



Office of General Counsel

107 Oakley Applied Science Building
Murray, KY 42071-3345
270-809-3399 • 270-809-3471 fax

October 27, 2022

Via Email to: pboxx@wpsdlocal6.com

Mr. Perry Boxx
News Director
WPSD Local 6
100 Television Lane
Paducah, KY 42003

RE: Open Records Request

Dear Mr. Boxx:

The university is in receipt of your Open Records Request dated October 20, 2022. Pursuant to your request, it is our understanding that you desire the following:

- A. Correspondence, including but not limited to emails and attachments, responses and threads, letters and other forms of communications from and/or to Dr. Robert Jackson, Tim Todd, David Eaton, Judge Jamie Jameson and Chad Lampe in any combination, the content of which regards a Kentucky Open Records Request filed by the news department of WKMS Radio News seeking courthouse security video showing Circuit Court Judge Jamie Jameson walking in the Marshall County Courthouse in his underwear.
- B. Correspondence, including but not limited to emails and attachments, responses and threads, letters and other forms of communications regarding WKMS News, both prior to and subsequent to the open records request described above in item "A" from and/or to Dr. Allen White, Rachel Collins, Derek Operle, Kevin Qualls, Asia Burnett, Liam Niemeyer, Jordan Smith, Jill Hunt and Shawn Touney.

In response to Request "A," please note that the Open Records Act requires a requester to precisely describe the record(s) being requested. Although your request fails to precisely describe the records as required by KRS 61.872(3)(b), and would require the University to guess as to the records you are seeking, the University will endeavor to collect and review documents that include all correspondence, including "other forms of communication," with the exception noted in the paragraph immediately below. Because your request does not identify a specific or approximate date, nor does it identify a University record of correspondence between a specific sender and a

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recipient, additional time is needed to complete the collection and review of such records. The records are not readily available due to the aforementioned reasons. *See* KRS 61.872(5).

The aforementioned exception is that WKMS, as a member of the press, is entitled by the First Amendment to the U.S. Constitution to the free exercise of the press protections contained therein. The University understands, acknowledges and supports the policy statement in KRS 61.878 declaring that the “examination of public records is in the public interest...” In this case, there is a competing interest as to the freedom of the press. Permitting the public to engage in fishing expeditions by searching the files of journalists and/or an agency of the press, undermines and dissuades the press from fulfilling its Constitutionally protected freedom. For these reasons, your request “A” is denied to the extent documents contain exempt information – the disclosure of which would impinge or inhibit the freedom of the press – pursuant to KRS 61.878(1)(k).

The University will complete its review and provide responsive records regarding request “A” by November 4, 2022. If you wish to supplement your request in order to expedite this collection and review of records, please specify the documents/records that are being requested in definite, specific and unequivocal terms. To that end, attached is a copy of an article for your review.

Your request “B” is denied because it does not precisely describe the records you are requesting as required by KRS 61.872(3)(b). Your request for all correspondence including “other forms of communication” does not identify a specific or approximate date, nor does it identify a University record of correspondence between a specific sender and a recipient. Further, your request requires the university to guess as to which emails, attachments, memos, letters, etc. were composed “regarding WKMS news.” The Commonwealth of Kentucky Office of the Attorney General has consistently held that blanket requests for records do not adequately describe the record(s) being sought. *See, e.g.*, Attorney General Opinion 21 ORD-017.

Your request “B” is denied pursuant to KRS 61.872(6) because the request is unduly burdensome. Your request is unduly burdensome because the time period – 234 days, and the nine different individual email accounts you referenced potentially result in thousands of individual emails and attachments which would each require individual review. This individual review requires each email to be reviewed for confidential information, information protected by the attorney client privilege, and information that may require redaction as may be permitted by the Kentucky Open Records Act. As stated in Kentucky Attorney General opinion 22-ORD-182, the “number of records implicated” is the most important factor to be considered when determining whether a request is unduly burdensome. Importantly, the term *implicated* is broader than the number of records that may be responsive, and it is broader than the number of records that may be subject to disclosure after a careful review is conducted to determine whether an exemption is applicable. Such a review


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would require dozens, and perhaps hundreds, of hours to search, locate, review and redact (as may be necessary) depending on the number of emails such a search would produce.

Your request "B" is denied pursuant to KRS 61.878(1)(k) because records "regarding WKMS news" are protected from disclosure by the First Amendment to the U.S. Constitution, specifically the free exercise of the press contained therein. Permitting the public to engage in fishing expeditions by searching the files of journalists and/or an agency of the press, undermines and dissuades the press from fulfilling its Constitutionally protected freedom. For these reasons, to the extent that disclosure of documents containing exempt information would impinge or inhibit the freedom of the press, your request is denied.

Thank you.

Sincerely,



Robert Miller

RM/llm

Attachment