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25-ORD-300

October 3, 2025

In re: Brandon Bryan/Kentucky State Police

Summary: The Kentucky State Police ("KSP") violated the Open Records Act ("the Act") when it failed to respond to a portion of a request for records. KSP did not violate the Act when it withheld a record the disclosure of which could harm its investigation by premature disclosure of information to be used in a prospective law enforcement action under KRS 61.878(1)(h). Furthermore, KSP did not violate the Act when it redacted personal identifiers under KRS 61.878(1)(a) or when it did not provide records that do not exist or that were not precisely described.

Open Records Decision

This appeal concerns three separate requests submitted to KSP by Brandon Bryan ("the Appellant").[1] On August 8, 2025, the Appellant requested a "complete copy of the interview conducted by Sgt. Blake Owens with Zacary Robinson" and a "copy of the letter from the Federal Bureau of Investigation (FBI) removing Sgt. Blake Owens from the Public Corruption Task Force in Louisville, Kentucky, including any related correspondence." In a timely response, KSP denied access to the interview under KRS 61.878(1)(h), explaining that "the investigation has only just begun (3 months ago) and disclosure of [the interview] at this early stage of the investigation and prosecution, would irreparably harm the subject investigation by compromising the recollections of those witnesses that investigators have not interviewed yet and those who might ultimately be testifying at trial." KSP further explained that release of the records "would also pose a significant risk of causing the jurors to develop preconceived opinions regarding this incident." KSP did not respond to the Appellant's request for a copy of a letter.

[1] A previous request dated July 24, 2025, was initially denied under KRS 61.878(1)(h). However, after this appeal was initiated, KSP reconsidered that response and made records available to the Appellant upon receipt of copying fees. Therefore, the initial denial is now moot. *See* 40 KAR 1:030 § 6.

When a public agency receives a request to inspect records, that agency must decide within five business days "whether to comply with the request" and notify the requester "of its decision." KRS 61.880(1). A public agency cannot simply ignore portions of a request. *See, e.g.,* 21-ORD-090. If the requested records exist and an exemption applies that allows the agency to deny inspection, the agency must cite the exemption and explain how it applies. Conversely, if the records do not exist, then the agency must affirmatively state that such records do not exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov't,* 172 S.W.3d 333, 341 (Ky. 2005). Here, KSP initially failed to respond to the Appellant's request for a letter from the FBI. Thus, KSP violated the Act.

As for KSP's denial of the requested interview, KRS 61.878(1)(h) exempts from disclosure "[r]ecords of law enforcement agencies . . . that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information could pose an articulable risk of harm to the agency or its investigation by revealing the identity of informants or witnesses not otherwise known or by premature release of information to be used in a prospective law enforcement action." However, this exemption "shall not be used by the custodian of the records to delay or impede the exercise of rights granted by" the Act. *Id.* When a public agency relies on KRS 61.878(1)(h) to deny inspection, it must "articulate a factual basis for applying it," such that the risk of harm exists "because of the record's content." *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 law enforcement agency in *Shively* 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*, 406 S.W.3d at 852) (emphasis added).[2]

After the *City of Fort Thomas* and *Shively* cases were decided, the General Assembly amended KRS 61.878(1)(h) in 2025. The previous version of the statute allowed the exemption only when "the disclosure of the information *would* harm the agency," rather than when disclosure *"could* harm the agency *or its investigation"* (emphasis added). The use of "would" instead of "could" in the previous version

[2] 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.

indicates "a more stringent standard." 06-ORD-265 n.10. In *City of Fort Thomas,* the Court held that the prior language of the statute required "a concrete risk of harm to the agency," as opposed to "a hypothetical or speculative concern." 406 S.W.3d at 851. "Under the amended version of the statute, where an agency need only articulate the *possibility* that release of information poses a threat of harm to the agency (or its investigation), the 'risk of harm' that must be articulated will look more like 'hypothetical or speculative' harms." 25-ORD-290.[3]

Here, KSP states the release of the interview at this early stage of its investigation could compromise the recollections of witnesses or cause potential jurors to develop preconceived opinions. The Court in *Shively* recognized these risks as "legitimate concerns." *Id.* Thus, it remains only for KSP to establish a nexus between the record withheld and the specific risks of harm. To that end, KSP explains that the requested interview "contains graphic information regarding juveniles and sensitive information regarding alleged sexual offenses, disclosure of which could . . . harm the subject investigation by revealing the specifics of the alleged crime(s) and the identities of those involved as well as revealing what information KSP may still be lacking." Furthermore, KSP provides an order entered July 22, 2025, in which the Grayson Circuit Court directed that discovery materials in the relevant criminal case "only be disclosed to the Defendant, the Commonwealth, and to Court personnel needing access to this information, but not to third parties, without leave of the Court."[4] KSP asserts the requested interview is part of the discovery in that case. Under these specific facts, KSP has established the required nexus between release of the requested interview and the asserted risks of harm to its investigation. Accordingly, KSP did not violate the Act when it withheld the requested interview under KRS 61.878(1)(h).[5]

