



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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25-ORD-286

September 30, 2025

In re: Mark Dungan/Commonwealth's Attorney, 34th Judicial Circuit

Summary: The Commonwealth's Attorney for the 34th Judicial Circuit ("the Commonwealth's Attorney") did not violate the Open Records Act ("the Act") when he denied under KRS 61.878(1)(h) a request for records contained in his criminal investigation or litigation files. The Office cannot resolve the factual dispute regarding whether the Appellant received a response to his request.

Open Records Decision

On August 5, 2025, inmate Mark Dungan ("the Appellant") submitted a request to the Commonwealth's Attorney seeking records related to a criminal case against him. Claiming to have received no response to his request, the Appellant initiated this appeal on September 10, 2025.

Under KRS 61.880(1), a public agency must respond within five business days after receipt of a request for records. Here, the Appellant claims the agency failed to timely respond to his request. However, the Commonwealth's Attorney states it issued a timely written response on August 6, 2025. Because the Office cannot adjudicate disputed issues of fact, such as when an agency issued a response, the Office cannot find that the Commonwealth's Attorney's response in this case was untimely. *See, e.g.,* 24-ORD-040. Accordingly, the Office cannot find that the Commonwealth's Attorney violated the Act.

Regarding the Commonwealth's Attorney's response, it denied the Appellant's request under KRS 61.878(1)(h). Under KRS 61.878(1)(h), "records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the [Act] and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action." Thus, "a prosecutor's litigation files are excluded in toto from the Act." *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 853 (Ky. 2013). "[T]his exemption is unique because it categorically

exempts county attorneys' and Commonwealth's attorneys' criminal litigation or investigative files." 23-ORD-106 (emphasis in original); see also 02-ORD-112 (finding investigative records in the possession of a county attorney or Commonwealth's attorney are "permanently shielded from disclosure").

The Commonwealth's Attorney, in its denial, explained that the Appellant has requested records related to its criminal litigation against the Appellant. Such records are permanently exempt under KRS 61.878(1)(h). Thus, the Commonwealth's Attorney did not violate the Act when he denied the Appellant's request.

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
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

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Ronald L. Bowling, Commonwealth's Attorney, 34th Circuit