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25-ORD-393

December 9, 2025

In re: Ricky Ladd/Graves County School District

Summary: The Graves County School District (“the District”) violated the Open Records Act (“the Act”) when it failed to explain how the attorney-client privilege applied to the records withheld.

Open Records Decision

Ricky Ladd (“Appellant”) submitted a request to the District seeking “all communications between the Graves County Board of Education” and the Board’s attorney that mention the Office of Education Accountability or the Education Professional Standards Board between June 2023 and October 10, 2025. In response, the District stated that the requested records are exempt under the attorney-client privilege and advised that a privilege log was available for review at its office. This appeal followed.

Upon receiving a request to inspect public records, a public agency must determine within five business days whether to grant the request or deny it. KRS 61.880(1). If the agency denies the request, it “shall 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.* An agency response denying a request for records must explain the denial by “provid[ing] 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] 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). In the event a request implicates a great many records, an agency discharges its duty under KRS 61.880(1) by assigning the withheld records to meaningful categories, describing the nature of the documents in each category, and explaining how the claimed exception applies to the documents in each category. *See, e.g.*, 22-ORD-007 (holding

an agency violated the Act when it merely stated the withheld records were exempt under KRS 61.878(1)(i) and (j) as not having been adopted as final agency action, because the agency did not describe the records withheld or the potential final action that was being contemplated).

Here, the District's original response stated that the requested records "are protected from disclosure because of attorney-client privilege" and provided a privilege log stating only that the "basis" of the withholding was "Attorney-client protected communications." The District provided no description of the records withheld or why they are exempt under the attorney-client privilege. On appeal, the District maintains that its response was sufficient and adds only that the communications were between its board of education and attorney. The District is incorrect.

KRS 61.878(1)(l) operates in tandem with KRE 503 to exempt from inspection public records protected by the attorney-client privilege. *Hahn v. Univ. of Louisville*, 80 S.W.3d 771, 774 (Ky. App. 2001). The attorney work-product doctrine, on the other hand, "affords a qualified privilege from discovery for documents 'prepared in anticipation of litigation or for trial' by that party's representative, which includes an attorney." *Univ. of Ky. v. Lexington H-L Servs.*, 579 S.W.3d 858, 864 (Ky. App. 2018). "[D]ocuments which are primarily factual, non-opinion work product are subject to lesser protection than 'core' work product, which includes the mental impressions, conclusions, opinions, or legal theories of an attorney." *Id.* Records protected by the work product doctrine may be withheld from public inspection under KRS 61.878(1)(l) and CR 26.02(3). *See Univ. of Ky.*, 579 S.W.3d at 864–65.

When a party invokes the attorney-client privilege to shield documents in litigation, that party carries the burden of proof. That is because "broad claims of 'privilege' are disfavored when balanced against the need for litigants to have access to relevant or material evidence." *Haney v. Yates*, 40 S.W.3d 352, 355 (Ky. 2000) (quoting *Meenach v. Gen. Motors Corp.*, 891 S.W.2d 398, 402 (Ky. 1995)). So long as the public agency provides a sufficient description of the records it has withheld under the privilege in a manner that allows the requester to assess the propriety of the agency's claims, then the public agency will have discharged its duty under the Act. *See City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848–49 (Ky. 2013) (providing that the agency's "proof may and often will include an outline, catalogue, or index of responsive records and an affidavit by a qualified person describing the contents of withheld records and explaining why they were withheld.").

Here, the District's response was "limited and perfunctory" because it did not explain how the attorney-client privilege applied to the records withheld. And although the District now explains that the responsive records consist of communications between its board and its attorney, the District has not explained how the content of those communications falls within the attorney-client privilege. At bottom, stating only that communications are attorney-client privileged or that communications included an attorney is insufficient to invoke the privilege. Therefore, the District violated the Act when it did not explain how the attorney-client privilege applied to the records withheld.

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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