



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

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24-ORD-108

April 30, 2024

In re: Saeid Shafizadeh/Jefferson County Commonwealth's Attorney

**Summary:** The Jefferson County Commonwealth's Attorney ("the Commonwealth's Attorney") violated the Open Records Act ("the Act") when she denied a request for records without explaining how the claimed exemption applied to the records withheld.

***Open Records Decision***

Saeid Shafizadeh ("the Appellant") submitted a request to the Commonwealth's Attorney seeking various types of employment records related to a specific person that were created between 2013 and 2018. Specifically, he sought criminal background checks, alcohol and drug screenings, disciplinary files, internal affairs investigatory files, performance reviews, records of trainings and requests for leave, as well as other types of employment records. In a timely response, the Commonwealth's Attorney denied the request, stating it is "the consistent policy" of her office to deny requests under KRS 61.878(1)(h), which exempts from disclosure the criminal litigation files of Commonwealth's and county attorneys. This appeal followed.

KRS 61.878(1)(h) states "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." However, by its plain language, KRS 61.878(1)(h) only applies to the criminal litigation files of Commonwealth's and county attorneys. The exemption does not apply to every public record in the possession of Commonwealth's and county attorneys. *See, e.g.*, 05-ORD-150 n.3 (files associated with a county attorney involved in litigation to obtain child support arrearages were

not exempt under KRS 61.878(1)(h) if the files did not pertain to a criminal investigation or prosecution).

Here, although neither the Appellant nor the Commonwealth's Attorney have explicitly stated the subject of the request is or was employed by the Commonwealth's Attorney, that fact may be inferred from the types of documents that were requested. For example, employment performance reviews and requests for leave would not ordinarily be included in a prosecutor's criminal litigation file, unless such information was relevant to a particular crime. Moreover, the Commonwealth's Attorney has not identified a criminal prosecution to which these records relate. Rather, she denied the request because it is her "consistent policy" to deny requests under KRS 61.878(1)(h). Because the Commonwealth's Attorney has not explained how the requested records are relevant to any criminal litigation, she has not carried her burden of showing that the records are exempt. Accordingly, the Commonwealth's Attorney violated the Act by denying the Appellant's request.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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).

**Russell Coleman**  
**Attorney General**

/s/ Marc Manley  
Marc Manley  
Assistant Attorney General

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Distributed to:

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