



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-113

May 2, 2025

In re: Danny Maiden/Office of the Attorney General

Summary: The Office of the Attorney General (“the Office”) did not violate the Open Records Act (“the Act”) when it invoked KRS 61.878(1)(i) and (j) to withhold records.

Open Records Decision

Danny Maiden (“Appellant”) submitted a request to the Office seeking “all records from” a specific criminal case and investigation related to the Carrollton police and a specific individual. In response, the Office stated that it possessed one record responsive to the request, but that it is exempt under KRS 61.878(1)(i), (j), and (h). Regarding its invocation of KRS 61.878(1)(i) and (j), the Office explained that “the record is an internal working document that is in its draft form.” Regarding its invocation of KRS 61.878(1)(h), the Office explained that “the investigation is in its very early stages” and the record’s release would “pose a concrete risk of harm” of “tipping off suspects or leading to the destruction of evidence” and would “reveal the identity of suspects informants, and witnesses.” This appeal followed.¹

On appeal, the Appellant states only that the Office “failed to provide concrete risk of harm associated with the release of the records as required by” KRS 61.878(1)(h). However, the Appellant ignored the Office’s invocation of KRS 61.878(1)(i) and (j), under which the Office correctly withheld the record.

“Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency” may be exempt from inspection under KRS 61.878(1)(i). And “[p]reliminary

¹ After this appeal was initiated, the Office identified additional records it determined might be “potentially responsive” to the Appellant’s request and provided redacted copies of those records to the Appellant. This portion of the Office’s response is not at issue in this appeal.

recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended” may be exempt from inspection under KRS 61.878(1)(j).

On appeal, the Office further explained how the record is exempt under KRS 61.878(1)(i) and (j). The withheld record is a “case opening document” used to consolidate an investigator’s “initial impressions” of a case and “recommended next steps” in one document. The Office explains that the investigator will document his notes regarding “information initially gathered at the beginning of the investigation” including “potential witnesses [and] suspects.” This information is then used as the basis for the “initial recommendations by the investigator.” Finally, the Office also explained that the record is maintained as “an internal working document,” meaning it remains “in its draft form.”

Notes may be characterized as records “created as an aid to memory or as a basis for a fuller statement,” such as “shorthand notes taken at a meeting.” 05-ORD-179. Here, the Office has explained that the “case opening document” is the single document used by the investigator to document all his or her notes regarding a specific case. As such, those notes are exempt under KRS 61.878(1)(i). Further, the “case opening document” also contains the investigator’s “initial recommendations” related to a case. Those recommendations are “[p]reliminary recommendations” exempted under KRS 61.878(1)(j). Finally, because the record is an “internal working document” that is continually updated and is still “in its draft form,” the entire record is also exempt as a draft under KRS 61.878(i). Accordingly, the Office did not violate the Act when it withheld the responsive “case opening document” under KRS 61.878(1)(i) and (j).²

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.

² Because the record at issue is exempt under KRS 61.878(1)(i) and (j), it is unnecessary to examine the Office’s alternative grounds for denial.

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/s/ Zachary M. Zimmerer
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Distributed to:

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