privacy Protection Act, 18 U.S.C. § 2721, incorporated into the Open Records Act by KRS 61.878(1)(k).” Section 2721(a) prohibits the release and use of certain personal information from State motor vehicle records,² and is incorporated into the Act by KRS 61.878(1)(k), which exempts from inspection “[a]ll public records or information the disclosure of which is prohibited by federal law or regulation.” Thus, KSP did not violate the Act when it withheld information that federal law requires KSP to keep confidential.

Finally, KSP withheld “graphic images depicting deceased” under KRS 61.878(1)(q). KRS 61.878(1)(q) exempts from inspection “photographs or videos that depict the death, killing, rape, or sexual assault of a person.” Thus, KSP did not violate the Act when it withheld photographs depicting the deceased victim in the case.

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.

² “Personal information” is defined in 18 U.S.C. § 2725(3) as “information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status.” Highly restricted personal information is defined in § 2725(4) as “an individual's photograph or image, social security number, medical or disability information[.]”

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