



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON  
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118  
700 CAPITAL AVENUE  
FRANKFORT, KENTUCKY 40601  
(502) 696-5300  
FAX: (502) 564-2894

**23-ORD-224**

August 21, 2023

In re: Alastair Couch/Fayette County Commonwealth's Attorney

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

***Open Records Decision***

On July 3, 2023, inmate Alastair Couch ("Appellant") asked the Commonwealth's Attorney to provide "a complete copy of any and all emails sent and/or received" by anyone in the Commonwealth's Attorney's office concerning the Appellant or another named individual since July 1, 2010. The Commonwealth's Attorney denied the Appellant's request because the requested emails were records pertaining to criminal investigations and 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." On appeal, the Commonwealth's Attorney reiterates that all the requested records pertain to a criminal investigation and criminal litigation, and therefore are exempt under KRS 61.878(1)(h).

The Appellant, however, claims he is entitled to obtain the records under KRS 197.025(2), which provides that "KRS 61.870 to 61.884 to the contrary notwithstanding, the [Department of Corrections] shall not be required to comply with a request for any record from any inmate confined in a jail or any facility or any individual on active supervision under the jurisdiction of the department, unless the

request is for a record which contains a specific reference to that individual.” This argument fails for two reasons. First, the Appellant did not request records from the Department of Corrections. Second, the Appellant incorrectly construes KRS 197.025(2) to mean an inmate *is* entitled to obtain any record, even if exempt from inspection, if it contains a specific reference to him. The opposite is true, and the Office has rejected that argument as “clearly antithetical to the intention of the General Assembly in enacting KRS 197.025, which, when read in its entirety, is to provide fewer rights of inspection to inmates than to the general public.” 21-ORD-198. Accordingly, the Commonwealth’s Attorney did not violate the Act when she denied the Appellant’s request for criminal investigation and litigation records under KRS 61.878(1)(h).

A party aggrieved by this decision may appeal it by initiating an 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 emailed to OAGAppeals@ky.gov.

**Daniel Cameron**  
**Attorney General**

s/ James M. Herrick  
James M. Herrick  
Assistant Attorney General

#328

Distributed to:

Alastair Couch, #247390  
Patrick M. Malone, Esq.  
Kimberly Henderson Baird, Esq.