

COMMONWEALTH OF KENTUCKY

JEFFERSON CIRCUIT COURT

DIVISION 4

CASE NO. 19-CI-004860

**KENTUCKY CONGRESS OF PARENTS AND
TEACHERS, INC. D/B/A KENTUCKY PTA**

PLAINTIFF

v. ADELMANN'S RESPONSE TO REQUEST FOR INJUNCTIVE RELIEF

JEFFERSON COUNTY BOARD OF EDUCATION

DEFENDANT

AND

GAY ADELMANN

REAL PARTY IN INTEREST

Gay Adelmann, pro se, Real Party in Interest, responds to Plaintiff, Kentucky Congress of Parents and Teachers, Inc. d/b/a Kentucky PTA's ("PTA") request for injunctive relief as follows:

PTA IS NOT ENTITLED TO INJUNCTIVE RELIEF

The Kentucky Open Records Act, KRS 61.870 to KRS 61.884, proceeds from the legislative recognition that “free and open examination of public records is in the public interest” and that each of the sixteen exceptions “shall be strictly construed.” KRS 61.871. A liberal construction of the exceptions to the fundamental mandate of the Act, which requires that “[a]ll public records shall open for inspection by any person,” KRS 61.872(1) and which is judicially recognized to “exhibit[] a general bias favoring disclosure,” *Kentucky Board of Examiners of Psychologists v. Courier Journal and Louisville Times Company*, 826 S.W.2d 324, 327 (Ky. 1992), is contrary to the spirit and the letter of the Act. Since “statutes enacted for the public benefit must be interpreted most favorably to the public,” *Courier Journal and Louisville Times Co. v. University of Louisville Board of Trustees*, 569 S.W.2d 374 (Ky. 1979), “all doubts must be resolved in favor of disclosure.” 14-ORD-217, citing 99-ORD-088 and 11-ORD-076.

PTA’s request for injunctive relief is premised on a liberal construction of the exception to the Open Records Act, KRS 61.878(1)(c)1. that is at odds with these governing authorities and “violates the public good.” *Floyd County Board of Education v. Ratliff*, 955 S.W.2d 921,923 (Ky. 1997). The exception is intended to protect records that are: 1) confidentially disclosed to an agency or required by an agency to be disclosed to it; 2) generally recognized as confidential or proprietary; and 3) if disclosed, would permit an unfair commercial advantage to competitors of the entity that disclosed them. PTA fails to make the requisite showing that each part of this three part test is met. On the contrary, these records are of great public interest, constituting collection and expenditure of membership dues, taxpayer funds and donations, in a public, taxpayer-funded setting, and should remain public for that reason.

As PTA observes, the “Jefferson County Public Schools Accounting Procedures for Kentucky School Activity Funds (“Redbook”) is a handbook of regulations incorporated into 702 KAR 3:130, promulgated by the Kentucky Department of Education.” The Redbook “defines PTA as an ‘external support/booster organization’ and places certain financial reporting requirements on all such organizations. Specifically, each local unit of Kentucky PTA is required to ‘submit an annual External Support/Booster Organization Budget worksheet . . . to the principal within the first thirty days of the school year or within thirty days of the first transaction of the group. . . . Additionally, each local unit of Kentucky PTA is required to ‘submit an annual financial report for the fiscal year ending June 30 to the principal by July 15.’” This reporting requirement, mandated by law, is applicable to all PTAs and not accompanied by any confidentiality provision or written assurances of confidentiality. Clearly, in developing the Redbook and promulgating the regulation, the Kentucky Department of Education has recognized the importance of imposing reporting requirements on PTAs as a means of ensuring accountability and transparency and curbing potential abuse, outweighs any competing interests. Furthermore, the data collected on the Financial Review Form simply consists of beginning bank balance, receipts, disbursements, and ending bank balance; hardly information that could be considered proprietary or confidential. **Exhibit A**

Media accounts that appeared in July 2018 suggest that the reporting requirement, and the need for transparency and accountability, are entirely warranted. In a recent article entitled, “Lax oversight of fundraisers and booster clubs uncovered in JCPA audit,” the media reported on irregularities and improprieties identified at schools across Jefferson County relating to oversight and expenditure of funds collected and expended by boosters and other “fundraisers.”

https://www.wdrb.com/news/education/lax-oversight-of-fundraisers-and-booster-clubs-uncovered-in-jcps/article_80278617-92c1-5110-8a9c-0fd51f31f146.html According to this story, JCPS subsequently undertook appropriate measures to hold these groups accountable and aggressively enforce reporting requirements. By affording the public access to these financial reports, JCPS provides an additional check on potential abuse.

