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26-ORD-197

May 6, 2026

In re: Jamie Wilkinson/Cabinet for Health and Family Services

Summary: The Cabinet for Health and Family Services (“the Cabinet”) did not violate the Open Records Act (“the Act”) by denying a request for copies of public records pertaining to an ongoing administrative adjudication pursuant to KRS 61.878(1)(h).

Open Records Decision

On February 24, 2026, Jamie Wilkinson (“the Appellant”) submitted a request to the Cabinet’s Department for Community Based Services (“DCBS”) for copies of “[a]ll records pertaining to any Cabinet for Health and Family Services (CHFS) / Department for Community Based Services (DCBS) intake report, referral, investigation, or assessment in which Jamie Francis Wilkinson . . . or Accent Therapeutic Services, PSC is identified as a subject, alleged perpetrator, or person of interest, including but not limited to” six categories of records and information, from January 1, 2025, to the date of the request.¹ The Appellant further stated that his request relates to a case that is currently pending in the Boone County Family Court involving a named juvenile and that he is the subject of the investigation. The Cabinet denied the Appellant’s request on February 25, 2026, pursuant to KRS 61.878(1)(h), advising that premature disclosure of these records would harm the ongoing investigation by revealing information such as “names of involved persons and pertinent details unknown to potential witnesses. Disclosing this information will deprive the Cabinet and the relevant law enforcement agencies the opportunity to receive untainted information from potential witnesses and the subjects of the investigation.”

¹ In particular, the Appellant requested: (1) the intake or referral document(s) containing the specific allegations received; (2) the date(s) received; (3) the identity of the reporting party to the extent permitted by law; (4) any screening or classification decisions; (5) any investigative findings, disposition, or current status; and (6) any correspondence or documentation generated in connection with the investigation.

On March 31, 2026, the Appellant submitted a new request, asking for copies of “[a]ll intake reports, investigation records, assessment records (ADTs/SDM), case notes, contact logs, disposition letters, notification letters, and TWIST system entries associated with the following individual ID numbers for subject Jamie Francis Wilkinson. . . .”² The Appellant noted that both individual ID numbers “were read into the public record on March 26, 2026, in Boone County Family Court. . . . I am the named subject of all records associated with both ID numbers.” Later that day, the Cabinet again denied his request under KRS 61.878(1)(h) for the same reasons previously identified. This appeal followed.

The Appellant maintains that KRS 61.878(1)(h) is “expressly time-limited” and “only applies when disclosure would harm a prospective enforcement action.” In his view, the Cabinet’s “DNA-1 Petition” filed in the related pending case in Boone County Family Court “is the enforcement action. It is now pending before the court. The investigative phase has concluded. There is no prospective action remaining to be harmed.” The Appellant contends that, “[o]nce a petition has been filed, the rationale for withholding investigative records—to prevent tainting of witnesses before a decision to prosecute—no longer applies.” However, the Appellant’s argument is contrary to controlling legal authority.³

On appeal, the Cabinet first emphasizes that KRS 61.878(1)(h) exempts from disclosure records that agencies involved in administrative adjudication have compiled in the process of detecting and investigating statutory or regulatory violations if disclosure of the information contained therein “*could pose an articulable risk of harm to the agency or its investigation* by revealing the identity of informant[s] or witnesses not otherwise known or by premature release of information to be used in adjudication” (emphasis added). Because the Cabinet is a public agency involved in administrative adjudication here, it focuses on demonstrating the potential harm that could result from disclosure of the records in dispute, stating:

² On appeal, the Appellant explains that he is the “named subject of all records associated with both individual ID numbers” and the “second individual ID number exists because a prior intake report contained an incorrect date of birth for Appellant, resulting in a duplicate individual record in the TWIST system.”

