



## COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-187

July 22, 2025

In re: Caleb Hurt/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*

On April 14, 2025, Caleb Hurt (“Appellant”) submitted a request to KSP seeking records related to an officer-involved shooting that occurred on or about March 17, 2025.<sup>1</sup> In response, KSP denied the request under KRS 61.878(1)(h) because the “the case is not completed” and it would be harmed by release of the records because: “there are still witnesses that need to be interviewed and the release of data could impact” their “memories and statements”; “[t]here is an active criminal investigation that is intertwined with this case” and release of the information “could be detrimental to the separate investigation”; and “[r]elease of information could also easily taint a jury or grand jury pool.” This appeal followed.<sup>2</sup>

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

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<sup>1</sup> Specifically, the Appellant sought “All reports, videos, CAD Reports, interviews and recorded statements, Bodycam and Dashcam recordings, identity of reporting party or parties, APB issued by Marshall County, and Communications related to the Critical Investigation Response Team investigation of the shooting” of a particular individual.

<sup>2</sup> KSP identified a related investigation that had been completed and provided nonexempt records. That production has not been challenged on appeal.

<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) went into effect on June 27, 2025. Because the Appellant’s request was submitted before HB 520 took effect, the former version of the statute is at issue here.

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] must be concrete, amounting to ‘something more than a hypothetical or speculative concern.’” *Shively*, 701 S.W.3d at 438. 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 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).

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<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.

Turning now to the merits of the appeal, because the incident that is the target of the Appellant's request took place less than 30 days prior to submission of the request, the "degree of factual justification" that was "reasonably possible" for KSP is minimal. Elaborating on its original statement that the investigation is not yet complete, KSP explains on appeal that it "is still awaiting forensic laboratory results, a scale diagram of the scene to be completed, a medical examiner's report, and a review from the assigned detective of numerous video and audio files." Moreover, KSP explains that "release of the requested records would make public new leads that KSP is pursuing, thus jeopardizing the integrity of the investigation and the confidentiality of the witnesses."

KSP's original 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 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. Similarly, the Office has agreed that disclosure of new leads that would lead to the identification of an individual not yet known to the public is a legitimate harm. *See* 25-ORD-177. 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).

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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 implicates KRS 61.878(1)(j).

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