PTA presents no proof, beyond a bare allegation, that disclosure of annual financial reports containing revenues and expenditures, by category, would permit an unfair commercial advantage to competitors of the entities that disclosed them. See 09-ORD-100 and authorities cited therein (recognizing that “the burden of proving that the records withheld qualify for exclusion under KRS 61.878(1)(c)1. rests with the public agency,” and that “a bare allegation, without a supporting explanation, is not sufficient under the Open Records Act”). It asserts that it “competes with such other advocacy groups and organizations for time, events, membership, advocacy opportunities, financial opportunities, influence, and other tangible and intangible assets and benefits” but fails to identify its “competitors” or how disclosure of would place it at a competitive disadvantage. The only legal authority it cites in support of its position involves private commercial entities that, by virtue of their entanglements with public agencies, must provide information, generally recognized as confidential and proprietary, and under certain assurances of confidentiality, the disclosure of which would give their competitors in the marketplace “substantially more than a trivial unfair advantage, the document should be protected from disclosure” *Southeastern United Medigroup, Inc. v. Hughes*, 952 S.W.2d 195, 199 (Ky. 1997), *abrogated in part on other grounds, Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004)); see also, *Marina Management Services, Inc. v. Cabinet for Tourism*, 906 S.W.2d 318 (Ky.

1995) and *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) (both involving records of privately owned corporations).

Conversely, the Jefferson County Public Schools (“JCPS”), defendant in this action, bears the burden of proof in sustaining its actions pursuant to KRS 61.880(2)(c) and KRS 61.882(3). Having legally analyzed the propriety of invoking KRS 61.878(1)(c)1. to deny access to these financial reports, JCPS has properly concluded on at least three past occasions, once in July and twice in September 2017, that it cannot meet that statutory burden in denying the public access to these reports. **Exhibit B.** In fact, despite these records having been released before, KY PTA has not provided any evidence of harm done from this action. The public agency charged with disclosing public records, and withholding those that are statutorily protected, has determined that disclosure of the financial reports will not give competitors of Kentucky PTA, and its constituent members, “substantially more than a trivial unfair advantage” and that reliance on the exception to deny access cannot be sustained. *Southeastern United Medigroup, Inc. v. Hughes*, 952 S.W.2d at 199. It can be assumed that JCPS is not in the practice of releasing public records that it believes can and should be withheld under one or more statutory exemptions to the Open Records Act. Its past course of action in responding to similar requests is entirely consistent with both the legislative policy that informs the Act and the judicially recognized bias favoring disclosure. It is also consistent with years of interpretation of the referenced exception by the Kentucky Attorney General pursuant to his statutory charge. KRS 61.880(2). It is the same course of action that it can and should follow here in the salutary interest of transparency and accountability.

In its filing, Kentucky PTA “asks the Court to enter the attached Restraining Order, which restrains Defendants as follows: Restraining Defendants JCPS and the Jefferson County BOE from producing any records disclosed to JCPS and/or the Jefferson County BOE by Kentucky PTA or any of its individual units in response to Adelman’s Open Records Act request.” From this language, it is unclear whether the judge’s decision would apply to other parties making the same open records requests.

From a recent opinion column by Amye Bensenhaver,

<https://www.nkytribune.com/2019/02/amy-bensenhaver-public-right-to-know-payday-lenders-dont-deserve-secrecy-on-disclosures/>

“What” is being requested is a legitimate focus of any open records analysis. “Who’s asking” is most certainly not. Kentucky’s open records law guarantees the right of “any person” to inspect and copy any non-exempt public record. Analysis of an open records dispute between a requester and an agency resisting disclosure, a 1994 open records case declared, “does not turn on the purposes for which the request for information is made or the identity of the person making the request” since “the legislature clearly intended to grant any member of the public as much right [of] access to information as the next.” In opinions dating back to the 1980s, the attorney general emphasized that “agencies should have uniform policies regarding inspection of their records. If one person (in the absence of a court order) is allowed to inspect a record, all should be allowed to inspect ... It is the content of the record itself which makes it either mandatorily accessible to public inspection and copying or exempt from the mandatory requirement.” Simply put, “selective disclosure” of public records violates Kentucky’s open records law.