³ The Appellant further argues that he is the “Subject of the [r]ecords, not a Witness or a [T]hird party,” and the Cabinet has “Represented These Records as Publicly Accessible” because the Cabinet has released the records via the online portal to the Boone County Attorney prosecuting the circuit court action. Under KRS 61.884, “[a]ny person shall have access to any public record relating to him or in which he is mentioned by name, upon presentation of appropriate identification, *subject to the provisions of KRS 61.878*” (emphasis added). The Appellant contends that he is entitled to copies of the records because he is the subject of the investigation records. However, KRS 61.884 only makes the records available “subject to the provisions of KRS 61.878.” Because the Office has concluded that the Cabinet has adequately invoked KRS 61.878(1)(h) to justify its denials of the Appellant’s requests, KRS 61.884 does not require disclosure of the records. 26-ORD-156.

Here, the requested records are being compiled for the agency's adjudication of abuse and neglect allegations, and the action is still prospective since a determination has yet to be made. Prematurely releasing these records to the Appellant could harm the investigation since there are pertinent details unknown to him and other potential witnesses. The Cabinet strives to receive the most accurate information regarding any allegations to a specific case. The Appellant's access to the records, while the investigation is ongoing, runs the risk of biased and tainted statements from other witnesses in his proximity. This has the possibility of undermining the credibility of the Cabinet's investigation. This risk is further supported as the Appellant has the ability to be in communication with individuals in the alleged victim's life who may have pertinent information to this investigation, as well as Appellant's proximity to employees of Accent Therapeutic Services. Furthermore, enforcement action may be brought for multiple reasons prior to the investigation closing, such as to protect the imminent safety of a minor victim or encourage compliance with the investigation.

Alternatively, the Cabinet argues the records are preliminary and exempt from disclosure under KRS 61.878(1)(i) and (j) because it has not made a final decision or taken any final action regarding the investigation. Because KRS 61.878(1)(h) is controlling here, discussion of the Cabinet's alternative grounds for denial is unnecessary.

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-290.⁴ Thus, the agency invoking KRS 61.878(1)(h) must only explain the *possibility* that disclosure of the information contained in the responsive records could harm it or the investigation.

To justify invocation of KRS 61.878(1)(h) here, the Cabinet has established the records responsive to both of the Appellant’s requests “are being compiled for the agency’s adjudication of abuse and neglect allegations, and the action is still prospective since a determination has yet to be made.” The Appellant does not dispute that the Cabinet is an administrative agency that is currently involved in administrative adjudication; rather, his argument focuses on whether the Cabinet has adequately demonstrated the potential harm that *could* result from the premature disclosure of those records. According to the Cabinet, “[t]he Appellant’s access to the records, while the investigation is ongoing, runs the risk of biased and tainted statements from other witnesses in his proximity. This has the possibility of undermining the credibility of the Cabinet’s investigation.” In addition, the Cabinet notes the Appellant “has the ability to be in communication with individuals in the alleged victim’s life who may have pertinent information to this investigation, as well as Appellant’s proximity to employees of Accent Therapeutic Services.”

The Office has previously recognized that a public agency satisfied its burden of proof relative to KRS 61.878(1)(h) by explaining that premature disclosure of the records in dispute could prejudice the recollections of potential witnesses. 26-ORD-156; 26-ORD-097; 25-ORD-290. Here, the Cabinet further justifies invocation of KRS 61.878(1)(h) by explaining that “enforcement action may be brought for multiple

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

reasons prior to the investigation closing, such as to protect the imminent safety of a minor victim or encourage compliance with the investigation.” Accordingly, the Office finds the Cabinet has adequately demonstrated the harm that could result from premature disclosure of the records in dispute as necessary to justify its denial of the Appellant’s requests under KRS 61.878(1)(h).⁵

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.

Russell Coleman
Attorney General

/s/ Michelle D. Harrison
Michelle D. Harrison
Assistant Attorney General

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Distributed to:

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⁵ On April 30, 2026, the Appellant sent a “Supplemental Submission” to the Office that he alleged was “directly relevant” to his pending appeal; however, the Appellant made claims regarding a new request he submitted to the Cabinet on April 21, 2026, after he initiated this appeal. Under KRS 61.880(2)(a), the Office’s review is limited to the Cabinet’s response to the Appellant’s February 24 and March 31, 2026, requests.