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25-ORD-388

December 8, 2025

In re: Brennan Crain/Glasgow Police Department

Summary: The Glasgow Police Department (“the Department”) 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

Brennan Crain (“Appellant”) submitted a request to the Department seeking (1) “calls made to 911” on either October 17 or 18, 2025, which are related to a particular “triple fatality crash,” (2) scanner traffic from the incident, and (3) “CAD reports related” to the incident. In response, the Department denied the request under KRS 61.878(1)(h), and alternatively, under KRS 61.878(1)(a). In support of its reliance on KRS 61.878(1)(h), the Department explained that disclosure would harm the agency and its investigation by “[r]evealing information to be used in ongoing and future investigative or prosecutorial actions”; “[p]otentially disclosing the identities of witnesses who have not yet been interviewed”; and “[t]ainting witness testimony by exposing details that could influence statements or recollections before formal interviews occur.” 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 *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-290.¹

Turning to the merits of this appeal, the Department maintains that disclosure would harm its investigation by revealing the “direction of the investigation, witness identities, and evidence not yet public.” The Office has found that a law enforcement agency adequately invoked KRS 61.878(1)(h) when it explained that disclosure of requested records would lead to the disclosure of witness identities not previously known to the public. *See* 25-ORD-333. On appeal, the Department adds that disclosure would “[e]xpos[e] sensitive evidence still subject to forensic analysis.” The Office has previously determined that the release of unfinished testing records would present a risk of disseminating potentially incomplete or inaccurate information to

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

the public that constitutes a risk of harm to the agency. *See* 25-ORD-094. As such, the release of the requested records “could pose an articulable risk of harm” to the Department or its investigation.² Accordingly, the Department properly invoked KRS 61.878(1)(h) to withhold and redact the requested records, and thus, did not violate the Act.³

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
Zachary M. Zimmerer
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Distributed to:

Brennan Crain
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² Additionally, the Department states that it reviewed the records to see whether partial release was possible under KRS 61.878(4). On appeal, the Department explains that the information which would harm it is “intrinsically intertwined throughout” such that “no meaningful portion could be released at that time without” implicating the relevant exemptions.

³ Because the records are exempt under KRS 61.878(1)(h), the Office need not address the Department’s alternative arguments under KRS 61.878(1)(a).