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26-ORD-237

May 26, 2026

In re: Jamie Sloan/London City Council

Summary: The London City Council (“the Council”) violated the Open Records Act (“the Act”) when it denied a request for records without explaining how the attorney-client privilege applied to the records it withheld. On appeal, the Council met its burden of proof that certain records were protected by the attorney-client privilege. The Council did not violate the Act when it did not provide correspondence with private individuals exempt under KRS 61.878(1)(i).

Open Records Decision

On February 12, 2026, Jamie Sloan (“the Appellant”) submitted a request to the Council seeking records dated between January 1 and February 12, 2026. That request specifically sought: (1) “communications referencing Jamie Sloan, James Keith Sloan, or the London Police Department”; (2) “communications regarding NCIC usage, JIJ access, misuse, revocation of CJIS privileges or terminals, MDTs, or any CJIS-related inquiries”; (3) “discussions, notes or communications, made before during, or after Council or 911 Board meetings regarding the topics above”; (4) “records explaining how members of the public and officials became aware of meetings concerning CJIS misuse inquiries, including any notification emails, memos, or correspondence”; and (5) “records reflecting the two-day delay in notifying the police department of an email and any related discussions or communications.” The Appellant further specified that the request only sought records related to him or the London Police Department.

In response, the Council (1) provided one responsive record, which mentioned the Appellant by name, and (2) provided four nonexempt records responsive to the Appellant’s request for records related to the London Police Department. Otherwise, the Council stated that it was withholding communications between it and its counsel under the attorney-client privilege and KRE 503, and that it was withholding correspondence with private individuals under KRS 61.878(1)(i).

Subsequently, on March 10, 2026, the Appellant submitted a second request to the Council. This request sought: (1) “drafts of Resolution 2026-03”¹; (2) records “reviewed or relied upon in formulating the twenty-five questions referenced in Resolution 2026-03”; (3) communications “between council members, city officials, employees, or counsel, relating” to the creation of Resolution 2026-03; (4) any records “authorizing or initiating the administrative investigation referenced in the February 19, 2026, response”; (5) records “identifying the person, agency, or entity assigned to conduct the investigation”; (6) records “identifying the date the investigation commenced”; (7) “agreements, contracts, or communications with outside investigators, attorneys, consultants, or agencies retained in connection with the investigation”; and (8) “communications between the City of London and any outside entities relating to NCIC compliance, CJIS compliance, or matters involving the London Police Department.”

In response, the Council stated that it possessed no records responsive to part 1 of the request and that Resolution 2026-03 is the only record responsive to parts 4, 5, and 6 of the request. Regarding part 2 of the request, the Council stated that it was withholding correspondence with private individuals under KRS 61.878(1)(i). Regarding part 3 of the request, the Council stated that it was withholding communications between it and its counsel under the attorney-client privilege and KRE 503. Last, the Council provided records responsive to parts 7 and 8 of the request.

This appeal followed. The Appellant alleges that (1) the Council has not adequately invoked the attorney-client privilege, (2) the Council should provide redacted records rather than withholding them in their entirety, (3) additional records should have been provided, (4) KRS 61.878(1)(i) is not applicable because he believes the Council used records withheld under that exemption, (5) the Council violated the Act by stating that it did not possess a draft resolution and that a draft resolution would be exempt under KRS 61.878(1)(i), and (6) the Council cannot invoke KRS 61.872(6) to deny his requests.² The Office will address each claim in turn.

First, 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

¹ The Council also stated that any drafts would be exempt from inspection under KRS 61.878(1)(i).

² The Council stated that it “reserve[s] the right to deny future requests for the same materials under KRS 61.872(6).” Because the Council did not actually invoke KRS 61.872(6), the Office need not address the applicability of that subsection.

the lawyer, KRE 503(b)(1), as well as between representatives of the client, KRE 503(b)(4).

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 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)

When a public agency denies a request under the Act, it must give “a brief explanation of how the exception applies to the record withheld.” KRS 61.880(1). The agency’s explanation must “provide particular and detailed information,” not merely a “limited and perfunctory response.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). “The agency’s explanation must be detailed enough to permit [a reviewing] court to assess its claim and the opposing party to challenge it.” *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013).

Here, the Council, in its response to the first request, stated that the requested records involve “communications between City Council and its legal counsel” that “are protected by the attorney-client privilege.” This statement failed to provide a description of the communications with enough specificity to permit the Appellant to assess the propriety of the Council’s invocation of the attorney-client privilege. In contrast, the Council’s response to the Appellant’s second request included the same statement regarding who was involved in the communications but further explained that each communication “contain[s] legal advice in [its] entirety.” On appeal, the Council further explains that all communications withheld in response to both requests were withheld under the attorney-client because they contained legal advice. This description is sufficient to determine that the withheld emails are protected by the attorney-client privilege under KRE 503 and KRS 61.878(1)(l). See, e.g., 25-ORD-038. Accordingly, the Council did not violate the Act when it denied the Appellant’s request for those text messages.

Next, KRS 61.878(1)(i) exempts from disclosure “correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency.” The Council states that the withheld records were only those that

came from “private community members within the City of London” and did not reference the Appellant. The Appellant does not assert that the Council has withheld any communications which were “intended to give notice of final action.” Therefore, the withheld communications fall squarely within KRS 61.878(1)(i) and are exempt. *See, e.g., 25-ORD-153; 23-ORD-296; 21-ORD-248; 20-ORD-095.*

Regarding the Appellant’s assertion that the Council should have provided redacted records, the Office notes that KRS 61.878(1)(4) requires that, “[i]f any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.” The Council only withheld correspondence with private individuals under KRS 61.878(1)(i) and attorney-client privileged communications. Records exempt under those provisions are exempt in their entirety. Therefore, the Council did not violate the Act when it did not provide redacted records.

Next, the Appellant asserts that the Council should have produced additional records in response to his request for records related to the Council’s investigation. For its part, the Council maintains that it has provided all responsive records it possesses.

Once a public agency states affirmatively that no additional records exist, the burden shifts to the requester to make a *prima facie* case that additional records do exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester makes a *prima facie* case that the records do or should exist, “then the agency may also be called upon to prove that its search was adequate.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341). A requester must provide some evidence to make a *prima facie* case that additional records exist, such as the existence of a statute or regulation requiring the creation of the records or other factual support for the existence of the records. *See, e.g., 21-ORD-177; 11-ORD-074.* A requester’s bare assertion that certain records exist or should exist is insufficient to make a *prima facie* case that the records actually do exist. *See, e.g., 22-ORD-040.*

To make a *prima facie* case that additional records exist, the Appellant states that some of the records provided by the Council show that there was “detailed investigative activity” and an email from the Council’s attorney discussed certain allegations in depth. The Appellant argues that there must be underlying documents to support the Council’s actions. The Office disagrees. This argument is no more than

an assertion that more records must exist. Accordingly, the Office cannot find that the Council violated the Act when it did not provide records it does not possess.

Finally, the Office finds no violation where the Council stated it does not possess responsive records but also stated that if such records existed, they would be exempt. The Council met its obligation under the Act when it explained it does not possess responsive records

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/ Zachary M. Zimmerer
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Distributed to:

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