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-246

June 2, 2026

In re: Christopher Wiest/Department of Kentucky State Police

Summary: The Kentucky State Police ("KSP") violated the Open Records Act ("the Act") by failing to either provide the requester with all existing, responsive, and nonexempt records within five business days of receiving the request or properly invoke KRS 61.872(5) by providing a detailed explanation of the cause for the delay in providing some records and the earliest date on which those records would be made available.

Open Records Decision

This appeal concerns two requests submitted by Christopher Wiest ("the Appellant") on February 20, 2026.

The Appellant's first request sought "[a]ny/all documents, documentation, audio, video, photos for the investigation of the shooting of Douglas Harless, including the complete investigative file." In response, KSP stated that request implicated "75 GB of potentially responsive records," which would need to be reviewed for responsiveness and to determine whether redactions to protect individuals' privacy or to prevent harm to KSP's investigation were necessary. KSP stated that it would issue a final response on April 10, 2026. This appeal followed.

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request or deny it and explain why. KRS 61.880(1). A public agency may also delay access to responsive records if they are "in active use, storage, or not otherwise available." KRS 61.872(5). A public agency that invokes KRS 61.872(5) to delay access to responsive records must, within five business days of receipt of the request, notify the requester of the earliest date on which the records will be available and provide a detailed explanation for the cause of the delay. *Id.*

Under KRS 61.880(4), a person who feels the intent of the Act has been subverted, short of denial, may seek the Attorney General's review. Such violations include "delay past the five (5) day period described in [KRS 61.880(1) and] excessive extensions of time." *Id.* Given that a public agency may delay access to records beyond five business days if it provides the requester the earliest date on which records will be available and a detailed explanation for the cause of delay, KRS 61.872(5), this Office has recognized that the length of delay is a question of reasonableness in light of the request at issue and the agency's explanations. *See, e.g.*, 22-ORD-176.

In determining whether a delay is reasonable, this Office has previously considered the number, location, and content of the records. *See, e.g.*, 01-ORD-140; OAG 92-117. In this analysis, the content of the records may be relevant if the records contain both exempt and nonexempt information because the law governing the confidentiality of the records is also an important factor. *Id.* Some laws require confidentiality and can carry consequences for public agencies that fail to adhere to strict confidentiality. Others do not. *Compare* 20 U.S.C. § 1232g (tying continued federal funding to confidentiality compliance) *with* KRS 61.878(1)(a) (exempting personally private information from inspection, but imposing no consequences for the failure to protect that information).[1] Weighing these factors is a fact-intensive inquiry. Some delays are warranted. *See, e.g.*, 12-ORD-097 (finding a six-month delay to review over 22,000 emails to be reasonable). Some delays are not. *See, e.g.*, 01-ORD-140 (finding a two-week delay to produce three documents to be unreasonable). At all times, however, a public agency must substantiate the need for any delay and that it is acting in good faith. *See* KRS 61.880(2)(c) (placing the burden on the public agency to substantiate its actions).

To support its delay, KSP explains that the requested records amount to almost 1,200 pages of records in the investigative file, 1,246 photographs, and 11.5 hours of video.[2] KSP stated that it would need to review those records and redact materials that may be exempt under KRS 61.878(1)(h) and KRS 61.878(1)(a).

In response, the Appellant correctly points out that KSP has not explained the basis of its invocation of KRS 61.878(1)(h). Specifically, the Appellant states that a Laurel County Grand Jury returned a "no true bill" in the underlying matter, meaning KRS 61.878(1)(h) is unapplicable. In response, KSP states that it has not determined whether any redactions are necessary, but rather, was explaining its need to review all records for redactions that *might* be made. The Office has

---

[1] Consider also the attorney-client privilege, KRE 503, which is incorporated into the Act by KRS 61.878(1)(l). Although there may be no loss of federal funding because of an inadvertent disclosure of privileged material, such disclosure could result in tremendous disadvantage to a public agency involved in litigation.

