



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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26-ORD-314

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In re: Charles Justice/Campbell County Police Department

Summary: The Campbell County Police Department (“the Department”) did not violate the Open Records Act (“the Act”) when it denied a request for interviews of juvenile witnesses.

Open Records Decision

Charles Justice (“the Appellant”) submitted a request to the Department for transcripts of interviews of juvenile witnesses¹ conducted in connection with a 2018 criminal case in which he was convicted of sex crimes against child victims. In a timely response, the Department denied the request on two grounds. First, the Department claimed the interviews were “juvenile records not subject to release according to [KRS] 610.320.” Second, the Department denied the request under KRS 61.878(1)(h), citing *Skaggs v. Redford*, 844 S.W.2d 389 (Ky. 1992), for the proposition that “the law-enforcement action is not to be regarded as complete until a defendant completes his or her sentence.” This appeal followed.

On appeal, the Department raises KRS 61.878(1)(a) as an additional basis for denying the request. 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.” The proper application of KRS 61.878(1)(a) “requires a ‘comparative weighing of the antagonistic interests’—the privacy interest versus the policy of openness for the public good.” *Cape Publ’ns v. City of Louisville*, 147 S.W.3d 731, 734 (Ky. App. 2003) (quoting *Ky. Bd. of Exam’rs of Psychologists v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324, 327 (Ky. 1992)). “[T]he question of whether an invasion of privacy is ‘clearly unwarranted’ is intrinsically situational, and can only be determined within a specific context.” *Ky. Bd. of Exam’rs*, 826 S.W.2d at 327.

¹ Although the exact number of transcripts at issue is unclear from the record on appeal, the parties agree that the witnesses were under the age of 18 at the time of the interviews.

As the courts have recognized, juvenile victims of crime and juvenile witnesses have a “heightened privacy interest[,] particularly in the context of records pertaining to . . . intensely personal crimes.” *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 85 (Ky. 2013).² Indeed, the Court in *Kentucky New Era* stated the degree of privacy protection afforded to information about juvenile witnesses and victims³ under KRS 61.878(1)(a) is comparable to the absolute confidentiality of juvenile offender records under KRS 610.320.⁴ *Id.* Here, the Appellant argues he should have access to the interviews because the witnesses “are now 18.” However, just as juvenile offender records do not suddenly become open to the public when the offender turns 18, the privacy interests of juvenile witnesses regarding “intensely personal crimes” do not disappear with the mere passage of time. Therefore, the Department did not violate the Act⁵ when it denied the Appellant’s request.⁶

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.

Russell Coleman
Attorney General

/s/ James M. Herrick
James M. Herrick
Assistant Attorney General

² Here, it is unquestionable that sex crimes against children are “intensely personal.”

³ Although it is unclear how many of the juvenile witnesses in the Appellant’s criminal case were also victims, the analysis in *Kentucky New Era* does not treat that distinction as significant.

⁴ Under KRS 610.320(3), “[a]ll law enforcement and court records regarding children who have not reached their eighteenth birthday shall not be opened to scrutiny by the public,” with certain limited exceptions.

⁵ As the Office’s jurisdiction under KRS 61.880(2) extends only to issues arising under the Act, the Office expresses no opinion as to whether the Appellant might obtain the requested records through discovery in any civil or criminal action to which he is a party.

⁶ Because KRS 61.878(1)(a) is dispositive of the issues on appeal, it is unnecessary to decide issues relating to the Department’s alternative arguments under KRS 610.320(3) and KRS 61.878(1)(h). However, for future reference, the Department is advised that “[c]riminal records concerning an *adult* suspect are not confidential under KRS 610.320(3) merely because the victim is a juvenile.” 23-ORD-265 n.3; *see also* 10-ORD-073; 10-ORD-066; 09-ORD-201; 93-ORD-42. Additionally, as to police records under KRS 61.878(1)(h), the cited proposition from *Skaggs v. Redford* has been overruled. *See City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 853 (Ky. 2013).

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Distributed to:

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