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26-ORD-097

March 16, 2026

In re: Danny Maiden/Kentucky State Police

Summary: The Kentucky State Police ("KSP") 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. KSP also did not violate the Act when it denied a request for information. The Office cannot resolve the factual dispute about the content of the records produced.

Open Records Decision

Danny Maiden ("Appellant") submitted a request to KSP seeking "any and all documents" related to an investigation involving a specific KSP employee and Carroll County law enforcement agencies. The Appellant specified that he sought records created between May 2023 and January 29, 2026. The Appellant also requested the names of investigators or contacts at the Federal Bureau of Investigation or the U.S. Attorney's Office who assisted "on the criminal case." In response, KSP provided the Appellant with the initial Kentucky Incident-Based Reporting System ("KYIBRS") Report concerning this investigation, excluding the narrative portion. KSP explained that it was withholding the narrative portion and certain parts of the investigation file[1] under KRS 61.878(1)(h) and explained that disclosure would harm the agency and its investigation by (1) "compromising the recollections of those witnesses that investigators have not interviewed yet and those who might ultimately be testifying at trial" and (2) allowing "jurors to develop preconceived opinions regarding this incident prior to being presented with all of the relevant evidence in its entirety." This appeal followed.

[1] Specifically, KSP stated it was withholding "five audio recordings and a written complaint."

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.[2]

[2] 25-ORD-290 more fully discusses the amendments to KRS 61.878(1)(h).

Turning to the merits of this appeal, KSP explains that disclosure of the requested records would harm its investigation because they "contain[ ] interviews with possible victims, including a juvenile" and "interviews with [the] Appellant." KSP explains that disclosure will "impact the memories of witnesses and make it difficult for investigators to determine whether those memories were impacted by reviewing the materials. This is particularly true here, where Appellant is one of the witnesses at issue." This articulation of harm is sufficient to invoke KRS 61.878(1)(h). KSP further explains that disclosure "could potentially hamper the investigation by giving the public and potential defendants insight into the status and direction of the investigation." 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 expose ongoing leads not yet known to the public. *See* 25-ORD-177. Thus, the Office finds that the release of the requested records "could pose an articulable risk of harm" to KSP or its investigation. Accordingly, KSP properly invoked KRS 61.878(1)(h) to withhold and redact the requested records, and thus, did not violate the Act.

The Appellant also complains that the KYIBRS report was "incomplete" and contained "false information." KSP disputes both claims and explains that that it produced the KYIBRS report as it existed on the date of its response to the Appellant's request. Thus, a factual dispute exists between the parties as to the content of the redacted material. The Office cannot resolve factual disputes between a requester and a public agency about the content of the records produced. *See, e.g.*, 26-ORD-017; 22-ORD-246; 22-ORD-010; 19-ORD-083; 03-ORD-061; OAG 89-81. Here, therefore, the Office cannot resolve the factual dispute between the parties or find that KSP violated the Act.

Finally, the Appellant asserts that he is entitled to "know who has work[ed] on this case and the name of the prospective prosecutor." For its part, KSP maintains that this is a request for information that need not be granted. The Office agrees. The Act does not require a public agency to create a record to satisfy a request. *See, e.g.*, 24-ORD-278; 24-ORD-229; 16-ORD-052. Further, the Act does not require a public agency to fulfill requests for information. Rather, the Act only requires public agencies to produce extant public records for inspection. *See* KRS 61.872(2)(a) (requiring a request to inspect records to include, inter alia, a description of "the records to be inspected"). The final part of the Appellant's request sought the names of individuals associated with the identified investigation. Because this was not a request for records, KSP did not violate the Act when it did not grant it.

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
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Distributed to:

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