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26-ORD-011

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In re: Melanie Barker/Cabinet for Health and Family Services

Summary: The Cabinet for Health and Family Services (“the Cabinet”) did not violate the Open Records Act (“the Act”) when it withheld “records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

Open Records Decision

Melanie Barker (“Appellant”) submitted a request to the Cabinet for the “Employee Identification Badge” for two named individuals. The Appellant specified that the records should include “a photo” and that she wanted “that photo for both as well.” The Cabinet denied her request under KRS 61.878(1)(a) because “public records containing information of a personal nature in which disclosure of [sic] would constitute an unwarranted invasion of personal privacy are exempt from disclosure.” This appeal followed.

KRS 61.878(1)(a) 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). The Kentucky Supreme Court has established a balancing test in which “the public’s right to expect its agencies properly to execute their functions” is measured against the “countervailing public interest in personal privacy.” *Id.* at 328. Whether a public agency has properly relied on KRS 61.878(1)(a) is “intrinsically situational.” *Id.* 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 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).

The Office has held that public employees have a privacy interest in their photographs. *See, e.g.*, 21-ORD-117; 20-ORD-005; 11-ORD-139; 08-ORD-014. Similarly, the Office had found that employee identification numbers may be redacted under KRS 61.878(1)(a). *See, e.g.*, 16-ORD-274, 16-ORD-194, 09-ORD-049. Moreover, an ordinary photograph of an employee, which does not depict the employee engaging in any type of governmental activity, would shed little light on "what [the] government is doing." *Zink*, 902 S.W.2d at 829.

Here, the Appellant acknowledged that some information on the employees' identification badge would be exempt from public disclosure, such as Social Security numbers, home addresses, or medical information. Yet, she presents no countervailing public interest in disclosure of specific Cabinet employee's identification badges, which typically contain an employee identification number or other identifying information, or a photograph.¹ Thus, the Appellant fails to explain how specific Cabinet employees' identification badges and photographs relate to their public duties. To the contrary, such employee identification badges and photographs shed little light on the Cabinet's execution of its functions. As a result, the Cabinet did not violate the Act when it denied a request for its employees' identification badges and photographs.²

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.

¹ The Appellant asserts that, according to Google, "[i]n Kentucky, photo ID badges themselves are generally considered public records and are subject to disclosure." She further asserts that public employees "are required to present to us their badge with their photo so we know who they are and we are not just letting some stranger who says they are 'so and so' into our facilities." But she does not provide any legal authority to support these assertions.

² Under KRS 61.878(4), "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." However, it is unclear that any nonexcepted material remains on these specific employees' identification badges.

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