In the Appellant's next request, submitted on August 15, 2025, he claimed KSP's response to a previous request (not at issue here) was "missing several items." Specifically, he requested "[d]isciplinary issues and complaints for Blake Owens," including an "internal investigation in November/December 2024"; "Citizen Complaints on Blake Owens"; "Owens [*sic*] removal from the FBI task force"; "the internal investigation known as the Shoe-gate Scandal that Bo Hensley was involved in"; and "[e]valuations for Hensley and Owens." In a timely response, KSP provided certain Internal Affairs ("IA") files, personnel files, training records, and "KSP chain of command documentation." Pursuant to KRS 61.878(1)(a), KSP redacted "social security number(s), operator license number(s), date(s) of birth, personal address(es), vehicle identification number(s) and telephone number(s), the disclosure of which

[3] This decision more fully discusses the amendments to KRS 61.878(1)(h).

[4] In general, "this Office defers to [a] Circuit Court as the authoritative interpreter of its orders." 21-ORD-164 n.2.

[5] Because KRS 61.878(1)(h) is dispositive of this issue, it is unnecessary to address KSP's alternative argument under KRS 61.878(1)(a).

may leave persons at risk for identity theft." It is well established that personal identifiers of this nature may be redacted from law enforcement records under KRS 61.878(1)(a), which exempts from disclosure "[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." *See, e.g., Ky. New Era, Inc. v. City of Hopkinsville,* 415 S.W.3d 76, 83 (Ky. 2013).

KSP further stated it had "conducted a diligent search, but was unable to locate any evaluations pertaining to the two people requested." On appeal, KSP explains that evaluations are not performed upon sworn personnel, but the "only similar kind of record," the Supervisor Probationary Report, is contained in the personnel files provided. In addition, KSP stated "there are no documents pertaining to Owens being removed from the FBI task force" and no other responsive records exist "because one IA file is past retention schedule and any other documentation would be located in the personnel files." On appeal, KSP further explains that no records exist pertaining to Sgt. Owens's removal from the FBI Public Corruption Task Force because he was never a member of the task force. Once a public agency states affirmatively that it does not possess responsive records, the burden shifts to the requester to make a *prima facie* case that the records do exist. *See Bowling,* 172 S.W.3d at 341. A requester must provide some evidence to make a *prima face* case that requested records exist, such as the existence of a statute or regulation requiring the creation of the requested records, or other factual support for the existence of the records. *See, e.g.,* 21-ORD-177; 11-ORD-074. If the requester is able to make a *prima facie* case that the records do or should exist, then the public agency "may also be called upon to prove that its search was adequate." *City of Fort Thomas,* 406 S.W.3d at 848 n.3 (citing *Bowling,* 172 S.W.3d at 341). Here, the Appellant has not attempted to refute KSP's assertion that no further records exist. Accordingly, KSP did not violate the Act in its disposition of the August 15 request.

Finally, on August 19, 2025, the Appellant requested a copy of "all emails sent to and/or from Sgt. Blake Owens' supervisors and the Agent in Charge and supervisors of the Public Corruption Task Force between November 1, 2024, and August 19, 2025."[6] In response, KSP asserted the Appellant's request did not describe the records precisely enough for the records to be located, as he had not provided the names of "the Agent in Charge and supervisors of the Public Corruption Task Force" and KSP did not possess that information. Under KRS 61.872(3)(b), it is incumbent on a person requesting copies of public records to "precisely describe[ ] the public records which are readily available within the public agency." At a minimum, the

[6] The Appellant sought other items in the same request, and KSP issued a separate response to those portions of the same request. However, as the Appellant has not provided a copy of that response, those portions of his request are not at issue in this appeal. *See* KRS 61.880(2)(a) (requiring submission of both "a copy of the written request and a copy of the written response denying inspection" to initiate an appeal to the Attorney General).

request must be "specific enough so that a public agency can identify and locate the records in question." 13-ORD-077. Records must be described in "definite, specific and unequivocal terms." 08-ORD-147. Here, KSP asserts it cannot determine the identities of the individuals whom the Appellant has identified solely by reference to their purported functions within the FBI's Public Corruption Task Force. Because the record does not indicate that those individuals are KSP personnel, the knowledge of those functions cannot reasonably be imputed to KSP. Accordingly, KSP did not violate the Act when it did not provide records not precisely described in the Appellant's request.

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.

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/s/ James M. Herrick
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