



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-314**

November 27, 2023

In re: Nick Horne/Kentucky State Police

**Summary:** The Kentucky State Police (“KSP”) did not violate the Open Records Act (“the Act”) when it denied inspection of public records that are exempt under KRS 61.878(1)(h) and KRS 17.150(2).

***Open Records Decision***

On behalf of his client, Nick Horne (“the Appellant”) submitted a request to KSP for copies of various records related to an officer-involved shooting that led to the death of his client’s brother. KSP denied the request under KRS 61.878(1)(h) and KRS 17.150(2). The Appellant “acknowledg[ed] the validity” of KSP’s denial under those exceptions but submitted a second request for only the photographs and videos depicting the death of the decedent. The Appellant claimed to have a right to inspect these records under KRS 61.878(1)(q) notwithstanding KSP’s previously claimed exceptions. After KSP again denied the request under KRS 61.878(1)(h) and KRS 17.150(2), this appeal followed.

On appeal, the Appellant does not claim that the law enforcement exceptions, KRS 61.878(1)(h) and KRS 17.150(2), do not apply to the requested records.<sup>1</sup> Rather,

---

<sup>1</sup> KRS 61.878(1)(h) exempts from inspection, “Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication.” KRS 17.150(2), on the other hand, exempts from inspection, “Intelligence and investigative reports maintained by criminal justice agencies are subject to public inspection if prosecution is completed or a determination not to prosecute has been made.” KRS 17.150(2) is one of the many confidentiality statutes outside of KRS 61.870 to KRS 61.884 that is nevertheless incorporated into the Act by KRS 61.878(1)(l), which exempts from inspection “[p]ublic records or information the disclosure of

he claims his client is entitled to these records under KRS 61.878(1)(q) despite the “validity” of KSP’s claim that the law enforcement exceptions apply. He is incorrect.

The Act declares that “[a]ll public records shall be open for inspection by any resident of the Commonwealth, except as otherwise provided by KRS 61.870 to 61.884.” KRS 61.872(1). This statutory right of inspection, however, does not apply to public records that “are excluded from the application of KRS 61.870 to 61.884.” KRS 61.878(1). That provision currently enumerates 19 categories of records that are exempt from inspection, two of which incorporate by reference every federal or state law that also makes records confidential. *See* KRS 61.878(1)(k) and (l). Any records exempt under KRS 61.878(1) “shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery.” *Id.*

Among the 19 categories of records that are exempt from inspection are “photographs or videos that depict the death, killing, rape, or sexual assault of a person.” KRS 61.878(1)(q). “However, such photographs or videos shall be made available by the public agency to the requesting party for viewing on the premises of the public agency, or a mutually agreed upon location, at the request of . . . [a]ny victim depicted in the photographs or videos, his or her immediate family, or legal representative.” KRS 61.878(1)(q)1.a. Here, the Appellant argues he is the legal representative of the family of the deceased victim who is depicted in the photographs and video of the officer-involved shooting. While that may be true, this fact alone does not entitle the Appellant to inspection of the records because KRS 61.878(q)1.a. is an exception to the exception of KRS 61.878(1)(q). Thus, if KSP had denied the Appellant’s request on the basis of KRS 61.878(1)(q), then the Appellant could have invoked KRS 61.878(1)(q)1.a. to inspect the records anyway. But here, KSP did not invoke KRS 61.878(1)(q) as a basis to deny the request. It invoked KRS 61.878(1)(h) and KRS 17.150(2), which the Appellant admits are applicable exemptions. As such, KRS 61.878(1)(q)1.a. does not apply.

The Act presumes public records are subject to inspection unless an exception applies. Even when an exception applies, there may be an exception to that exception that tilts the scales back in the direction of requiring inspection. KRS 61.878(1)(q)1.a. is an exception to the exception of KRS 61.878(1)(q), not a trump card that supersedes any other exception in KRS 61.878(1) applicable to the inspection of records. If an agency does not invoke KRS 61.878(1)(q), then an exception to that exception has no bearing on the analysis. And here, the Appellant does not challenge KSP’s other claimed exceptions in support of its denial. Accordingly, KSP did not violate the Act when it denied the Appellant’s request.

---

which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.”

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](mailto:OAGAppeals@ky.gov).

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

s/ Marc Manley  
Marc Manley  
Assistant Attorney General

#484

Distribution:

Nick Horne  
Samantha A. Bevins  
Abbey Hub  
Stephanie Dawson