



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-134

May 22, 2025

In re: *Kentucky Lantern*/Energy and Environment Cabinet

Summary: The Energy and Environment Cabinet (“the Cabinet”) did not violate the Open Records Act (“the Act”) when it withheld records that were “preliminary drafts” under KRS 61.878(1)(i).

Open Records Decision

The *Kentucky Lantern* (“the Appellant”), submitted a request to the Cabinet for copies of “[p]repared materials (i.e. presentation slides, a written speech or summarized points, etc.)” for a keynote speech given by the Secretary of the Cabinet at the Kentucky Environmental Conference on March 27, 2025.¹ In response, the Cabinet provided the PowerPoint presentation that accompanied the speech, but withheld three items as “preliminary drafts” under KRS 61.878(1)(i). Specifically, the Cabinet withheld a speech outline, a draft of the speech, and a draft version of the PowerPoint presentation. Regarding the outline and draft of the speech, the Cabinet stated these were “preliminary expression[s] of [the Secretary’s] opinion and [were] not strictly followed when she gave her speech.” This appeal followed.

KRS 61.878(1)(i) exempts from disclosure “[p]reliminary drafts, notes, [and] correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency.” A preliminary draft is “a tentative version, sketch, or outline” of a final document. 05-ORD-179. Preliminary drafts “by their very nature are rejected when a final [version] is approved.” 24-ORD-193. Thus, a preliminary draft does not lose its preliminary status when the agency takes final action. *See* 21-ORD-089. Here, the Cabinet asserts the only final version of the Secretary’s speech is what she delivered orally at the conference.² The Cabinet

¹ Although the request encompassed additional items, only this portion of the request is at issue in this appeal.

² The Appellant also requested “[a]udio and/or video recordings in the possession of the [Cabinet] of” the Secretary’s speech, but the Cabinet asserted that none exist. This portion of the Cabinet’s response is not at issue on appeal.

reiterates that “[t]he outline and draft were not followed strictly and the speech given was not the same as what is in the written outline.” Furthermore, the Cabinet asserts the Secretary’s copy of the draft speech was marked up with “handwritten notes [which] were thrown away after the speech was given.”³ Thus, the Cabinet argues the outline and draft of the speech remain preliminary drafts because they “were never shared during the presentation, were only used in preparation for the final speech, [and] differ from the speech that was actually given.”

The Appellant, however, claims the outline and draft of the speech are not preliminary drafts because the Secretary “relied on” them when delivering her speech. Thus, the Appellant claims the Secretary “adopted” the outline and draft because they “form[ed] the basis for” the speech delivered at the conference. “Adoption” is a concept generally associated with KRS 61.878(1)(j), which exempts from disclosure “[p]reliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended.” Kentucky courts have held that, if a public agency adopts such opinions or recommendations as the basis of final action, the exempt status of the records is lost. *See, e.g., Univ. of Ky. v. Courier-Journal & Louisville Times Co.*, 830 S.W.2d 373, 378 (Ky. 1992). But “the same concept is not so easily applied to records exempt from disclosure under KRS 61.878(1)(i),” such as preliminary drafts. 23-ORD-075; *see also* 20-ORD-095.

Here, the Appellant relies on *Univ. of Ky. v. Lexington H-L Services, Inc.*, 579 S.W.3d 858 (Ky. App. 2018). In that case, the University of Kentucky improperly withheld as “preliminary” an audit of the Appalachian Heart Center, which it had directed to be performed and upon which it had relied in deciding to issue certain refunds. The University did not specifically claim the audit was a “draft,” but relied on KRS 61.878(1)(i) and (j) indiscriminately to argue the audit was in some way “preliminary.” *Id.* at 862. The court concluded this was not the case because the audit documents “form[ed] the basis for” the University’s final action in issuing the refunds. *Id.* at 863. Here, however, important distinctions must be drawn. The act of issuing refunds was not a *revision* of the audit documents, but a separate action taken by the University after *accepting* the audit documents as final. Thus, the relationship between the audit and the refunds in *Lexington H-L Services* is not equivalent to the relationship between an outline or draft of a speech and the speech itself as delivered.

An outline or draft, which is not strictly followed in delivering a speech, is not the final version of a speech, and therefore remains exempt after the speech is delivered, just as notes do.⁴ *Cf.* 24-ORD-193; 21-ORD-168. Accordingly, the Cabinet

³ Notes used to give a speech remain exempt under KRS 61.878(1)(i) after the speech is given. *See* 24-ORD-193; 21-ORD-168.

⁴ Indeed, under the facts of this appeal, it may have been appropriate for the Cabinet to characterize the outline and draft as “notes” under KRS 61.878(1)(i), as they were not a tentative version of a final

did not violate the Act when it withheld the outline and draft as “preliminary drafts” under KRS 61.878(1)(i).

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

#184

Distributed to:

Mr. Liam Niemeyer
Brittany Hayes Koenig, Esq.
Sarah Noble, Esq.

written product but were “created as an aid to memory or as a basis for a fuller statement” that was given orally. 05-ORD-179.