

08-ORD-146

July 24, 2008

In re: *The Eastern Progress*/Eastern Kentucky University

Summary: With only one exception, Eastern Kentucky University improperly relied on KRS 61.878(1)(a) in redacting the addresses of persons whose names appeared on incident reports. That exception relates to an incident report involving a juvenile victim and an alleged sex offender. Requester does not challenge EKU's authority to redact personal identifiers such as social security number.

Open Records Decision

The question presented in this appeal is whether Eastern Kentucky University properly relied on KRS 61.878(1)(a) in partially denying *Eastern Progress* Editor Ben Kleppinger's April 15, 2008, request for access to, and copies of, "all police reports filed from 6 p.m. on Friday, April 11 through 8 a.m. on Tuesday, April 15." On April 18, 2008, EKU provided Mr. Kleppinger with fourteen incident reports after redacting "[f]rom all reports, personally identifiable information, such as home address, telephone number, social security number, etc. . . ." Relying on KRS 61.878(1)(a), EKU characterized the redacted information as "information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Mr. Kleppinger subsequently initiated this appeal, asserting that "the University has overstepped its authority in redacting, as a blanket measure, all of the addresses from these reports," and that "addresses can only be redacted on a case-to-case basis, when the address is either clearly irrelevant to the media or possibly damaging to an ongoing investigation" ¹ Based on the authorities cited, and with the single exception noted below, we agree. Our conclusion turns on the analysis in 04-ORD-188.

In supplemental correspondence directed to this office following commencement of *The Eastern Progress*' appeal, EKU elaborated on its position.

¹ *The Eastern Progress* does not contest the University's redaction of social security numbers and dates of birth from the reports.

Acknowledging that it did not provide a detailed explanation for each redaction in its original response, the University asserted that it “reviews each specific incident report for which it receives a request and makes an individualized determination as to what information, if any, should be redacted as permitted by KRS 61.878.” EKU then provided “a more detailed statement of [its] rationale for redactions made, pursuant to KRS 61.878, in each of the reports provided” to Mr. Kleppinger.

In 04-ORD-188, the Attorney General determined that the University of Kentucky Police Department improperly relied on KRS 61.878(1)(a), (i), (h), and (l), as well as KRS 17.150(2), in partially denying the University newspaper editor’s request for eight incident reports by redacting the victims’ names and personal identifiers based on the victims’ preference for anonymity. A copy of 04-ORD-188 is attached hereto and incorporated by reference. At page 9 and 10 of that open records decision, we quoted the Kentucky Court of Appeals published opinion in *Cape Publications v. City of Louisville*, 147 S.W. 3d 731, 733 (Ky. App. 2004):

[P]olice incident reports are matters of public interest and are public records. 93-ORD-42, citing OAG 76-443. As a result, the public should be allowed to scrutinize the police to ensure they are complying with these statutory duties.

Based on the court’s analysis, in 04-ORD-188 this office concluded that the University of Kentucky Police Department had “a statutory duty to release [the incident reports] for public inspection in full and without redactions absent a particularized showing of a heightened privacy interest in the individual report” We rejected the UKPD’s reliance on KRS 61.878(1)(a) to authorize partial nondisclosure of the reports.² Accord, 08-ORD-105.³

² In 04-ORD-188, this office also determined that incident reports “are not generally accorded protection under KRS 61.878(1)(h) and KRS 17.150(2)” absent a description of harm to the law enforcement agency that would result from disclosure of the incident report or specific justification for the refusal of inspection. Although *The Eastern Progress* recognized that there may be rare cases in which disclosure of the full addresses of the person reporting the crime, the victim of the crime, or the suspect might “damag[e] an ongoing investigation,” EKU does not invoke KRS 61.878(1)(h) or KRS 17.150(2) in the instant appeal.

In 08-ORD-105, the Attorney General reaffirmed the university newspaper’s right to an unredacted copy of an incident report, focusing on KRS 61.878(1)(h), (i), and (j) and the

At page 10 and 11 of 04-ORD-188, the Attorney General noted that a university safety and security department is statutorily charged with the duty:

To preserve the peace, maintain order and prevent unlawful use of force or violence or other unlawful conduct on the campuses of [that] . . . institution[], and to protect all persons and property located thereon from injury, harm and damage;

To enforce, and to assist the officials of [that] . . . institution[] in the enforcement of, the lawful rules and regulations of said institution, and to assist and cooperate with other law enforcement agencies and officers.

KRS 164.955(1)(a) and (b). There, as here, the university newspaper postulated its right of access to unredacted copies of the incident reports “on the public interest ‘in being fully informed about the nature and details of the crimes committed in their city and campus, and police efforts to deal with those crimes.’” 04-ORD-188, p. 11. In turn, the Attorney General held that “[t]he information sought in its totality . . . implicates a significant public interest that has been, and will continue to be, treated as superior to the privacy interests implicated absent a particularized showing of a heightened privacy interest,” or, per *Cape Publications v. City of Louisville*, above, where the individual identified in the incident report is the victim of a sexual offense. *Id.*

Our review of EKU’s “more detailed statement of the . . . rationale for redactions made, pursuant to KRS 61.878, in each of the reports” confirms the propriety of partial redaction in only one incident report: 0404080322, involving a juvenile victim and a charge of criminal facilitation, unlawful transaction with a minor, first degree. Given the circumstances of the incident, to wit, a juvenile approached by an alleged sex offender for purposes of an unlawful transaction,

university’s failure to articulate the nature of the particular harm to the agency from premature disclosure of an unredacted copy of the report.

³ The courts and this office have recognized only one exception to this general rule. In *Cape Publications*, above, and 02-ORD-36, the Kentucky Court of Appeals affirmed the Attorney General’s position that the names and personal identifiers of victims of sexual offenses identified in Chapter 510 of the Kentucky Revised Statutes could be redacted from incident reports on the basis of KRS 61.878(1)(a).

we concur with ECU in the view that the public's interest must yield to the heightened privacy interests of the *victim*, and that the University properly withheld both the juvenile's name and all other personal identifiers. The protections afforded by KRS 61.878(1)(a) do *not*, however, extend to the *suspect* in the case, and we believe his full address must be disclosed.

So too, we find that the protections afforded by KRS 61.878(1)(a) do not extend to the addresses of persons identified in the remaining incident reports.⁴ Our review of these reports does not confirm the propriety of ECU's redaction of full addresses, including campus residence hall and room number, where the incidents reported involved personal injury or illness, property damage, alcohol intoxication, and theft. We are aware of no prohibition on disclosure of campus addresses appearing in an incident report, or according them greater protection, with the exception of the addresses, whether campus or home, of victims of sexual offenses per KRS 61.878(1)(a) as construed in *Cape Publications v. City of Louisville*, *above*, and the University has identified none. Accordingly, we find that ECU improperly redacted addresses from the remaining incident reports.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. Pursuant to KRS 61.880(3), the Attorney General should be notified of any action in circuit court, but should not be named as a party in that action or in any subsequent proceeding.

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⁴ We reiterate that *The Eastern Progress* does not dispute the University's reliance on KRS 61.878(1)(a) to support nondisclosure of personal identifiers such as social security number.