[2] In its original response, KSP described the volume of implicated records by data size, stating that it amounted to "75 GB" of data.

previously stated that only stating that records must be "gathered, evaluated, reviewed, and redacted" is not a sufficiently detailed response because "the Act contemplates that all those actions should be completed within five business days for every request, unless KRS 61.872(5) applies." 25-ORD-076. Therefore, the sole basis of KSP's delay is the volume of responsive records, which KSP stated will "need to be reviewed to determine *if* any information within it fell into these categories" (emphasis in original).[3]

In 23-ORD-295, the Office considered whether a 30-day delay to produce "nearly 1,000 records" was reasonable. In that decision, the Office noted that the request implicated roughly 1,000 records, some of those records were in storage, and the records contained information which the agency was prohibited from disclosing. In contrast, here, although the present request implicated more records than were at issue in 23-ORD-295, the records here do not need to be retrieved from storage and KSP has not explained that any redactions will be necessary. The Office has consistently recognized that persons requesting a large volume of records should "expect reasonable delays in records production." 12-ORD-045. Here, the Office does not doubt that the scope of the Appellant's request does require some delay. However, it is the agency's responsibility to give a detailed explanation for why its delay was reasonable. KSP's explanation was limited solely to only the number of records implicated by the request. Under the facts of this particular request, the Office concludes that KSP has not adequately explained why its 30-day delay was reasonable.

The Appellant's second request sought "[a]ny/all documents, documentation, including but not limited to emails by and between Laurel County 911 Communications Center, Kentucky State Police, CJIS, London City Police, Laurel County Sheriff's office regarding any information pertaining to the NCIC or CJIS investigation or suspension of for the London City Police Department." KSP denied this request under KRS 61.878(1)(h), stating that the identified investigation was "still active and ongoing" and disclosure "could irreparably harm the subject investigation."

Specifically, KSP stated that the "records contain factual details related to the events being investigated, including recitations of the specific conduct at issue, and conclusions reached thus far by law enforcement related to the ongoing

[3] The Office notes that, "[w]hile it may be true that records are 'not otherwise available,' within the meaning of KRS 61.872(5), if portions of them must be redacted to comply with confidentiality laws, the 'detailed explanation' that is required must include an explanation of how those confidentiality laws actually apply to the records to be redacted." 23-ORD-295. Although the Office makes no finding regarding whether any records could have been withheld or redacted under KRS 61.878(1)(h), the Office does note that mere reference to a facially inapplicable exemption will not support an agency's delay.

investigation." It further stated that disclosure would harm its investigation by (1) "compromis[ing] the recollections of those witnesses that investigators have not interviewed yet and those who might ultimately be testifying at trial"; (2) "reveal[ing] investigatory leads that could harm the investigation"; and (3) "causing the jurors to develop preconceived opinions regarding this incident prior to being presented with all of the relevant evidence in its entirety." 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 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.

Turning to the merit's of KSP's denial, it stated that its investigation could be harmed by (1) compromising witness memories, (2) revealing leads not yet known to the public, and (3) prejudicing the jury before evidence can be presented to it. The Office has found that a law enforcement agency adequately invoked KRS 61.878(1)(h) when it explained that disclosure of requested records "could compromise the recollections of witnesses or cause potential jurors to develop preconceived opinions" 25-ORD-300, or when disclosure could expose ongoing leads not yet known to the public, 25-ORD-177. And here, KSP further explains that the Federal Bureau of Investigation is investigating this matter, and disclosure of the requested records would specifically harm that investigation, as well. Because KSP has articulated the risks of harm to its investigation associated with the specific records requested, it has met its burden under KRS 61.878(1)(h). Accordingly, KSP did not violate the Act when it withheld the requested 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
Zachary M. Zimmerer
Assistant Attorney General

#240

Distributed to:

Christopher Wiest, Appellant
Sara Talarigo
Charles Bates
Captain Bradly Stotts
Sgt. Zack Morris
Emmalie K. Hankinson, Supervisor, Public Records Branch, Kentucky State Police
Jonathan Courtwright, Kentucky State Police
Ann Smith, Executive Staff Advisor, Justice
Nathan Goens
Lydia Kendrick, Kentucky State Police, Records Custodian
Caitlyn Clark