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25-ORD-178

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In re: Randle Penn/Louisville Metro Government

Summary: The Louisville Metro Government (“Metro”) violated the Open Records Act (“the Act”) when it stated that addresses would be redacted from responsive records under KRS 61.878(1)(a).

Open Records Decision

Randle Penn (“Appellant”) submitted a request to Metro seeking “a list of vacant structures” and “structures that are boarded.” In response, Metro advised the Appellant that records he received would not have addresses and asked whether the Appellant still wanted to proceed with his request.¹ This appeal followed, challenging Metro’s intent to redact the records.

Under KRS 61.878(1)(a), a public agency may withhold “information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” To determine whether a public record may be redacted or withheld under KRS 61.878(1)(a), the Office must weigh the public’s right to know that a public agency is properly executing its functions against the “countervailing public interest in personal privacy” when the records in dispute contain information that touches upon the “most intimate and personal features of private lives.” *Ky. Bd. of Exam’rs of Psychologists v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324, 328 (Ky. 1992). This balancing test requires a “comparative weighing of the antagonistic interests. Necessarily, the circumstances of a particular case will affect the balance. . . . [T]he question of whether an invasion of privacy is ‘clearly unwarranted’ is intrinsically situational, and can only be determined within a specific context.” *Id.* at 327–28. In reviewing an agency’s denial of an open records request based on the personal privacy exemption, the courts and

¹ Metro also asked the Appellant if he would consider temporally narrowing the range of data sought in his request. That portion of Metro’s response is not at issue in this appeal.

this Office balance the public's right to know what is happening within government against the personal privacy interest at stake in the record. *See Zink v. Commonwealth, Dep't of Workers' Claims*, 902 S.W.2d 825, 828 (Ky. App. 1994).

To start, the Office considers the privacy interests implicated by the request. Metro correctly states that home addresses are among the most private categories of information the Appellant could seek. Indeed, "[t]here are few things which pertain to an individual in which his privacy has traditionally been more respected than his own home." *Zink*, 902 S.W.2d at 829. Moreover, 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. *Id.*

However, it is not clear that the Appellant has requested information about *home* addresses. Rather, the face of the Appellant's request says he is seeking "a list of vacant structures" and "structures that are boarded," *i.e.*, properties that have been abandoned and presumably not being used as someone's residence. Even assuming the Appellant's request concerns only residential properties (as opposed to commercial properties), the important privacy interests an individual has in his or her home do not apply when the property has been abandoned.² Ultimately, the agency bears the burden of proof to sustain its actions. KRS 61.880(2)(c). Here, Metro has not adequately identified privacy interests the disclosure of which would "constitute a clearly unwarranted invasion of personal privacy." Thus, Metro violated the Act when it did not adequately support its invocation of KRS 61.878(1)(a).³

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

² Likewise, to the extent any of the properties at issue are owned or subject to condemnation by Metro, the privacy interests implicate by a person's *home* address also would not apply.

³ On appeal, Metro provides a form in which the Appellant certified that his request was made for a commercial purpose: "offer[ing] sales and services" on behalf of a specified cleaning business. Thus, Metro argues that the Appellant's request "does not further a public interest." Metro may be correct that the Appellant's request does not serve any public interest. *See Ky. New Era*, 415 S.W.3d at 85 ("[A]ny private interest the requester may have in the information is irrelevant."). However, here, because Metro has not invoked a sufficient privacy interest to bar disclosure of the records, the reasons for the Appellant's request do not justify redaction.

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
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