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25-ORD-342

October 31, 2025

In re: Jonathan Henderson/Lakeside Park/Crestview Hills Police Department

Summary: The Lakeside Park/Crestview Hills Police Department (“the Department”) violated the Open Records Act (“the Act”) when it denied an employee’s request for his own promotional examination scores. However, the Department did not violate the Act when it withheld the scores of other candidates for promotion.

Open Records Decision

Patrolman Jonathan Henderson (“the Appellant”) submitted a request to the Department for “all scores, documents, notes, recommendations, recorded discussions including but not limited to audio, video, or text and eligibility list pertaining to the most recent promotional process for Sergeant.” In response, the Department provided 22 pages of records but withheld 137 pages of records as exempt under KRS 18A.020(4), KRS 61.878(1)(a), and KRS 61.878(1)(i). This appeal followed.

The Appellant objects to two specific omissions. First, he complains that the Department withheld “the individual score by each candidate in each phase” of the promotional examination, including his own score. Second, he claims the Department failed to address his request for “the eligibility list.”

On appeal, the Department argues, “records showing the results of examinations and the reasons for the results are exempt from review” under KRS 61.878(1)(a). That provision exempts from disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” *Id.* It requires a “comparative weighing of the antagonistic interests” between privacy and the public interest in disclosure. *Ky. Bd. of Exam’rs of Psychologists v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324, 327 (Ky. 1992). In previous decisions, the Office has recognized that a public employee or applicant for public employment “has a cognizable privacy interest in test scores and examination results when those scores or results are disclosed in conjunction with the employee’s name or other personally

identifiable information.” 99-ORD-113; *see also* OAG 78-382. Therefore, the test scores of an employee or applicant are exempt under KRS 61.878(1)(a) “[i]n the absence of a superior public interest in disclosure.” 96-ORD-45; *see also* 23-ORD-091; 06-ORD-145; OAG 79-128. Here, the Appellant has not alleged any heightened public interest in the disclosure of the examination scores of other applicants. Accordingly, the Department did not violate the Act when it withheld the scores of applicants other than the Appellant.¹

Regarding the Appellant’s own examination scores, KRS 61.878(3) provides that “[n]o exemption in this section shall be construed to deny, abridge, or impede the right of a public agency employee [or applicant for employment] to inspect and to copy any record including preliminary and other supporting documentation that relates to him or her. The records shall include but not be limited to work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, layoffs, disciplinary actions, *examination scores*, and preliminary and other supporting documentation” (emphasis added). On appeal, the Department claims the Appellant is not entitled to view his scores under the last sentence of KRS 61.878(3), which states, “A public agency employee [or applicant] shall not have the right to inspect or to copy *any examination* or any documents relating to ongoing criminal or administrative investigations by an agency” (emphasis added). Essentially, the Department argues the Appellant’s scores are part of the “examination.” But KRS 61.878(3) itself draws an express distinction between “any examination,” which an employee may not inspect, and “examination scores,” which he is entitled to inspect if they are his own.²

Additionally, the Department relies on KRS 61.878(1)(g), which exempts from disclosure “[t]est questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again.” In 24-ORD-002, the Office observed, “It is reasonable to conclude that neither the public nor applicants for employment should have access to interview questions that may be used again, because future applicants would have an unfair advantage in being able to prepare answers ahead of time if such information were disseminated[.] However, it is not clear why applicants for employment should be prevented from obtaining an interviewer’s ‘evaluation’ about their own qualifications, or supposed lack thereof, for any particular position.” Thus, an interviewee’s “nonexempt notes and assessments”

¹ Because KRS 61.878(1)(a) is dispositive of this issue, it is unnecessary to address the Department’s alternative arguments under KRS 18A.020(4) and KRS 61.878(1)(g), (i), and (j).

² Whereas “an examination is commonly understood to involve an objective assessment of knowledge and skill,” 02-ORD-168, “it is doubtful that such an interpretation should include ‘the subjective elements’ of assessing an applicant’s answers to interview questions,” which resembles an “examination score” under KRS 61.878(3). 24-ORD-002 (quoting 02-ORD-168).

must be separated from “the exempt questions,” as required by KRS 61.878(4),³ and provided to the applicant. *Id.* Here, likewise, the Appellant’s scores must be segregated from exempt materials, such as interview questions and scoring keys, and provided to him.⁴

The Department objects, however, that the Appellant’s scores are analogous to a “Training and Experience Score,” which it claims a public agency properly denied to an applicant for a position under KRS 61.878(1)(g)⁵ in OAG 92-80. However, the record at issue in OAG 92-80 was not the score itself, but the “training and experience rating scale” on which the score was calculated. The Office characterized this rating scale “as an inactive examination,” which could be “classified as a ‘scoring key’ or ‘other examination data’” within the meaning of KRS 61.878(1)(g), due to “a concern that candidates who have been afforded access to the rating scale will be given an unfair advantage in the application process.” *Id.* Thus, OAG 92-80 is inapplicable to the present appeal, which involves scores only. Accordingly, the Department violated the Act insofar as it denied the Appellant’s access to his own scores relating to the promotional examination.⁶

Finally, the Appellant claims the Department failed to address the portion of his request that related to an “eligibility list” for promotion to sergeant. However, the Department states it provided the only record responsive to that request, a memorandum dated May 8, 2025, “which lists the six candidates who meet the eligibility criteria for the Sergeant position.”⁷ In a supplement to his appeal, the Appellant explains that he wishes to inspect the document mentioned in a subsequent memorandum dated June 16, 2025, in which the Chief “recommend[ed] that the remaining candidates and their respective results of this competitive process be maintained as an eligibility list for a period of 12 months from [that] date.” However, the Department states that document is merely “the list of candidates and a breakdown of their scores in each phase of the promotion process,” which was withheld for the reasons already stated. Therefore, the Department did not violate the Act by failing to address a portion of the Appellant’s request.

³ “If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.”

⁴ Likewise, while the scores of other applicants are exempt under KRS 61.878(1)(a), the Department must separate the exempt material and provide the Appellant his own scores.

⁵ Due to a subsequent change in numbering of the provisions, the current KRS 61.878(1)(g) was referenced in OAG 92-80 as KRS 61.878(1)(e).

⁶ Although the Appellant claims the Department has provided some other promotional candidates with both their own scores and “scores of other candidates,” the Department denies this allegation.

⁷ The Appellant attached to his appeal a copy of the records he received, which include the memorandum described by the Department.

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.

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/s/ James M. Herrick
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Distributed to:

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