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25-ORD-234

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In re: Tara McMahan/Henry County Public Schools

Summary: The Henry County Public Schools (“HCPS”) did not violate the Open Records Act (“the Act”) when it withheld records exempt under KRS 61.878(1)(a).

Open Records Decision

Tara McMahan (“the Appellant”) submitted a multi-part request related to a teaching position at HCPS seeking, in relevant part, “A list of all applicants who were interviewed, including the dates of those interviews.”¹ In response, HCPS provided the Appellant with responsive records. Among the records provided was a list stating when each applicant was interviewed, which included the name of the candidate selected for the position but withheld the names of the two candidates not chosen for the position under KRS 61.878(1)(a). This appeal followed, challenging HCPS’s withholding of the names of the unsuccessful candidates.

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

¹ The Appellant also sought six additional categories of records but has not challenged HCPS’s response to those other parts of the request.

of an open records request based on the personal privacy exemption, the courts and 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).

Here, the Appellant seeks the names of unsuccessful candidates for a teaching position at HCPS. In support of disclosure, she argues that "the names of interviewees for a public school teaching position fall on the side of disclosure" and that there is "community concern" that "certification requirements may not have been followed," and she claims that HCPS is selectively relying on KRS 61.878(1)(a) because it did not redact the name of the candidate chosen for the teaching position.²

For its part, HCPS maintains that unsuccessful candidates for public employment have strong privacy interests in records related to them. HCPS is correct. The Office has consistently found that the heightened privacy interest in information about unsuccessful candidates for public employment outweighs the public interest in disclosure of that information. *See, e.g.*, 17-ORD-093; 10-ORD-227. This finding is "premised on the notion that disclosure might embarrass or harm applicants who fail to get a job. Present employers, coworkers, and prospective employers, should the applicants seek new work, would learn that others were deemed better qualified for a competitive appointment. The simple fact that the unsuccessful applicant wished to leave his/her present employment might prove embarrassing." 17-ORD-093. That the Appellant seeks the names of candidates for a position at a public school is of no moment. *See, e.g.*, 10-ORD-196 (upholding a school district's withholding of records containing information regarding unsuccessful applicants for the county's superintendent position). Further, HCPS's disclosure of the identity of the successful candidate does not bar it from withholding the names of unsuccessful candidates. Rather, such action by HCPS recognizes that successful candidates have little expectation of privacy regarding their holding public employment. *See, e.g.*, 15-ORD-085 (finding only a "negligible" privacy interest in a successful candidate's job application). Accordingly, HCPS did not violate the Act when it withheld information regarding unsuccessful job applicants pursuant to KRS 61.878(1)(a).

² The Appellant also directs the Office to 21-ORD-163 and 19-ORD-180, arguing that both decisions support disclosure of the names of individuals who interview for public positions. However, 21-ORD-163 was an appeal brought by an inmate concerning whether the agency had provided him with all records in its possession and 19-ORD-180 addressed a school board's requirement that a requester provide a notarized form as part of his request. Neither decision supports the Appellant's position.

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/ Zachary M. Zimmerer
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Distributed to:

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