

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF GRAYSON)
COUNTY WATER DISTRICT FOR A RATE) CASE NO. 2021-00191
ADJUSTMENT PURSUANT TO 807 KAR 5:076)

MOTION FOR CONFIDENTIAL TREATMENT

Pursuant to 807 KAR 5:001, Section 13, Grayson County Water District (“Grayson District”) moves for confidential treatment of the personal information contained in Exhibits L-1 and L-2 to its Application.

In support of its Motion, Grayson District states:

1. Grayson District has attached as Exhibits L-1 and L-2 to its application for rate adjustment its general ledger for calendar years 2019 and 2020. It has also provided a copy of these ledgers in Excel spreadsheet format. Although 807 KAR 5:076 does not require a utility’s application to contain these materials, the Commission has recently requested such documents when reviewing applications for rate adjustment pursuant to 807 KAR 5:076. To expedite review of its application and reduce the need for discovery, Grayson District has provided these materials as part of its application.

2. The general ledgers contain wage and benefit information for each Grayson District employee and, if made available for public inspection, would reveal the wages and benefits specific to each employee. More specifically, Account 601 – Payroll Expense lists the name of

each employee and the amounts paid to each employee in his or her biweekly paycheck as well as deductions.¹

3. The Kentucky Open Records Act exempts from disclosure certain private and personal information.² The Kentucky Court of Appeals has stated, “information such as ... wage rate ... [is] generally accepted by society as [a] detail[] in which an individual has at least some expectation of privacy.”³ The Commission should therefore give confidential treatment to the information included in Exhibits L-1 and L-2 because disclosing the contents thereof would invade the privacy rights of the individuals listed in these ledgers. These employees’ compensation, which Grayson District does not otherwise publicly report, is personal and private information that should not be in the public realm. Grayson District’s employees, therefore, have a reasonable expectation that Grayson District will maintain the confidentiality of their compensation information, the disclosure of which would constitute an unwarranted invasion of personal privacy in contravention of KRS 61.878(1)(a).

4. Providing confidential protection for the compensation information of Grayson District’s employees would fully accord with the purpose of the Act, which is to make government and its actions open to public scrutiny. Concerning the rationale for the Act, the Kentucky Court of Appeals has stated:

[T]he public’s ‘right to know’ under the Open Records Act is premised upon the public’s right to expect its agencies properly to execute their statutory functions. In general, inspection of records may reveal whether the public servants are indeed serving the public, and the policy of disclosure provides impetus for an agency steadfastly to pursue the public good. At its most basic level, the

¹ The information in question is found at pages 466 through 564 of the 2019 General Ledger and pages 464 through 572 of the 2020 General Ledger and consists of the employees’ names. All other payroll information remains available for public review.

² KRS 61.878(1)(a).

³ *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. Ct. App. 1994).

purpose of disclosure focuses on the citizens' right to be informed as to what their government is doing.⁴

Citing the Court of Appeals, the Kentucky Office of the Attorney General ("AG") stated in an Open Records Decision ("ORD"), "If disclosure of the requested record would not advance the underlying purpose of the Open Records Act, namely exposing agency action to public scrutiny, then countervailing interests, such as privacy, must prevail."⁵

In Case No. 89-374, the Commission has previously stated that salary information "should be available for customers to determine whether those salaries are reasonable," but "the right of each individual employee within a job classification to protect such information as private outweighs the public interest in the information."⁶ In the same order, the Commission concluded, "Thus, the salary paid to each individual within a classification is entitled to protection from public disclosure."⁷ The Commission had reached the same conclusion in other proceedings.⁸

5. Protecting the employee's identity from public disclosure will not adversely affect the public's right to know. In its application Grayson District has provided comprehensive information regarding the pay and benefits of each job position. This information remains available for public inspection. None of the information for which confidential treatment is sought involves the pay or benefits provided to the members of Grayson District's Board of

⁴ *Id.* at 828-829.

