



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

26-ORD-190

May 1, 2026

In re: Travon Byers/City of Frankfort

Summary: The City of Frankfort (“the City”) did not violate the Open Records Act (“the Act”) when it adequately invoked KRS 61.878(1)(h) to withhold investigatory records.

Open Records Decision

On February 26, 2026, Travon Byers (“Appellant”) submitted a request to the City seeking records of the City’s police department (“the Department”) related to the “December 9, 2025, incident and subsequent investigation that occurred on the campus of Kentucky State University.” In a timely response, the City denied the request under KRS 61.878(1)(h), explaining that disclosure would harm the Department¹ and its investigation by “identify[ing] trial witnesses and expos[ing] them to undue influence, including threats or intimidation.” The City also explained that release of the records would disclose “investigative details” and lead to prospective jurors “form[ing] opinions prior to the presentation of evidence.” 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

¹ “An agency can assert an exemption on the behalf of another agency; however, the agency asserting the exemption on behalf of another agency must still meet the requirements to assert the exemption.” 15-ORD-038 (finding that a local agency could invoke KRS 61.878(1)(h) to withhold records that would harm a KSP investigation). Here, the question on appeal is whether the Sheriff’s Office properly invoked KRS 61.878(1)(h).

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

Turning to the merits of this appeal, the City explained that disclosure of the requested records would expose potential witnesses to threats or intimidation and would prejudice prospective jurors. 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. *See* 25-ORD-333.

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

Accordingly, the City³ properly invoked KRS 61.878(1)(h) on behalf of the Department to withhold the requested records, and thus, did not violate the Act.⁴

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
Assistant Attorney General

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Distributed to:

Travon Byers, Appellant
Derrick Napier, Frankfort Police Department, Chief
Scott Tracy, Frankfort Police Department, Assistant Chief
Laura Ross, Frankfort City Solicitor
Chermie Maxwell, Frankfort City Clerk

³ After this appeal was initiated, the City stated that it would be providing the Appellant with redacted records because the Commonwealth's Attorney confirmed that he would not be taking action regarding the underlying matter, meaning the records are no longer exempt under KRS 61.878(1)(h).

⁴ The City separately denied the request because all requested records had been provided to the Commonwealth's Attorney's Office and are therefore exempt *in toto* under KRS 61.878(1)(h) as litigation records. KRS 61.878(1)(h) separately provides that "records or information *compiled and maintained* by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the [Act] and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action." The Office has previously stated that this portion of KRS 61.878(1)(h) "only applies to records requested from the prosecutor." 24-ORD-126 (citing *City of Fort Thomas*, 406 S.W.3d at 850 n.5). Importantly, this portion of KRS 61.878(1)(h) only exempts records that have been "compiled *and* maintained" by county attorneys or Commonwealth's attorneys. Records compiled or maintained by the City (or the Department) are not records "compiled and maintained" by a county attorney or Commonwealth's attorney, even if copies are eventually provided by the City to a county attorney or Commonwealth's attorney. Here, however, because the City adequately explained how disclosure of the records would harm its Department's investigation, the Office need not determine whether it could have properly withheld the records on this basis.