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26-ORD-218

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In re: Daniel Brennan/Letcher County Public Schools

Summary: Letcher County Public Schools (“LCPS”) violated the Open Records Act (“the Act”) when it did not explain the basis of portions of its denial. LCPS did not violate the Act when it withheld records containing personally identifiable information exempt under federal law.

Open Records Decision

Daniel Brennan (“the Appellant”) submitted a request to LCPS seeking records related to the “Auditions, Casting, and Production” of *Frozen* at Letcher County Central High School. His request sought: (1) communications regarding (a) “casting decisions, callbacks, or role assignments,” (b) the purchase of costume items, and (c) “production planning, set design, or volunteer participation contingent upon particular casting outcomes”; (2) “agreements, communications, or arrangements with Dr. Narramore or any other volunteers providing set design, materials, or services for the production”; (3) “audition materials used in the evaluation and selection process, including score sheets, rubrics, notes, and callback lists”; and (4) “correspondence or records referencing financial contributions, material donations, or volunteer conditions related to the production.”

In response, LCPS granted part (1)(b) of the request, but it denied all remaining parts of the request. Specifically, LCPS denied parts (1)(a) and (3) of the request under KRS 61.878(1)(a) and the Federal Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g.¹ It denied parts (2) and (4) of the request under KRS 61.878(1)(a). And it denied part (1)(c) of the request under KRS 61.878(1)(a), (i), and (j). This appeal followed.

¹ FERPA is incorporated into the Act by KRS 61.878(1)(k).

When a public agency denies a request for records, it must “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.” KRS 61.880(1). The agency must “provide particular and detailed information” in its explanation, 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). LCPS’s original response only cited the exemptions upon which it relied for denying each part of the request, but it gave no explanation of the records being withheld or how the cited exemptions applied to them. Thus, LCPS’s initial response violated the Act.²

On appeal, LCPS supplements the portions of its response invoking FERPA, explaining that the parts of the request that were denied on that basis seek records that include students’ education records. LCPS adds that those records are also exempt under the Kentucky Family Educational Rights and Privacy Act (“KFERPA”), KRS 160.700, *et seq.* FERPA provides that “[n]o funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information . . .) of students without the written consent of their parents to any individual, agency, or organization, other than to” specified individuals under conditions not relevant here. 20 U.S.C. § 1232g(b)(1). KFERPA states that “[e]ducation records of students in the public educational institutions in [Kentucky] are deemed confidential and shall not be disclosed, or the contents released, except under the circumstances described in KRS 160.720.” KRS 160.705(1).

Personally identifiable information includes a “student’s name,” 34 C.F.R. § 99.3(a), or “[i]nformation requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates,” 34 C.F.R. § 99.3(g).

Here, LCPS has invoked FERPA to withhold records related to the casting of students in a high school production of *Frozen*. On its face, it is apparent that such records are student education records containing the names of students involved in that production. That alone justifies the invocation of FERPA to withhold records.

² On appeal, LCPS has provided no further explanation for its denials of parts (1)(c), (2), and (4) of the Appellant’s request. Therefore, the Office will not consider those denials further.

Moreover, redaction is not an option regarding these records. LCPS explains that the Appellant is the parent of a child who “was not selected to play the leading role.” Therefore, it is likely that the Appellant is an individual who “knows the identity of the student[s] to whom the education record[s] relate[.]” 34 C.F.R. § 99.3(g). Therefore, redacting the names of students identified in the requested records would not alter the status of those records as an education record containing personally identifiable information of the students under FERPA. *See, e.g.,* 22-ORD-073. Therefore, the Office concluded that LCPS did not violate the Act when it denied requests (1)(a) and (3) under FERPA.³

In summary, both in its original response and on appeal, LCPS has not sufficiently explained its denial of parts (1)(c), (2), and (4) of the Appellant’s request. Rather, LCPS merely cited exemptions without explaining how they applied to the records withheld. But LCPS has adequately explained how FERPA allows it to withhold casting records containing personally identifiable information of LCPS students.

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
Zachary M. Zimmerer
Assistant Attorney General

³ Because FERPA is dispositive of this appeal, the Office need not separately address LCPS’s belated invocation of KFERPA.

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Distributed to:

Dan Brennan, Appellant

Denise Yonts, Letcher County Public Schools, Superintendent

Jamie Hatton, Letcher County Public Schools, Legal Counsel