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25-ORD-285

September 30, 2025

In re: Tina Burnell/Louisville Metro Government

Summary: The Louisville Metro Government (“Metro”) did not violate the Open Records Act (“the Act”) when it denied a request for records exempt under KRE 503.

Open Records Decision

Tina Burnell (“Appellant”) submitted a request for three “Handbooks” in Metro’s possession. Specifically, she requested (1) the “Louisville Metro Council Personnel Policies Handbook,” (2) the “Metro Council and Land Use Handbook,” and (3) the “Louisville Metro Council Legal Services Handbook.” In response, Metro provided an unredacted copy of the first handbook, a redacted copy of the second handbook, and withheld the entirety of the third handbook. As a basis of its redactions and denial, Metro relied on the attorney-client privilege and the work product doctrine, citing KRE 503. Metro further explained that the withheld material in the second handbook includes “legal interpretation of statutes and legal advice on the exercise of Metro Council’s powers under Kentucky statutes, common law, constitutional law, and the Metro Ethics Code” and, in the third handbook, “legal interpretation of Metro Council’s statutory powers, and legal advice on the exercise of those powers.” Finally, Metro also explained that all described legal advice was provided to the Metro Council by the Jefferson County Attorney’s Office (“County Attorney”) “for the purpose of facilitating the rendition of professional legal services.” This appeal followed.

KRS 61.878(1)(l) operates in tandem with KRE 503 to exclude from inspection public records protected by the attorney-client privilege. *Hahn v. Univ. of Louisville*, 80 S.W.3d 771, 774 (Ky. App. 2001). The attorney work-product doctrine, on the other hand, “affords a qualified privilege from discovery for documents ‘prepared in anticipation of litigation or for trial’ by that party’s representative, which includes an attorney.” *Univ. of Ky. v. Lexington H-L Servs.*, 579 S.W.3d 858, 864 (Ky. App. 2018).

“[D]ocuments which are primarily factual, non-opinion work product are subject to lesser protection than ‘core’ work product, which includes the mental impressions, conclusions, opinions, or legal theories of an attorney.” *Id.* Records protected by the work product doctrine may be withheld from public inspection under KRS 61.878(1)(l) and CR 26.02(3). *See Univ. of Ky.*, 579 S.W.3d at 864–65.

When a party invokes the attorney-client privilege to shield documents in litigation, that party carries the burden of proof. That is because “broad claims of ‘privilege’ are disfavored when balanced against the need for litigants to have access to relevant or material evidence.” *Haney v. Yates*, 40 S.W.3d 352, 355 (Ky. 2000) (quoting *Meenach v. Gen. Motors Corp.*, 891 S.W.2d 398, 402 (Ky. 1995)). So long as the public agency provides a sufficient description of the records it has withheld under the privilege in a manner that allows the requester to assess the propriety of the agency’s claims, then the public agency will have discharged its duty under the Act. *See City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848–49 (Ky. 2013) (providing that the agency’s “proof may and often will include an outline, catalogue, or index of responsive records and an affidavit by a qualified person describing the contents of withheld records and explaining why they were withheld.”).

Here, Metro explains that the County Attorney serves as the legal advisor and representative of Louisville Metro Council members, Council staff, the Mayor’s office, and the executive departments of Metro Government. *See* KRS 67C.115(5) (“The county attorney shall serve as the legal advisor and representative to the consolidated local government”); *see also* KRS 69.210 (“The county attorney shall give legal advice to the fiscal court or consolidated local government and the several county or consolidated local government officers in all matters concerning any county or consolidated local government business within their jurisdiction.”). Thus, an attorney-client relationship exists between the Metro Council and the County Attorney.

Metro explains that both handbooks were created by the County Attorney “in response to repeated requests from Metro Council members and from the Mayor’s Office on the scope of Metro Council’s” powers and duties related to land use in Jefferson County or generally. Both handbooks contain the County Attorney’s “analysis, interpretation, and application of statutes, common law, constitutional law, and Louisville Metro Government’s Ethics Code ordinances.”

Metro explains that the “Metro Council and Land Use Handbook” “describes the various options [the] Council can and cannot pursue for each type of potential land use regulation, and details the roles the Planning Commission and the Mayor’s Office of Planning play in connection with Council’s role.” Regarding the legal advice contained therein, Metro states that the handbook explains how to “respond[] to

potential constituent concerns” and “how and what to consider when evaluating potential conflicts of interest.”¹

Regarding the “Louisville Metro Council Legal Services Handbook,” Metro explains that it “describes the legal authority of Council and its members,” “explores the separation of legislative and executive powers in Metro Government,” and “identifies the particular [County Attorney] personnel to advise government officials on various legal questions.” Regarding the legal advice contained therein, Metro states that the handbook explains how to “maintain[] attorney-client privilege when responding to constituents” and “provides analysis and advice on topics ranging from potential statutory sanctions for misappropriation to the steps in enacting legislation.”

Finally, Metro explains that the handbooks are only given to “the 26 elected members of Metro Council, the staff that each Council member is statutorily authorized to hire, the Metro Council Clerk’s Office, and the Office of Mayor’s General Counsel.”

For her part, the Appellant asserts that the handbooks are not exempt under the attorney-client privilege because the information it contains is “factual or procedural,” and because explanations of statutes governing a public official’s roles and responsibilities is not legal advice. This is incorrect. The Office has previously found that a general legal memorandum, created by legal counsel for his clients, is legal advice that may be withheld pursuant to the attorney-client privilege. *See* 14-ORD-167.²

The Appellant also argues the privilege has been waived by distribution. However, the handbooks were only disclosed to the County Attorney’s statutory clients. Such distribution, even among many individuals, does not waive the attorney-client privilege.

Finally, the Appellant argues that the public interest weighs in favor of disclosing the handbooks. But the attorney-client privilege does not require a weighing of the public’s interest in the document against the public agency’s interest in maintaining the attorney-client privilege. As such, none of the Appellant’s arguments require disclosure of these handbooks.

¹ Metro states that this handbook includes an appendix containing publicly available documents. That portion of the handbook was provided to the Appellant without redactions.

² The Appellant refers to several prior open records decisions of the Office that she says stand for the opposite proposition. However, upon the Office’s review of each of those prior decisions, the Office has determined that none of the decisions cited by the Appellant support her position.

At bottom, Metro has clearly demonstrated that the redacted information in the “Metro Council and Land Use Handbook” and the entirety of the “Louisville Metro Council Legal Services Handbook” are exempt under the attorney-client privilege as legal advice given by the County Attorney to its clients. Accordingly, Metro properly withheld these records under the attorney-client privilege.³

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.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
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³ Because the records are exempt under the attorney-client privilege, the Office need not address Metro’s original invocation of the work product doctrine.