

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF NORTH)	
MANCHESTER WATER ASSOCIATION, INC.)	CASE NO.
FOR AN ALTERNATIVE RATE ADJUSTMENT)	2023-00183

PETITION FOR CONFIDENTIAL TREATMENT

North Manchester Water Association, Inc. (“NMWA”), by counsel, moves the Public Service Commission of Kentucky (the “Commission”) for an order granting confidential treatment of certain information and documents filed in response to the initial requests for information. Specifically, NMWA requests confidential treatment for information or documents related to Staff Request 4 of the Commission Staff’s First Request for Information. In support of its motion, NMWA states as follows:

Administrative Regulation 807 KAR 5:001, Section 13(2) sets forth the procedure by which certain information filed with the Commission shall be treated as confidential. Specifically, the party seeking confidential treatment must establish “specific grounds pursuant to KRS 61.878 [the Kentucky Open Records Act] for classification of that material as confidential.” 807 KAR 5:001, Section 13(2)(a)(1).

The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. KRS 61.878(1)(a) exempts from disclosure “public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” This exception is intended to protect privacy, which Kentucky courts have held as a “basic right of the sovereign people.” *See Bd. of Ed. of*

Fayette Cty. v. Lexington-Fayette Urb. Cty. Hum. Rts. Comm'n, 625 S.W.2d 109, 110 (Ky. Ct. App. 1981). The test the Kentucky Supreme Court has adopted to determine if information is exempt from disclosure, pursuant to KRS 61.878(1)(a), requires that the information be “of a personal nature” and that, upon “weighing the interest of the person involved against the public’s interest in disclosure,” the disclosure would constitute an invasion of privacy. *Cape Publications, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 821 (Ky. 2008) (citing *Kentucky Bd. Of Exam’rs of Psychologists v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324, 327-28 (Ky. 1992)).

The information in Request 4 contains salary and personal identifying information about NMWA employees, and disclosure thereof would constitute an invasion of privacy. The public information for disclosure does not outweigh the legitimate privacy interests of the employees. Request 4 seeks employee wage and hour information along with information about an employee’s dates of employment. The information contained in this request is position specific as employees’ titles, hours worked, and dates of employment are specific to an individual employed at NMWA.

The Kentucky Court of Appeals has identified an individual’s salary as information of a personal nature. *See Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1994) (stating that “information such as ... wage rate ... [is] generally accepted by society as [a] detail [] in which an individual has at least some expectation of privacy.”) The Commission has also held that “personally identifiable information for . . . non-executive employees” would constitute a disclosure of personal nature and would invade employees’ personal privacy.¹ The titles of the NMWA non-executive employees are personal information and

¹ *Application of Kentucky-American Water Company for an Adjustment of Rates Supported by a Fully Forecasted Test Year*, Case No. 2012-00520 at 4 (Ky. PSC April 17, 2014); *Electronic Application of Grayson County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076*, No. 2021-00191, at 2 (Ky. PSC June 3, 2022).

should not be disclosed along with salary information. NMWA employee titles are identifying information, and the use of an employee's title in relation to the employee's salary, hourly, and employment dates could easily and publicly identify that employee. Therefore, NMWA requests confidential treatment in perpetuity of employee name and title in relation to salary information provided in Request 4. The Commission has previously held that this type of information should be granted confidential treatment.²

WHEREFORE, NMWA respectfully requests that the Commission grant confidential treatment for confidential documents produced in response to Request 4. NMWA will tender the information with redactions publicly and will file the unredacted version under seal with the Commission. NMWA requests that the information be kept confidential in perpetuity due to the highly personal and proprietary nature of the information contained therein.

RESPECTFULLY SUBMITTED,

STURGILL, TURNER, BARKER & MOLONEY, PLLC



James W. Gardner
M. Todd Osterloh
Rebecca C. Price
333 West Vine Street, Suite 1500
Lexington, KY 40507
Phone: (859) 255-8581
E-mail: jgardner@sturgillturner.com
E-mail: tosterloh@sturgillturner.com
E-mail: rprice@sturgillturner.com
Counsel for North Manchester Water Association, Inc.

² *Application of Water Service Corp. of Kentucky*, Case No. 2020-00160 (Ky. PSC Dec. 22, 2020).