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25-ORD-378

December 1, 2025

In re: Ryan Dischinger/Louisville Metro Government

Summary: Louisville Metro Government ("Metro") violated the Open Records Act ("the Act") when it failed to explain how the cited exemptions applied to the records withheld. Metro did not violate the Act when it withheld emails exempt under KRE 503 and KRS 61.878(1)(i) and (j).

Open Records Decision

Ryan Dischinger ("Appellant") submitted a request to Metro seeking "all communications (email, text messages, signal messages, or other communication app) from officers with the Louisville Metro Police Department" ("LMPD") discussing a particular individual. In response, Metro produced two email chains, with redactions made pursuant to several exemptions. Specifically, Metro redacted dates of birth under KRS 61.878(1)(a), preliminary correspondence under KRS 61.878(1)(i), attorney-client privileged communications under KRS 61.878(1)(l) and KRE 503, and investigative reports under KRS 61.878(1)(l). This appeal followed, in which the Appellant changes Metro's redactions of preliminary and attorney-client privileged information.

Upon receiving a request to inspect public records, a public agency must determine within five business days whether to grant the request or deny it. KRS 61.880(1). If the agency chooses to deny the request, it "shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld." *Id*. An agency response denying a request for records must explain the denial by "provid[ing] particular and detailed information," not merely a "limited and perfunctory response." *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). "The agency's explanation must be detailed enough to permit [a reviewing] court to assess its claim

and the opposing party to challenge it." *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013). In the event a request implicates a great many records, an agency discharges its duty under KRS 61.880(1) by assigning the withheld records to meaningful categories, describing the nature of the documents in each category, and explaining how the claimed exception applies to the documents in each category. *See, e.g.*, 22-ORD-007 (holding an agency violated the Act when it merely stated the withheld records were exempt under KRS 61.878(1)(i) and (j) as not having been adopted as final agency action, because the agency did not describe the records withheld or the potential final action that was being contemplated).

Here, Metro's original response stated that the redacted information included "Preliminary correspondence redacted pursuant to KRS 61.878(1)(i)" and "Attorney-client privileged correspondence redacted/withheld pursuant to KRE 503 as incorporated into the Kentucky Open Records via KRS 61.878(1)(l)." Further, Metro merely labeled the redacted information as "preliminary" or an "attorney-client communication." Such a response is "limited and perfunctory" because Metro did not explain how either exemption applied to the records withheld. Therefore, Metro's initial response violated the Act.

On appeal, Metro supplemented its response and has now more fully described the records withheld and explained how KRS 61.878(1)(i) and (j) and the attorney-client privilege apply to them. Metro has explained who was involved in each email chain, a general description of the subject of the discussion, and how the relevant exemption applied to it.[1] To determine whether Metro properly invoked the claimed exemptions, the Office asked Metro to provide unredacted copies of the withheld records, *see* KRS 61.880(2)(c), and it did so. Of course, the Office cannot disclose the contents of these records. *Id*. But having reviewed the records, it is clear they all are exempt under KRE 503 and KRS 61.878(1)(i) and (j).

KRS 61.878(1)(j) exempts from inspection "[p]reliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended." This exception is distinct from KRS 61.878(1)(i), which exempts from inspection "[p]reliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public

[1] Moreover, Metro has amended its redactions so that the recipient and sender information can be seen. Metro has also unredacted the bodies of certain emails previously redacted. Any dispute regarding portions of the email chains now unredacted are moot. *See* 40 KAR 1:030 § 6 ("If the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter.").

agency." The distinction is important because 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 the first draft is always exempt under KRS 61.878(1)(i). *See, e.g.*, 21-ORD-089 (holding an 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.

Next, KRS 61.878(1)(l) operates in tandem with KRE 503 to exclude from inspection public records protected by the attorney-client privilege. *Hahn v. Univ. of Louisville*, 80 S.W.3d 771, 774 (Ky. App. 2001). The attorney work-product doctrine, on the other hand, "affords a qualified privilege from discovery for documents 'prepared in anticipation of litigation or for trial' by that party's representative, which includes an attorney." *Univ. of Ky. v. Lexington H-L Servs.*, 579 S.W.3d 858, 864 (Ky. App. 2018). "[D]ocuments which are primarily factual, non-opinion work product are subject to lesser protection than 'core' work product, which includes the mental impressions, conclusions, opinions, or legal theories of an attorney." *Id.* Records protected by the work product doctrine may be withheld from public inspection under KRS 61.878(1)(l) and CR 26.02(3). *See Univ. of Ky.*, 579 S.W.3d at 864–65.

