



COMMONWEALTH OF KENTUCKY  
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**22-ORD-269**

December 15, 2022

In re: Reginald Grider/Jefferson County Commonwealth's Attorney

**Summary:** The Jefferson County Commonwealth's Attorney ("the Commonwealth's Attorney") did not violate the Open Records Act ("the Act") when he withheld a record pertaining to criminal litigation under KRS 61.878(1)(h).

***Open Records Decision***

On November 7, 2022, Reginald Grider ("Appellant") requested that the Commonwealth's Attorney provide a copy of the grand jury transcript or audio recordings in a case in which the Appellant was the defendant. In a timely response, the Commonwealth's Attorney denied the Appellant's request on the grounds that the requested records were records pertaining to 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." Grand jury records are records pertaining to criminal litigation. *See, e.g.*, 17-ORD-085; 11-ORD-079; 00-ORD-116. Accordingly, the Commonwealth's Attorney did not violate the Act when he denied, under KRS 61.878(1)(h), the Appellant's request for transcripts or audio recordings of the grand jury proceedings.<sup>1</sup>

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<sup>1</sup> The Appellant argues that he is entitled to obtain the grand jury records through discovery under *Brady v. Maryland*, 373 U.S. 83 (1963). However, the fact that a criminal defendant may obtain a transcript of the grand jury proceedings through discovery, as permitted under RCr 5.16(3), is not determinative of whether he may obtain it under the Act. *See, e.g.*, 12-ORD-032; 03-ORD-126.

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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