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25-ORD-386

December 4, 2025

In re: Trisha Kaizen/Cabinet for Health and Family Services

Summary: The Cabinet for Health and Family Services ("the Cabinet") violated Open Records Act ("the Act") when it failed to properly invoke KRS 61.878(1)(h) to withhold records. The Cabinet did not violate the Act when it withheld records that are exempt from disclosure under KRS 620.050(5).

Open Records Decision

Trisha Kaizen ("the Appellant") has submitted several requests to the Cabinet seeking several categories of investigative records related to her children and her. Specifically, On October 14, 2025, she requested (1) certain records "in KAMES or any [Cabinet] benefits resource data"; (2) "all EIS records"; and (3) "[a]ll records in the TWIST system maintained by" the Cabinet. All requests were limited to records between June 1, 2024, and October 14, 2025. The Cabinet issued identical responses to each request. It denied the request under KRS 61.878(1)(h) because "the release of the records will harm the investigation by releasing information that may prevent the Cabinet from obtaining unbiased evidence." The Cabinet also denied each request as to a portion of the requested records implicated by KRS 620.050(5).[1] This appeal followed.[2]

KRS 61.878(1)(h) exempts from disclosure records of "law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the

[1] KRS 620.050 is incorporated into the Act by KRS 61.878(1)(l), which exempts "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly."

[2] The Appellant provided two additional undated requests and a Cabinet response to an October 3, 2025, request. None of those submissions were accompanied by the corresponding Cabinet response or Appellant request. As such, the Office lacks jurisdiction to adjudicate those submissions. *See* KRS 61.880(2)(a).

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 *Shively* was 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.

Turning to the merits of this appeal, in response to each request, the Cabinet states only "one of" its administrative investigations is ongoing, and "the release of the records will harm the investigation by releasing information that may prevent the Cabinet from obtaining unbiased evidence." After the 2025 amendment to KRS 61.878(1)(h), the Office explained that "an agency that states only that release of responsive records could harm it or its investigation without identifying a relationship between the records and the possible harm has not adequately invoked KRS 61.878(1)(h)." 25-ORD-290 n.6. Here, although the Cabinet has identified a harm—being prevented from obtaining unbiased evidence—the Cabinet has not explained how release of the records could pose an articulable risk of that harm.

Absent some explanation of how the release of the responsive records themselves pose the identified risk, the Office cannot find that the Cabinet has adequately invoked KRS 61.878(1)(h). Accordingly, the Cabinet's invocation of KRS 61.878(1)(h) was inadequate and violated the Act.

Next, the Cabinet explains that certain records are exempt under KRS 620.050(5). Under that statute, a "report of suspected child abuse, neglect, or dependency and all information obtained by the cabinet or its delegated representative, as a result of an investigation or assessment made pursuant to" KRS Chapter 620 "shall not be divulged to anyone except" those people listed in KRS 620.050(5)(a)–(k). Here, the Cabinet asserts that the requested records contain information made confidential by KRS 620.050(5) and that the Appellant is not a person allowed to inspect such records under KRS 620.050(5). For her part, the Appellant has not argued that she is authorized to inspect the records under KRS 620.050(5). As such, because the Appellant is not a person authorized to inspect the records under KRS 620.050(5), the Cabinet did not violate the Act when it denied a portion of her request.

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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