When a party invokes the attorney-client privilege to shield documents in litigation, that party carries the burden of proof. That is because "broad claims of 'privilege' are disfavored when balanced against the need for litigants to have access to relevant or material evidence." *Haney v. Yates*, 40 S.W.3d 352, 355 (Ky. 2000)

(quoting *Meenach v. Gen. Motors Corp.*, 891 S.W.2d 398, 402 (Ky. 1995)). So long as the public agency provides a sufficient description of the records it has withheld under the privilege in a manner that allows the requester to assess the propriety of the agency's claims, then the public agency will have discharged its duty under the Act. *See City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848–49 (Ky. 2013) (providing that the agency's "proof may and often will include an outline, catalogue, or index of responsive records and an affidavit by a qualified person describing the contents of withheld records and explaining why they were withheld.").

Here, Metro explains that the County Attorney serves as the legal advisor to and representative of Louisville Metro Council members, Council staff, the Mayor's office, and the executive departments of Metro Government. *See* KRS 67C.115(5) ("The county attorney shall serve as the legal advisor and representative to the consolidated local government"); *see also* KRS 69.210 ("The county attorney shall give legal advice to the fiscal court or consolidated local government and the several county or consolidated local government officers in all matters concerning any county or consolidated local government business within their jurisdiction."). Thus, an attorney-client relationship exists between the LMPD and the County Attorney.

The redacted emails are two email chains, one concluding on August 27, 2025, and the other concluding on September 2, 2025. The Office will address each in turn.

The first redacted email in the chain is a July 29, 2025, communication that Metro states is exempt under the attorney-client privilege. As described by Metro, this email contains communications between a representative of the County Attorney's office and Metro officials "who are involved in the implementation of the Louisville Metro Government unlawful camping ordinance." Metro explains that the County Attorney representative "receives confidential information from Louisville Metro client agencies to appropriately carry out prosecution of the unlawful camping ordinance" and she in turn provides "legal impressions and advice to the client agencies." Upon review, it is clear that Metro's description of the July 29 email is accurate, and the email contains attorney-client privileged communications from the County Attorney's office to its client. As such, it is exempt.

The remaining pending redactions in the first email chain are emails dated July 31, August 26, and August 27, 2025. On appeal, Metro explains that those redactions consist of preliminary internal discussion among Metro leadership "at the pre-decisional stage" and were appropriately redacted under KRS 61.878(1)(j). The Office's review confirms this description is accurate. Each email contains

correspondence soliciting opinions on the matters discussed in the earlier July 29 communication and upcoming action related to that communication. As such, they are exempt.

Turning to the email chain concluding with a September 2, 2025, email, the redacted email includes the same July 29 and August 27 emails discussed above in the context of the August 27 email chain. For the same reasons stated above, both emails are exempt.

Next, Metro explains that it redacted names and descriptions of five individuals who were not the subject of the Appellant's request from two August 27 emails. Ultimately, Metro's redactions of these emails are not at issue because the communications themselves do not mention or discuss the individual identified in the Appellant's request. Therefore, they are not responsive to the Appellant's request and need not be produced.[2]

The remaining redactions in the second email chain are three emails dated August 29, 2025. On appeal, Metro explains that the redactions to these emails all were made pursuant to the attorney-client privilege. Each of these communications includes conversation between Metro leadership and a member of the County Attorney's office's criminal division. The emails consist of conversation regarding certain ongoing prosecutions and how they will be impacted by recent events. Upon the Office's review, it is clear the redacted portions of these emails contain information exempt under the attorney-client privilege. As such, they are exempt.

In sum, Metro did not violate the Act when it redacted emails responsive to the Appellant's request. To the extent that Metro has produced unredacted portions of the responsive emails, this appeal is moot.

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.

[2] Because the August 27 emails are not responsive to the Appellant's request, the Office need not address Metro's argument that the redactions were proper under KRS 61.878(1)(a).

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