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OFFICE OF THE ATTORNEY GENERAL**

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25-ORD-319

October 16, 2025

In re: Andre Regard/Kentucky State Police

Summary: The Kentucky State Police (“KSP”) did not violate the Open Records Act (“the Act”) when it withheld records under KRS 61.878(1)(h) that, if disclosed, could harm its investigation through the premature disclosure of information to be used in a prospective law enforcement action. KSP also did not violate the Act when it redacted personal information under KRS 61.878(1)(a).

Open Records Decision

Andre Regard (“Appellant”) submitted a request to KSP seeking “reports, pictures, CAD Reports, interviews and recorded statements, written statements, Bodycam and Dashcam recordings, identity of reporting party or parties, APB issued by Marshall County, and Communications” related to KSP’s investigation of the shooting of a named individual. In response, KSP identified two interrelated cases, both of which related to the subject of the request. KSP explained that one case was still ongoing, and thus, it issued a complete denial for those records under KRS 61.878(1)(h) “because the premature disclosure of records generated in the course of this investigation, for which prosecution has not been declined yet, would cause irreparable harm, including but not limited to, creating bias in the jury pool from which the Grand Jury will be selected.” KSP further explained that “release of this information could easily cause essential facts and investigative materials associated to spread through the community before they have been properly examined, evaluated, and presented to an unbiased grand jury/trail jury, damaging the chances of an untainted jury pool” and “could also cause this case to be tried on social media rather than in a courtroom.” Regarding the other case, KSP provided a KYIBRS¹ report and CAD² report with personal information redacted under

¹ Kentucky Incident Based Reporting System.

² Computer Aided Dispatch.

KRS 61.878(1)(a). KSP also withheld body-worn camera footage under KRS 61.878(1)(h) for the same reasons previously stated. This appeal followed.

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).

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.” The use of “would” instead of “could” in the previous version 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

Turning to the merits of this appeal, KSP explains that the records were compiled as part of its investigation into the named individual’s death and a law enforcement action remains a possibility. Regarding the harm to its investigation, KSP explains the release of responsive records would disclose “essential facts and investigative materials” prior to those materials being “examined and evaluated.” KSP also stated that release of the information could “impact witnesses’ memories and statements and jeopardize the other ongoing” county level investigation. According to KSP, this harm is especially likely because it has not interviewed all relevant witnesses yet. The Office has previously agreed that the release of records from an incomplete investigation presents the risk of disseminating incomplete or inaccurate information to the public, which constitutes a concrete risk of harm to the agency. 25-ORD-188. Here, where KSP’s burden has been reduced, the release of such records “could pose an articulable risk of harm” to KSP or its investigation. Accordingly, KSP properly invoked KRS 61.878(1)(h) to withhold and redact the requested records, and thus, did not violate the Act.⁴

The Appellant also challenged KSP’s redactions made under KRS 61.878(1)(a). That statute 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.” Social Security numbers, home addresses, personal telephone numbers, dates of birth, and driver’s license numbers are the types of personal information pertaining to private individuals that may categorically be redacted from records when they provide no insight into how the public agency performed its public duties. *See Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 89 (Ky. 2013). KSP, in its original denial, stated this was the type of information it had redacted, and the Appellant has not claimed otherwise. Thus, KSP did not violate the Act when it redacted this information.

For his part, the Appellant challenges KSP’s reliance on KRS 61.878(1)(a) and (h) by describing the looming one-year statute of limitations motivating his request

³ 25-ORD-290 more fully discusses the amendments to KRS 61.878(1)(h).

⁴ The Appellant directs the Office’s attention to 25-ORD-043, in which the Office stated that the “risk of harm” described by a law enforcement agency “must be concrete, amounting to ‘something more than a hypothetical or speculative concern’” (quoting *Shively*, 701 S.W.3d at 438). However, 25-ORD-043 concerned whether the law enforcement agency had adequately invoked a previous version of KRS 61.878(1)(h). As explained above, KRS 61.878(1)(h) was amended in 2025. Thus, 25-ORD-043 describes a more stringent standard that is longer applicable.

for records. According to the Appellant, KSP's denial under KRS 61.878(1)(h) and redactions made under KRS 61.878(1)(a) hinder his investigation of a potential case of action. However, access to public records "does not turn on the purpose for which the request is made or the identity of the requester." *Zink v. Commonwealth, Dep't of Workers' Claims*, 902 S.W.2d 825, 828 (Ky. App. 1994); *see also* 17-ORD-056 (upholding the agency's delay of access to records under KRS 61.872(5) despite the appellant's description of a looming statute of limitations). Accordingly, here, the pending statute of limitations does not alter the Office's analysis of KRS 61.878(1)(a) or (h).

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
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/s/ Zachary M. Zimmerer
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