Attempts to restrict the access to information is due to the plaintiff’s concerns about the motives of the requestor, real or imagined, violates Kentucky’s open records law and should be denied.

One can only speculate as to the true motives behind this lawsuit. Could it be due to Adelman’s and other parents’ efforts to draw attention to the racial disparities that exist in local PTA leadership? Could it be due to the recent controversy over officer elections at both the district and state levels? (More information on these events can be found on the DearJCPS.com website.) This isn’t the first time Kentucky PTA has attempted to limit Adelman’s right to fair

and transparent process. **Exhibit C.** Regardless of the motives, at a time when privatizers and outsiders attempting to take advantage of our public schools are more prevalent than ever, allied organizations are also questioning this action. We should be collaborating on ways to protect our schools and students from these predators, not advocating to provide them with more cover.

PLAINTIFF IS NOT ENTITLED TO INJUNCTIVE RELIEF

PTA has requested both a temporary and permanent injunction to allow it to conceal public records regarding financials of an institution created and empowered solely to aid JCPS and taxpaying parents. PTA has no competitors, no independent right to access parents, students or schools, and is simply created to facilitate operation of our schools. The information PTA seeks to hide is properly in the public purview and should not be hidden.

CR 65.04(1) states:

A temporary injunction may be granted during the pendency of an action on motion if it is clearly shown by verified complaint, affidavit, or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action, or the acts of the adverse party will tend to render such final judgment ineffectual.

Id. A circuit court may grant injunctive relief when it finds “(1) that the movant's position presents ‘a substantial question’ on the underlying merits of the case, i.e. that there is a substantial possibility that the movant will ultimately prevail; (2) that the movant's remedy will be irreparably impaired absent the extraordinary relief; and (3) that an injunction will not be inequitable, i.e. will not unduly harm other parties or disserve the public.” *Price v. Paintsville Tourism Commission*, 261 S.W.3d 482, 484 (Ky. 2008) (citations omitted). PTA has not, and

cannot show that these factors require or permit the relief requested. This Court should deny PTA's motion and find that PTA is not allowed to hide this information from the public

CONCLUSION

For the above reasons Adelman respectfully requests that this Court DENY the request for injunctive relief and find that Petitioner is not entitled to conceal the records and must promptly disclose those. In addition, Adelman requests that this Court impose the statutory remedy and fines upon PTA, including but not limited to an award of her costs and expenses in responding to this motion, and a fine for violating the public trust and refusing to disclose public documents to parents and taxpayers.

Gay Adelman
9111 Hurstwood Ct.
Louisville, KY 40222
REAL PARTY IN INTEREST

moderator@dearjcps.com
(502) 565-8397

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was this day served via hand delivery on the following:

Coy Travis, Travis Law Office
PO Box 573
Hillview, KY 40129

Tyson Gorman, Wyatt, Tarrant & Combs
500 W. Jefferson St., Suite 2800
Louisville, KY 40202

Jefferson Circuit Court Clerk
600 W. Jefferson St., Room 2008
Louisville, KY 40202

This the 15th day of August, 2019

Required 2016-2017 Financial Review Form

Submit Financial Review Form to Principal of your School

Per "Kentucky Department of Education Accounting Procedures Redbook" Regulations each PTA/PTSA must submit an annual financial report to Principal of your School by **July 15**

Mail Financial Review Form to Kentucky PTA, 148 Consumer Lane, Frankfort, KY 40601

Kentucky PTA and local unit bylaws require all PTAs and PTSAs to file a Financial Review Form with Kentucky PTA by **July 15** each year to remain a "unit in good standing."

Financial Review Report Form for the Local PTA/PTSA

Name of PTA/PTSA _____ PTA District ____ County _____
EIN ____ - _____ This financial review is for the 2016-2017 fiscal PTA/PTSA year.
(For most PTAs/PTSAs this will be July 1, 2016 through June 30, 2017. Check your bylaws if unsure.)

