



COMMONWEALTH OF KENTUCKY
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22-ORD-104

May 19, 2022

In re: Thomas E. Clay/ Commonwealth's Attorney, 20th Judicial Circuit

Summary: The Commonwealth's Attorney, 20th Judicial Circuit ("the Commonwealth's Attorney"), did not violate the Open Records Act ("the Act") when he withheld records pertaining to criminal litigation under KRS 61.878(1)(h).

Open Records Decision

On March 29, 2022, Thomas E. Clay ("Appellant") requested that the Commonwealth's Attorney provide "any and all communication, including letters and e-mails," between anyone in his office and the office of the Commonwealth's Attorney for the 21st Judicial Circuit from January 2017 through January 2019. The Commonwealth's Attorney denied the Appellant's request on the grounds that the requested records were records pertaining to criminal investigations or criminal litigation, which are exempt under KRS 61.878(1)(h). This appeal followed.

Under KRS 61.878(1)(h), "records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of [the Act] and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action." The Appellant argues that his "requests do not involve an open investigation." This statement, even if true, makes no difference with regard to KRS 61.878(1)(h), which applies to records of a Commonwealth's Attorney regardless of whether an investigation is still ongoing. Accordingly, the Commonwealth's Attorney

did not violate the Act when he denied the Appellant's request under KRS 61.878(1)(h).

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to KRS 61.880(3), the Attorney General shall be notified of any action in circuit court, but shall not be named as a party in that action or in any subsequent proceedings. The Attorney General will accept notice of the complaint e-mailed to OAGAppeals@ky.gov.

Daniel Cameron

Attorney General

/s/ James M. Herrick

James M. Herrick

Assistant Attorney General

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Distributed to:

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