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**26-ORD-036**

February 2, 2026

In re: Kurt Alan/Louisville Metro Council

***Summary:*** The Louisville Metro Council ("the Council") did not violate the Open Records Act ("the Act") when it denied a request for an attorney-client privileged communication under KRE 503.

***Open Records Decision***

On November 10, 2025, Kurt Alan ("the Appellant") submitted a request to the Council for all emails related to the settlement of a certain lawsuit, which were sent or received by any Council member from "September 22, 2025 [through] November 10, 2025 or until the records are provided." On November 18, 2025, the Council issued a response stating there was one email responsive to the Appellant's request, which was "sent from the Jefferson County Attorney's Office to [the] Council President . . . regarding a separate civil lawsuit that referenced [the] settlement" in question. The Council asserted that the "email and its attachments are confidential attorney-client privileged communications made to render legal advice in that separate case and are attorney work product on that litigation," and thus "exempt from disclosure pursuant to Kentucky Rule of Evidence 503, as well as Civil Rule of Procedure 26.02, incorporated into the [Act] via KRS 61.878(1)(l)." This appeal followed.

Under the Act, a public agency must respond to a request for records "within five (5) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request." Here, the Appellant claims the Council violated the Act "when it failed to provide the records within 5 days." However, the first day after the Council received the request was November 11, 2025, Veterans Day, which is a legal holiday under KRS 2.110(1). The fifth business day after receipt of the request was therefore November 18, 2025. Thus, the Council's response on that date was timely.

The Appellant further claims the Council improperly asserted privilege as to the responsive email. The attorney-client privilege protects from disclosure "confidential communication[s] made for the purpose of facilitating the rendition of professional legal services to [a] client." KRE 503(b). "A communication is

'confidential' if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." KRE 503(a)(5). The privilege applies to communications between a client or representative of a client and the lawyer, KRE 503(b)(1), as well as between representatives of the client, KRE 503(b)(4). "Representative of the client" is defined broadly to include a "person having authority to obtain professional legal services, or to act on advice thereby rendered on behalf of the client." KRE 503(a)(2)(A).

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 (Ky. App. 2001). However, 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. *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, the Council described the email as a confidential attorney-client communication "made to render legal advice." This description suffices to establish that the withheld communication is protected by the attorney-client privilege.

The Appellant, however, claims the Council should have provided a redacted version of the email because communications relating to a lawsuit are "not subject to attorney-client privilege once the action is complete." But he provides no authority for that claim. "The attorney-client privilege is not contingent on actual or threatened litigation." *Collins v. Braden,* 384 S.W.3d 154, 160 (Ky. 2010). Therefore, the Council did not violate the Act.[1]

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to 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.

[1] Because the attorney-client privilege is dispositive of the issues on appeal, it is unnecessary to address the alternative basis for denial under the work product doctrine.

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