



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN  
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE  
SUITE 200  
FRANKFORT, KY 40601  
(502) 696-5300

25-ORD-058

March 5, 2025

In re: Brandi Lanham/Webster County Judge/Executive

**Summary:** The Webster County Judge/Executive (“the Judge/Executive”) violated the Open Records Act (“the Act”) when it failed to properly invoke KRS 61.878(1)(m)1. to withhold records.

***Open Records Decision***

Brandi Lanham (“the Appellant”) submitted a request to the Judge/Executive seeking “[a]ll security assessments from . . . homeland security for [the] old courthouse building” from 2018 to the date of her request. In response, the Judge/Executive stated it “cannot provide [the Appellant] any records for [her] request because of the exemption under KRS 61.878(1)(m)3.” This appeal followed.

Upon receiving a request to inspect public records, a public agency must determine within five business days whether to grant the request or deny it. KRS 61.880(1). If the agency chooses to deny the request, it “shall include a statement of the specific exception authorizing the withholding of the record *and a brief explanation of how the exception applies to the record withheld.*” *Id.* (emphasis added). Although KRS 61.880(1) requires the explanation in support of denial to be “brief,” the response cannot be “limited and perfunctory.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. App. 1996). In *Edmondson*, the agency’s response to a request stated merely that “the information you seek is exempt under KRS 61.878(1)(a)(k)(l) [sic].” *Id.* The agency failed to explain how any of the cited exemptions applied to the records withheld, and for that reason, the court held, the agency violated KRS 61.880(1). *Id.*

Here, the Judge/Executive’s initial response merely stated it “cannot provide [the Appellant] any records for [her] request because of the exemption under KRS 61.878(1)(m)3.”<sup>1</sup> Moreover, on appeal, the Judge/Executive states only that it

---

<sup>1</sup> The Office notes that the Judge/Executive cited the incorrect subsection of this exemption. KRS 61.878(1)(m)3. requires that “the same day that a public agency denies a request to inspect a public record for a reason identified in [KRS 61.878(1)(m)], that public agency shall forward a copy of the written denial of the request . . . to the executive director of the Kentucky Office of Homeland

“determined and cited the applicability of KRS 61.878(1)(m)(1)(e) [*sic*] as an exemption to this request.”

KRS 61.878(1)(m)1., which has been referred to as the “homeland security exemption,” makes exempt from disclosure under the Act “[p]ublic records the disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act.” The Office has found that public agencies carry a heavy burden to explain how the exemption applies. *See, e.g.*, 09-ORD-100 (finding that an agency failed to carry its burden of showing that the designs of a 300-foot radio antenna were exempt under KRS 61.878(1)(m)). That is because, by its express terms, KRS 61.878(1)(m) is a particularly narrow exemption. It applies only to a potential “terrorist act,” defined as “a criminal act intended to” “[i]ntimidate or coerce a public agency or all or part of the civilian population,” “[d]isrupt a system identified in [KRS 61.878(1)(m)1.f.],” or “[c]ause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency.” KRS 61.878(1)(m)2. The Office has found that records that merely expose a security vulnerability are not exempt under KRS 61.878(1)(m) in the absence of proof that a “reasonable likelihood” exists that the information could be used to carry out a “terrorist act.” *See, e.g.*, 15-ORD-041 (rejecting a law enforcement agency’s claim that security footage from inside the agency’s facility was exempt under KRS 61.878(1)(m) despite its potential to show the camera’s “blind spots”).

The Judge/Executive does not explain how release of responsive records would create a “reasonable likelihood” that a terrorist act would occur. Indeed, the Judge/Executive has not described the records responsive to the Appellant’s request. Under KRS 61.880(2)(c), “[t]he burden of proof in sustaining the action shall rest with the agency.” But here, the Judge/Executive’s “limited and perfunctory” response, which merely states that the exemption applies, provides no basis to conclude there is a “reasonable likelihood” that release of the record would lead to a criminal act intended to “[i]ntimidate or coerce a public agency or all or part of the civilian population,” “disrupt a system identified in” KRS 61.878(1)(m)1.f., or “[c]ause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency.”<sup>2</sup> Absent any explanation justifying its denial, the Office cannot find that the

---

Security and the Attorney General.” Additionally, the Judge/Executive, in its initial response and in its response on appeal, stated that it had forwarded its written denial to the Office. However, as of the date of this decision, the Office has yet to receive the Judge/Executive’s written denial. The Office has previously found that an agency fails to rely on the “homeland security exemption” when it does not comply with KRS 61.878(1)(m)3. *See* 24-ORD-094.

<sup>2</sup> Because the Judge/Executive has not described the records it has withheld or explained how they are exempt under KRS 61.878(1)(m)1., the Office cannot determine whether the “homeland security exemption” applies to the records withheld. The Office need not strain to imagine how records described by the Appellant as “security assessments . . . from homeland security” might fall under KRS 61.878(1)(m)1. But, given the lack of any detail about the records in this appeal, the Office

Judge/Executive properly withheld the records under KRS 61.878(1)(m)1.e. Accordingly, the Judge/Executive violated the Act.

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.

**Russell Coleman**  
Attorney General

/s/ Zachary M. Zimmerer  
Zachary M. Zimmerer  
Assistant Attorney General

#054

Distribution:

Brandi Lanham  
Stephen R. Henry, Webster County Judge/Executive  
Hon. Clint Prow, Webster County Attorney

---

declines to make that determination. Thus, the Office's decision in this appeal is therefore limited to a determination that the Judge/Executive failed to adequately invoke the "homeland security exemption" with respect to the requested records.