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25-ORD-333

October 22, 2025

In re: Jennifer Weiczner/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.

Open Records Decision

Jennifer Weiczner ("Appellant") submitted a request to KSP seeking "reports and calls pertaining to" a named individual "in 2024 and 2025." related to KSP's investigation of the shooting of a named individual. In response, KSP denied the request under KRS 61.878(1)(h), explaining that the records were compiled "in the process of detecting and investigating statutory violations" and their "premature disclosure" would "cause irreparable harm."[1] Specifically, KSP stated that (1) the records were obtained "as a direct result of the related confidential investigations [and] any disclosure of these materials will expose the direction of the ongoing investigations," and therefore, "impede the progress of those investigations," (2) "lab reports that are pending, other evidence that is unknown to the public" would be revealed, and (3) "multiple victims and witnesses whose identities remain confidential to protect the integrity of the investigations . . . would be revealed by release of these responsive records," and further explained that the "targets of this investigation have used violence during the conspiracies, including but not limited to torture, threats to harm witnesses, and threats to kill witnesses and victims." This appeal followed.

[1] KSP's original response stated its intent to grant the Appellant's request but "upon receipt of additional information," KSP issued a final response denying the request in total.

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.[2]

[2] 25-ORD-290 more fully discusses the amendments to KRS 61.878(1)(h).

Turning to the merits of this appeal, KSP maintains that disclosure of the requested records would likely reveal the identities of witnesses and victims whose identities remain confidential, thereby exposing "them to danger, harassment, and leav[ing] them vulnerable to further crimes." The Office has previously agreed that the release of records that would imperil crime victims is a legitimate harm. *See* 25-ORD-044. KSP also maintains that disclosure would result in "exposing and impeding the direction of the ongoing investigations" while it "believes there are likely other intended victims." Similarly, the Office has agreed that disclosure of new leads that would assist in the identification of an individual not yet known to the public is a legitimate harm. *See* 25-ORD-177. Here, the release of the requested 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.

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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Distributed to:

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