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26-ORD-464

October 15, 2026

In re: *Lexington Herald-Leader*/University of Kentucky

Summary: The University of Kentucky ("the University") violated the Open Records Act ("the Act") when its initial response failed to explain how the cited exemptions applied to the records withheld. However, the University did not violate the Open Records Act ("the Act") when it withheld records that were "preliminary drafts" under KRS 61.878(1)(i) or preliminary recommendations or expressions of opinion under KRS 61.878(1)(j).

Open Records Decision

The *Lexington Herald-Leader* ("the Appellant") submitted a request to the University for "the 2024, 2025, and 2026 response rates for the UKHC Engagement Survey, UK@Work Survey, and any other employee engagement surveys," "the questions and/or categories included in each survey," "the total scores for each question and/or category [for] each scale response," and any written responses to survey questions. In a timely response, the University stated that "no surveys were done in 2024 as they are done every two years."[1] The University provided a link to a webpage containing response rates for the two surveys for 2025 but denied the remainder of the request under KRS 61.878(1)(i) and (j) on the grounds that the surveys "have not been approved by the board." After further inquiry from the Appellant, the University explained that its Board of Trustees does not "vote on it per se," but the survey results are "present[ed] to the board as the policymaking authority first, so they can engage and opine on it" before the survey is "shar[ed] with the community as a final document." This appeal followed.

A public agency denying inspection of public records 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).

[1] On appeal, the University further clarifies that it "has no plans to do a 2026 survey." Thus, the University fully granted the Appellant's request for the survey response rates.

The agency must "provide 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). As this Office has recognized, KRS 61.878(1)(i) and (j) are two separate exemptions, and public agencies must explain how each exemption applies to the withheld records if an agency chooses to rely on both provisions. *See*, *e.g.*, 21-ORD-168; 21-ORD-169. Here, however, the University's response was "limited and perfunctory" because it did not explain how either of the two claimed exemptions applied to those records. *See, e.g.,* 25-ORD-406; 22-ORD-007; 21-ORD-202; 21-ORD-035. Thus, the University's response violated KRS 61.880(1).

On appeal, the University explains that it conducts "employee engagement surveys" in the fall of each odd-numbered year, one for its healthcare employees and one for other employees. The purpose of the surveys is to elicit employees' opinions on topics including "University Culture, Leadership, Communication, Operating Effectively, Stress, Balance & Workload, and Pay & Benefits." In the spring, "the data is sorted in [a] variety of different ways" for different unit supervisors and senior leaders, and "the information gathered from the survey results is a consideration in a variety of decisions within the University." Finally, "[a]pproximately one year after the survey is administered, the questions, categories, and university-wide scores are shared with the board of trustees." The University states the results of the 2025 surveys are scheduled to be presented to the Board of Trustees ("the Board") at its September 2026 meeting. According to the University's response to the Appellant's request, that presentation to the Board will eventually be followed by "a final document" that will be "shar[ed] with the community."

Under KRS 61.878(1)(i), "[p]reliminary drafts, notes, [and] correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency," are exempt from disclosure. A preliminary draft is "a tentative version, sketch or outline" of a final document. 05-ORD-179. Preliminary drafts "by their very nature are rejected when a final report is approved." 24-ORD-193. Thus, a preliminary draft does not lose its preliminary status when the agency takes final action. *See, e.g.,* 21-ORD-089. Here, the Appellant requested the survey questions, raw response data, and any narrative responses. The University claims that information will form the basis of "a final document" only after being considered by the Board. Therefore, to the extent the aggregated response data and other information sought by the Appellant may be contained in a preliminary draft of that final document, the draft is exempt from disclosure under KRS 61.878(1)(i).

It appears, however, that the Appellant also seeks access to the completed survey forms themselves, which would contain all the questions and employee responses. KRS 61.878(1)(j) exempts from disclosure "[p]reliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended." Unlike preliminary drafts, preliminary recommendations and preliminary memoranda under KRS 61.878(1)(j) "may form the basis of a public agency's final action [and] may thereby be 'adopted' once final action is taken." 21-ORD-168. Such records, when "adopted by the [agency] as the basis of its final action, become releasable" because "the preliminary characterization is lost, as is the exempt status." *Ky. State Bd. of Medical Licensure v. Courier-Journal & Louisville Times Co.,* 663 S.W.2d 953, 956 (Ky. App. 1983).[2]

The Office has consistently held that responses to surveys containing opinions or recommendations are exempt from disclosure under KRS 61.878(1)(j) when they have not been adopted as the basis of final agency action. *See, e.g.,* 24-ORD-210; 15-ORD-202; 05-ORD-048. Here, the University asserts "information gathered from the survey results is always a consideration" in "literally hundreds of decisions at the unit, area, or university level," but no single final action has been taken which adopts the 2025 survey results as its basis. Accordingly, the University did not violate the Act when it partially denied the Appellant's request.

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] The University claims the concept of preliminary recommendations "adopted" as the basis of final agency action applies only when the records pertain to an "investigation." However, that view is incorrect. *See* 25-ORD-406 n.3.

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