1. Beginning Balance (as of last date covered by last financial review) \$ _____

2. Receipts (total receipts from the beginning to the end of the period covered by this financial review) _____

3. Total Cash Available (add number 1 and number 2) _____

4. Disbursements (total disbursements from the beginning to the end of the period covered by this financial review) _____

5. Ending Balance (subtract number 4 from number 3) _____

6. Bank Statement Balance (for last month covered by this financial review) _____

7. Checks Outstanding _____

Total Checks Outstanding \$ _____

8. Deposits Outstanding _____

Total Deposits Outstanding \$ _____

9. Bank Account Balance (Subtract number 7 from number 6, Add number 8) \$ _____

Date of financial review: _____

We have examined the books of _____ PTA/PTSA for the financial year 2016-2017 and find them to be: (Please choose one)

___ Correct ___ Substantially Correct ___ Incomplete ___ Incorrect

Substantially correct with the following adjustments: _____

Comments: _____

Review Committee: Consists of 3 people who do not have check signing authority (Optional: professional auditor)

Signatures: Financial Review Committee Chair (or professional auditor) _____

2. (member) _____ 3. (member) _____

This Financial Review information should be presented to the PTA/PTSA at its first general meeting after the completion the financial review.

Remember to mail this report to Kentucky PTA and keep copies for your records.

ALL PTAs/PTSAs MUST FILE FORM 990, 990EZ, OR 990N WITH IRS BY 11/15/2017

See Part IV Financial Matters for more detail on the Financial Review Form

X _____

Gay Adelman
Appellant

Date

X _____

Autumn Neagle
15th District PTA President

Date

X _____

X _____

X _____

X _____

X _____

X _____

X _____

X _____

Exhibit B

Request ID	First Name	Last Name	Records Requested	Date Received	3 Days	Date Answered	Date Produced	Extension
18-0011	Allison	Ross	The PTSA/PTA/PTO/PTSO budgets for all JCPS high schools/ combined schools.	7/5/2017	7/10/2017	7/10/2017	8/4/2017	TRUE
18-0191	Allison	Ross	The PTSA/PTA budgets for all JCPS elementary school for 2015-16.	9/5/2017	9/8/2017	9/8/2017	9/19/2017	TRUE
18-0192	Allison	Ross	An electronic copy of the PTSA/PTA budgets for all JCPS middle schools for 2015-16.	9/5/2017	9/8/2017	9/8/2017	9/19/2017	TRUE



every child. one voice.[®]

15th District PTA

Appeals Process

Confidentiality and Non-Disparagement Agreement

This document must be signed by every member involved in the appeals process including the appellant. The Appeals Process will not formally begin until all members and parties involved have executed this document.

CONFIDENTIALITY

I agree that this Appeals Process, including all records, documents, statements, testimony, and other information disclosed during the Appeals Process as well as the structure, procedure, and discussions made during the Appeals Process (the "Confidential Information"), shall remain confidential among the members and parties to it and respective counsel, and shall not be disclosed for any reason, in any medium (including, but not limited to, conversations, text messages, emails, written correspondence, Facebook, Twitter, Instagram, and other social media sites), except as follows:

- The members and parties participating in this Appeals Process may reveal the Confidential Information, to the extent necessary, to any attorney hired to represent them; as otherwise required by law; or as otherwise agreed, in writing, by both Gay Adelman and the 15th District PTA President.
- If I am a member of the 15th District PTA, I agree that I shall make no public comment about this Appeals Process or the Confidential Information.
- If I am the Appellant, Gay Adelman, I agree that the only public comment I shall make about this Appeals Process is its result/verdict, without any discussion of or reference to any of the Confidential Information.

NON-DISPARAGEMENT

The members and parties participating in this Appeals Process mutually agree that they shall not, at any time or in any manner, disparage the any other members and/or parties in any way or in any medium, including, but not limited to, Facebook, Twitter, Instagram, or other social media.

LIQUIDATED DAMAGES

I agree that any violation by the Appellant of the above Confidentiality provision or Non-Disparagement provision shall result in liquidated damages in the amount of **ONETHOUSAND DOLLARS (\$1,000.00) PER VIOLATION** to be paid to the 15th District PTA within thirty (30) days of the notice of violation.

SIGNATURES TO FOLLOW ON NEXT PAGE