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**25-ORD-365**

November 19, 2025

In re: Josh Wood/Louisville Metro Government

***Summary:*** The Louisville Metro Government ("Metro") did not violate the Open Records Act ("the Act") when it withheld records exempt under KRS 61.878(1)(i).

***Open Records Decision***

On September 26, 2025, Josh Wood ("Appellant") submitted a request to Metro seeking the "Chat histories of all Chat GPT sessions conducted on city-owned devices or used in job-related functions by any Mayor's Office personnel between Jan. 1, 2025," and the date of the request. In response, Metro denied the request, stating the "chat histories" are exempt under "KRS 61.878(1)(i) as notes and preliminary drafts." Metro further explained that "outputs from AI tools . . . require human review and are not a finished product." This appeal followed.

KRS 61.878(1)(i) exempts from disclosure "[p]reliminary drafts, notes, [and] correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency." Kentucky courts have held "investigative materials that were once preliminary in nature lose their exempt status once they are adopted by the agency as part of its action." *Univ. of Ky. v. Courier–Journal & Louisville Times Co.*, 830 S.W.2d 373, 378 (Ky. 1992). But neither KRS 61.878(1)(i) nor (j) discusses preliminary "investigative materials." Rather, KRS 61.878(1)(i) relates to preliminary drafts and notes, which by their very nature, are rejected when a final report is approved. In other words, a first draft is not "adopted" when a second draft is written, and so the first draft is always exempt under KRS 61.878(1)(i). *See, e.g.*, 21-ORD-089 (holding the agency properly relied on KRS 61.878(1)(i) to deny inspection of the "first draft" of a report that was later adopted).

The same is true of "notes," which include most interoffice emails and chat messages. *See, e.g.*, 22-ORD-176 n.6; OAG 78-626. To the extent specific thoughts or beliefs contained within drafts and notes are "adopted," they are adopted in whatever final document the agency produces from those drafts and notes. That final document represents the agency's official action and is therefore subject to inspection. But the initial and preliminary thoughts on what the final product should contain, which are expressed during the drafting process in emails, do not lose their preliminary status once the final end-product is produced. To do so would destroy the "full and frank discussion[s] between and among public employees and officials" as they "hammer[ ] out official action," which is the very purpose of KRS 61.878(1)(i). 14-ORD-014.

This appeal concerns Metro's use of ChatGPT. ChatGPT is an AI software that generates certain outputs based on inputs entered by a user.[1] According to Metro, its employees use ChatGPT as a tool "to brainstorm, prepare drafts, and process ideas as part of the employees' deliberative work process." Further, Metro states that its policies "require human review of all AI generated materials." Thus, the whole "chat history" is always a preliminary draft subject to further review. As such, according to Metro, the ChatGPT chat histories are made up of preliminary drafts and notes made exempt by KRS 61.878(1)(i).

For his part, relying on 18-ORD-182, the Appellant argues that inputs into the ChatGPT software are essentially conversation with an outside entity and are therefore unlike the "full and frank discussion[s] between and among public employees and officials" that KRS 61.878(1)(i) exempts from production. Alternatively, the Appellant asserts that chat histories lose their preliminary status once they are adopted as part of a final action.

On the topic of notes, the Office has stated that:

> Not every paper [or series of computer bits] in the office of a public agency [or its computers] is a public record subject to public inspection. Many papers are simply work papers which are exempted because they are preliminary drafts and notes. KRS 61.878(1)[(i)]. Yellow pads can be filled with outlines, notes, drafts and doodlings which are unceremoniously thrown in the wastebasket or which may in certain cases be kept in a desk drawer for future reference. Such preliminary drafts and notes and preliminary memoranda are part of *the tools which*

[1] This combination of "inputs" by users and "outputs" by ChatGPT makes up the "chat history" the Appellant has requested.

> *a public employee or officer uses* in hammering out official action within the function of his office. They are expressly exempted by the Open Records Law and may be destroyed or kept at will and are not subject to public inspection.

22-ORD-176 n.6 (emphasis added); OAG 78-626. Today, ChatGPT is the newest "tool which a public employee or officer uses in hammering out official action." As explained by Metro, its employees may use ChatGPT as a tool to assist their "deliberative work process." With it, employees can brainstorm and process ideas or begin the work of preparing a draft. As such, its employees' inputs into ChatGPT are akin to initial notes kicking off the drafting process and are therefore exempt under KRS 61.878(1)(i).

The corresponding ChatGPT outputs are exempt for a different reason. Metro explains that it has adopted a policy stating that all outputs must receive human review. Thus, by policy, a ChatGPT output cannot be a final draft or record memorializing final agency action by Metro. Rather, pursuant to Metro's policy, a ChatGPT output is always a preliminary draft. Accordingly, the ChatGPT outputs are also exempt under KRS 61.878(1)(i).[2]

The Appellant's reliance on 18-ORD-182 is inapposite. That decision concerned whether an agency could withhold, under KRS 61.878(1)(j), communications with individuals outside the agency. *Id.* Here, the records withheld do not include communications with external individuals. Instead, they document Metro's use of a software tool.

Altogether, the chat histories requested by the Appellant are exempt under KRS 61.878(1)(i) as either "notes" or "preliminary drafts." Thus, Metro did not violate the Act when it denied the Appellant's request under KRS 61.878(1)(i).

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.

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[2] The Office's decision should not be interpreted as finding that a ChatGPT output can never be a document memorializing final agency action. Rather, the Office's decision is informed by Metro's policy mandating subsequent human review of all ChatGPT outputs.

**Russell Coleman**
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/s/ Zachary M. Zimmerer
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