



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-177

July 18, 2025

In re: Josiah Ward/Kentucky State Police

**Summary:** The Kentucky State Police (“KSP”) did not violate the Open Records Act (“the Act”) when it properly invoked KRS 61.878(1)(h) to withhold records.

### *Open Records Decision*

Josiah Ward (“Appellant”) submitted a request to KSP seeking records related to a homicide that that occurred in 2008.<sup>1</sup> In response, KSP denied the request under KRS 61.878(1)(h) because the “investigation is still open”<sup>2</sup> and the responsive records “can not be release[d]” because it is “awaiting results on new tests in this investigation,” and “new leads that are being explored would be made public jeopardizing the integrity of the investigation” and “jeopardizing the confidentiality of the witnesses.” KSP further stated that “prosecution has not been declined” and that release of the records would also harm it by “creating bias in the jury pool from which the Grand Jury will be selected if the Commonwealth’s Attorney decides to prosecute this matter.” This appeal followed.

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<sup>1</sup> Specifically, the Appellant sought “All interview transcripts, notes, or audio recordings” involving an unspecified individual; “Any investigative documents, memoranda, case files, or logs mentioning this individual by name as a person of interest”; “forensic comparison reports” related to the unspecified individual; “ATM surveillance footage or stills obtained during the investigation”; “Chain-of-custody and testing records” related to crime scene evidence; “documentation related to restitution payment records or financial documents received by investigators involving” the unspecified individual’s payments; and “Copies of any case updates or closing memos indicating whether the suspect was cleared, ruled out, or remains under investigation.”

<sup>2</sup> KSP specified that its ongoing investigation “includes consultation with law enforcement from another state who also have a similar open investigation.”

KRS 61.878(1)(h)<sup>3</sup> exempts from disclosure “[r]ecords 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 61.878(1)(h). The Supreme Court of Kentucky has held that, when a public agency relies on KRS 61.878(1)(h) to deny inspection, it must “articulate a factual basis for applying it, only, that is, when, because of the record’s content, its release poses a concrete risk of harm to the agency in the prospective action.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 851 (Ky. 2013).

In *Shively Police Department v. Courier Journal, Inc.*, 701 S.W.3d 430 (Ky. 2024), the Supreme Court re-examined KRS 61.878(1)(h) and its proper invocation by law enforcement agencies. The Office has addressed the impact of that decision in 25-ORD-043 and 25-ORD-044.

The *Shively* decision reaffirmed the Court’s previous decisions requiring agencies to describe a “risk of harm [that is] concrete, amounting to something more than a hypothetical or speculative concern.” *Shively*, 701 S.W.3d at 438 (internal quotation omitted). In *Shively*, the law enforcement agency described two potential risks of harm: “that the requested records could potentially compromise the recollections of some unnamed or unknown witnesses and that the release of the records might taint a future grand jury proceeding.” *Id.* at 439. The Court held that, although those “may, perhaps, be legitimate concerns,” the agency had “failed to provide even a ‘minimum degree of factual justification,’ that would draw a nexus between the *content of the specific records* requested in *this* case and the purported risks of harm associated with their release.” *Id.* (quoting *City of Fort Thomas*, 496 S.W.3d at 852) (emphasis added).<sup>4</sup>

The *Shively* decision also “posit[ed] that [KRS 61.878(1)(h)’s] ‘harm’ requirement is perhaps an even greater burden for law enforcement agencies to bear at the outset of a criminal investigation, when the agency has yet to fully determine

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<sup>3</sup> During the 2025 session, the General Assembly enacted House Bill 520, 2025 Ky. Acts ch. 97 (“HB 520”), which amended KRS 61.878(1)(h). The newly amended version of KRS 61.878(1)(h) took effect on June 27, 2025. Because the Appellant’s request was submitted on June 12, 2025, the former version of the statute is at issue here.

<sup>4</sup> The Court also noted that these concerns, without additional factual justification, “would seemingly apply universally to any criminal investigation turned felony prosecution.” *Shively*, 701 S.W.3d at 439.

what facts, evidence, or records are material to its ongoing or impending law enforcement action.” *Id.* Thus, when determining whether an agency has as many facts and details as reasonably possible to support their justification for denial under KRS 61.878(1)(h), the Office notes that “at the early stage of an investigation,” the “harm requirement imposes ‘an even greater burden,’ [and] the degree of ‘facts and details’ that is ‘reasonably possible’ is lesser than it is at later stages of an investigation.” 25-ORD-044 (citing *Shively*, 701 S.W.3d at 439).

Turning to the merits of this appeal, KSP’s original response explained that the “investigation is still open” and that the responsive records “can not be release[d]” because it is “awaiting results on new tests in this investigation,” and “new leads that are being explored would be made public jeopardizing the integrity of the investigation” and “jeopardizing the confidentiality of the witnesses.” KSP further stated that “prosecution has not been declined” and that release of the records would also harm it by “creating bias in the jury pool from which the Grand Jury will be selected if the Commonwealth’s Attorney decides to prosecute this matter.” KSP’s reference to bias in a potential jury pool is the type of harm that “would seemingly apply universally to any criminal investigation turned felony prosecution.” *Shively*, 701 S.W.3d at 439; *see also* 25-ORD-044. However, the Office has previously determined that the release of unfinished testing records would present a risk of disseminating potentially incomplete or inaccurate information to the public that constitutes a concrete risk of harm to the agency.<sup>5</sup> *See* 25-ORD-094.

Moreover, on appeal, KSP has further explained how releasing the requested records would jeopardize its ongoing investigation by revealing new leads. Specifically, KSP explains that release of the requested records would identify a person of interest in the investigation. KSP explains that revealing the identify of that person of interest “would only cause damage to this investigation.” Finally, through the sworn affidavit of a KSP detective, KSP explains that the confidentiality of new information is particularly important in maintaining “the integrity of witnesses and the interviews conducted with them.”<sup>6</sup>

Here, KSP has met its burden by explaining, in detail, how disclosing the requested records would harm its investigation. KSP has described the records that may not be complete or accurate due to incomplete testing. Moreover, KSP has

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<sup>5</sup> Although not the basis of this decision, the Office notes that the incomplete nature of the identified records also implicates KRS 61.878(1)(j).

<sup>6</sup> The Office does not doubt the particular importance of maintaining “witness integrity” in a longstanding investigation.

explained how release of the records would lead to identifying a person of interest in the investigation whose name is not yet publicly known. The Office does not doubt that the early identification of a person of interest not yet known to the public is a legitimate harm. Thus, KSP has met its burden under KRS 61.8781(h) by explaining how disclosure of the requested records would lead to the described harms. Accordingly, KSP properly invoked KRS 61.878(1)(h) to withhold the requested records, and thus, did not violate the Act.

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**  
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