

CASE NO. 19-CI-04860

JEFFERSON CIRCUIT COURT  
DIVISION FOUR (4)  
CHARLES L. CUNNINGHAM, JR., JUDGE

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

PLAINTIFF

VS.

**ORDER**

JEFFERSON COUNTY BOARD OF EDUCATION

And

GAY ADELMANN

DEFENDANTS

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This matter came before the Court for a hearing on August 15, 2019, at 9:31 a.m., EDT. Coy Travis appeared for the Plaintiff, Tyson Gorman appeared for the Jefferson County Board of Education (Board), and Ms. Adelmann appeared *pro se*. At issue is an interpretation of Kentucky's Open Records Act (hereinafter, "KORA"), KRS 61.870, *et seq.* Plaintiff is seeking injunctive relief to prevent the Board from giving Adelmann a copy of PTA financial records filed with the Board. Having considered the matters of record, the arguments of counsel, the controlling law, and being otherwise sufficiently advised, for the reasons which follow, the Court must deny Plaintiff the relief it seeks.

There are two types of records collected and retained by the Board which pertain to PTA operations. One is an audit of the individual schools which addresses the flow of money in and out of a number of organizations (*e.g.*, athletic teams, band boosters, PTA's, etc.). The Plaintiff does not seem particularly concerned about these records being provided to Adelmann. Essentially, for such audits to be meaningful, someone not directly connected to the school system has to be empowered to review them so they would seem to fit the classic definition of

materials addressed by KORA. The second type of records are more detailed financial records of the PTA; presumptively balance sheets, income statements, and the like. PTA's are required to file these with the school. It objects to the Board turning copies of these records over to Adelman. It cites KRS 61.878(1)(c)(1) which exempts records "... required by the agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records." See, *Marina Management vs. Cabinet for Tourism*, 906 S.W.2d 318 (Ky. 1995).

At the hearing the Court suggested it was skeptical of the application of the exemption in this context. However, because the parties were in agreement that the matter was not terribly urgent, the Court indicated it would seek an advisory ruling from the Kentucky Attorney General whose office addresses KORA issues on a recurring and frequent basis. In the interim, the Court encouraged the parties to confer and see if a mutually agreeable resolution could be forged.<sup>1</sup>

After speaking with one of the Assistant Attorneys General who handles such matters, it seems that an advisory ruling isn't actually available. By coming straight to circuit court, as Plaintiff is empowered to do, the matter rests with the undersigned to make a ruling without such guidance. Moreover, this Court is required to give such matters precedence on its docket. KRS 61.882(4). Therefore, the Court will issue a ruling.

#### Statutory Standard

For the exemption to apply, the Plaintiff must demonstrate that were Ms. Adelman, or anyone else, to receive the records in question, they: a) would be receiving confidential or proprietary information; b) gaining them a commercial advantage over Plaintiff; and c) that said advantage would be unfair. The PTA unlikely to prove any of these, much less all three.

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<sup>1</sup> It seemed that the Board had no particular position on the dispute and would comply with the Court's ruling however that played out.

### “Confidential and Proprietary”

Given its mission, it does not immediately resonate that Plaintiff would have proprietary information disclosed in its financial records nor that such records are confidential as those terms are used in the statute. Taking the matters addressed in *Marine Management* as a point of comparison, that case involved the operation of a private marina. Logically, it would not disclose, absent a regulatory obligation to do so, its financial circumstances to anyone except investors, its bankers, and possibly a potential buyer. Aside from this small cohort of persons/entities, the records would not be disclosed. Conversely, it is a given that the records of a PTA would be available to its member, which could number hundreds of persons, to the school itself, and to auditors. It seems strained to put a “confidential” label on such broadly disseminated materials.

Similarly, what could be proprietary in such records? If these financials are proprietary, wouldn't all financials be proprietary? There is no general exemption for financial records. A marina might, for example, be paying a 6% commission to advertise itself as an Evinrude dealer. The amount of that commission, and the profit it generates, would arguably be proprietary. There is no suggestion of such insider dope lurking within the lines of Plaintiff's balance sheet.

According to the Board, the *Courier-Journal* has previously requested and received these records. It is essentially impossible to make plumb and level an argument that it's okay if our records are obtained by the newspaper with the largest circulation in Kentucky but it poses a threat to us if a single individual obtains them.

### Commercial Advantage

At the hearing, Plaintiff asserted it suspects Adelman wishes to set up a “competitor” organization. In theory, if it knew what the PTA charged as membership dues, one could undercut that fee and drive some “business” its way. However, you could as easily just go to a