

**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 Attachment 1A-1 of its Response to Commission Staff’s First Request for Information.

In support of its Motion, Grayson District states:

1. In response to Item 1a of Commission Staff’s first request for Information, Grayson District has attached as Attachment 1A-1 its general ledger for the first six months of calendar year 2021. It has also provided a copy of this ledger in Excel spreadsheet format.

2. The general ledger contains wage and benefit information for each Grayson District employee and, if made available for public inspection, would review 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.<sup>1</sup>

3. The Kentucky Open Records Act exempts from disclosure certain private and personal information.<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> KRS 61.878(1)(a).

expectation of privacy.”<sup>3</sup> The Commission should therefore give confidential treatment to the information included in Attachment 1A-1 because disclosing the contents thereof would invade the privacy rights of the individuals listed in that ledger. 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 purpose of disclosure focuses on the citizens’ right to be informed as to what their government is doing.<sup>4</sup>

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.”<sup>5</sup>

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

<sup>4</sup> *Id.* at 828-829.

<sup>5</sup> *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).

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.”<sup>6</sup> In the same order, the Commission concluded, “Thus, the salary paid to each individual within a classification is entitled to protection from public disclosure.”<sup>7</sup> The Commission had reached the same conclusion in other proceedings.<sup>8</sup>

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 Commissioners or chief executive officer.<sup>9</sup> 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 ledger under Account 601 – Payroll Expense as found in the PDF version of Attachment 1A-1 be afforded confidential treatment and exempted from public disclosure or inspection. Because of difficulties in redacting materials from Excel spreadsheets,

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<sup>6</sup> *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.

<sup>7</sup> *Id.*

<sup>8</sup> *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.”).

<sup>9</sup> 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).

Grayson District requests that that the Excel spreadsheet version of Attachment 1A-1 be afforded confidential treatment in its entirety.

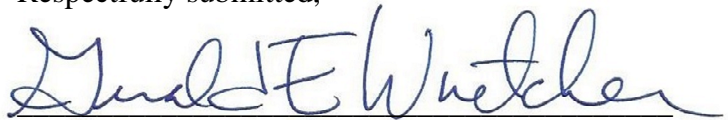
7. The information for which Grayson District is seeking confidential treatment is not known outside of Grayson District, and it is not disseminated within Grayson District except to those employees with a legitimate business need to know the information.

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.<sup>10</sup>

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

Dated: August 13, 2021

Respectfully submitted,



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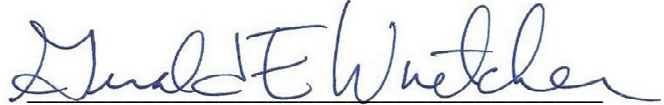
*Counsel for Grayson County Water District*

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

**CERTIFICATE OF SERVICE**

In accordance with 807 KAR 5:001, Section 8, and the Public Service Commission's Order of July 22, 2021 in Case No. 2020-00085, I certify that this document was transmitted to the Public Service Commission on August 13, 2021 and that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding.

A handwritten signature in blue ink that reads "Gerald E. Wuetcher". The signature is written in a cursive style with a horizontal line underneath the name.

Gerald E. Wuetcher