⁵ *In re: James L. Thomerson/Fayette County Schools*, KY OAG 96-ORD-232 (Nov. 1, 1996) (citing *Zink v. Department of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825 (Ky. Ct. App. 1994)) (emphasis added).

⁶ *Application of Louisville Gas and Electric Company for an Order Approving an Agreement and Plan of Exchange and to Carry Out Certain Transactions in Connection Therewith*, Case No. 89-374 (Ky. PSC Apr. 30, 1997) at 2.

⁷ *Id.*

⁸ *See, e.g., Application of BellSouth Telecommunications, Inc. d/b/a South Central Bell Telephone Company to Modify its Method of Regulation*, Case No. 94-121 (Ky. PSC July 20, 1995) at 4-5 ("Salaries and wages are matters of private interest which individuals have a right to protect unless the public has an overriding interest in the information. The information furnished, however, only shows the salary range for three labor classifications and does not provide the identity of persons who receive those salaries. Therefore, disclosure of the information would not be an invasion of any employee's personal privacy, and the information is not entitled to protection.").

Commissioners or chief executive officer.⁹ These persons' salary information will not be redacted or otherwise withheld from public inspection.

6. Grayson District requests the employee names (other than its chief executive officer and commissioners) listed in its general ledgers under Account 601 – Payroll Expense as found in the PDF version of Exhibits L-1 and L-2 be afforded confidential treatment and exempted from public disclosure or inspection. Because of difficulties in redacting materials from Excel spreadsheets, Grayson District requests that that the Excel spreadsheet versions of Exhibits L-1 and L-2 be afforded confidential treatment in their entirety.

7. The information for which Grayson District is seeking confidential treatment is not known outside of Grayson District, and it is not disseminated within Grayson District except to those employees with a legitimate business need to know the information.

8. If the Commission disagrees with this request for confidential protection, however, it must hold an evidentiary hearing (a) to protect Grayson District's due process rights and (b) to supply with the Commission with a complete record to enable it to reach a decision with regard to this matter.¹⁰

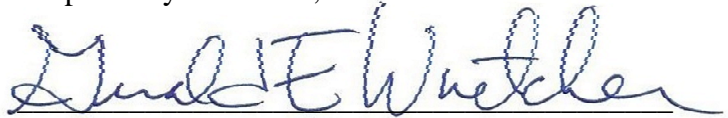
WHEREFORE, Grayson District respectfully requests that the Commission grant confidential protection for the information described herein.

⁹ In this regard, Grayson District's request is consistent with Commission precedent that holds that executive officer salary information is subject to public disclosure as ratepayers are required to pay those salaries. *See Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates*, Case No. 2012-00221 (Ky. PSC Sep. 11, 2013); *Application of Knott County Water and Sewer District for an Alternative Rate Adjustment*, Case No. 2019-00268 (Ky. PSC Dec. 9, 2019).

¹⁰ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

Dated: July 6, 2021

Respectfully submitted,

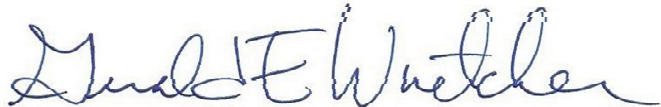


Gerald E. Wuetcher
Stoll Keenon Ogden PLLC
300 West Vine St. Suite 2100
Lexington, Kentucky 40507-1801
Telephone: (859) 231-3017
Fax: (859) 259-3517
gerald.wuetcher@skofirm.com

Counsel for Grayson County Water District

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that Grayson County Water District's electronic filing of this document is a true and accurate copy of the same document being filed in paper medium; that the electronic filing was transmitted to the Public Service Commission on July 6, 2021; that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding; and that within 30 days following the end of the state of emergency announced in Executive Order 2020-215 this document in paper medium will be delivered to the Public Service Commission.



Gerald E. Wuetcher