

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC PROPOSED ADJUSTMENT OF)	
THE WHOLESALE WATER SERVICE RATES OF)	CASE NO.
THE CITY OF PIKEVILLE TO MOUNTAIN WATER)	2019-00080
DISTRICT)	

ORDER

By petition filed on July 17, 2019, the city of Pikeville (Pikeville), requests confidential treatment for information filed with the Commission on July 17, 2019, in response to Commission Staff's Second Request for Information (Staff's Second Request). Pikeville requests confidential treatment for portions of its response to Item 28 of Staff's Second Request.

The portions of the response for which Pikeville seeks confidential treatment are more specifically described as information relating to employee and employer payments for health, vision and dental insurance. The information also includes information relating to retirement benefits and deductions. Pikeville argues that disclosure of the type of information is personal information that, if it were to become public, could constitute an unwarranted invasion of personal privacy, pursuant to KRS 61.878(a)(1), because such disclosure could allow the identity of familial circumstances that are not otherwise public. Pikeville requests that the material be granted confidential treatment in perpetuity.

The Commission finds that Pikeville's petition should be granted in part and denied in part. The two employees at issue are public employees and are paid with public money. Addressing a similar issue regarding what information on a paystub of a public employee

was exempt for the Open Records Act, the Attorney General found that a public employee's contributions and withholdings are exempt from public disclosure under the exemptions provided by KRS 61.878(1)(a), however, the Attorney General also found that salary and benefits paid for with public money are public records and must be produced.¹ Although the Attorney General's opinion dealt with withholdings and contributions on a paystub, the same rationale applies to the benefits provided to the two Pikeville employees paid from public coffers.

The information provided in response to Item 28 of Staff's Second Request, however, appears to contain not only information relating to benefits received that was paid from public funds, but also employee contributions or deductions. The public release of this information would constitute an unwarranted invasion of personal privacy.

Based on the above we find that any information that relates to benefits (e.g. insurance, retirement, etc.) that are paid for with public funds should be denied confidential protection and that any deductions or payments from employees warrants confidential treatment.

¹ See, Ky. Op. Atty. Gen. 16-ORD-128 (2016), in which the Attorney General found:

Specific amounts received for public service in the form of additional salary and incentive pay do not represent information of a personal nature the public disclosure of which constitutes a clearly unwarranted invasion of personal privacy but, instead, represent "amounts paid from public coffers" which are "uniquely of public concern." OAG 90-30, p. 3, cited with approval in 15-ORD-186, p. 2. "The public is entitled to records documenting exact amounts *paid* from public monies, to include amounts paid for items, or for salaries, etc." as opposed to amounts *withheld* from those records relating to an employee's personal financial affairs such as "taxes, insurance, retirement, credit union, bonds, charitable contributions, and annuities." OAG 82-233, at 2.

IT IS THEREFORE ORDERED that:

1. Pikeville's Petition for Confidential Treatment is denied in part and granted in part.
2. The designated material in Pikeville's response to Item 28 of Staff's Second Request, if that material is paid for by public funds, is denied confidential treatment.
3. The designated material in Pikeville's response to Item 28 of Staff's Second Request, if that material is paid for by the employee or deducted from the employee's salary, is granted confidential treatment.
4. The designated material in Pikeville's Petition for Confidential Treatment for which confidential treatment has been denied shall not be placed in the public record or made available for inspection for 30 days from the date of entry of this Order to allow Pikeville to seek a remedy afforded by law.
5. Within 30 days of the date of entry of this Order, Pikeville shall file revised documents identified in the Petition for Confidential Treatment reflected as unredacted the information that has been denied confidential treatment.
6. The identified material granted confidential treatment shall not be placed in the public record or made available for public inspection until further Order of this Commission.
7. Use of the material in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).
8. Pikeville shall inform the Commission if the material in question becomes publicly available or no longer qualifies for confidential treatment.

9. If a non-party to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, then Pikeville shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Pikeville is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

10. The Commission shall not make the material available for inspection for 30 days following an Order finding that the material no longer qualifies for confidential protection in order to allow Pikeville to seek a remedy afforded by law.

By the Commission

ENTERED
MAR 10 2020
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

*Daniel P Stratton
Stratton Law Firm PSC
P.O. Box 1530
Pikeville, KENTUCKY 41502

*City of Pikeville
243 Main Street
Pikeville, KY 41501

*Honorable John N Hughes
Attorney at Law
124 West Todd Street
Frankfort, KENTUCKY 40601

*Mountain Water District
6332 Zebulon Highway
P. O. Box 3157
Pikeville, KY 41502-3157

*M. Todd Osterloh
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507