



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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26-ORD-280

June 17, 2026

In re: Daniel Woodie/Commonwealth's Attorney for the 16th Judicial Circuit

Summary: The Commonwealth's Attorney for the 16th Judicial Circuit ("the Commonwealth's Attorney") did not violate the Open Records Act ("the Act") when he denied a request that did not seek records prepared, owned, used, in the possession of, or retained by the Commonwealth's Attorney.

Open Records Decision

On May 14, 2026, Daniel Woodie ("the Appellant") submitted a request to the Commonwealth's Attorney seeking records related to a social media account on Facebook identified as "Rob Sanders Commonwealths Attorney" and "other social media accounts . . . where you or your staff purport to represent the Office of the Commonwealth's Attorney."¹

In response, the Commonwealth's Attorney explained that the Facebook account identified by the Appellant is a "political campaign page that does not belong" to it and that, instead, it would apply the Appellant's request to the Commonwealth's Attorney's Office's official social media pages that it maintains on Facebook and X.² Regarding its official social media pages, the Commonwealth's Attorney stated that it possesses no responsive records because it does not block users or delete comments. This appeal followed.

¹ Specifically, the Appellant requested: (1) a list of social media users who are blocked from seeing the identified account; (2) an archive of "all comments, posts, or threads that have been deleted, hidden, or otherwise removed from public view"; (3) any records describing "the reason for the blocking of each user or the deletion of each specific post/comment"; (4) "written policies, guidelines, or SOPs utilized by [the Commonwealth's Attorney] regarding the criteria for deleting content or blocking users on social media"; and (5) "emails, text messages, or internal memos (whether on public or private devices) discussing the decision to block specific individuals or delete specific comments."

² X is the name of the social media website previously known as Twitter.

The Appellant alleges that the Facebook account he identified is a public record belonging to the Commonwealth's Attorney. KRS 61.870(2) defines "public record" to include "all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency." A record is only a "public record" if it is "*prepared, owned, used, in the possession of or retained by a public agency.*" *Ky. Dept. of Fish & Wildlife Res. Comm. v. Ky. Open Gov't Coalition*, No. 2023-SC-0524-DG, 2026 WL 1108344, at *4 (Ky. Apr. 23, 2026). (quoting KRS 61.870(2); emphasis in original).

Thus, a record is a "public record" if it is the property of a public agency. *See* 24-ORD-118. A record is the property of a public agency, and is therefore a "public record," if the agency owns, possesses, or retains it. Further, a record can become the property of a public agency if it is used or prepared by the public agency for an official purpose. *See, e.g.*, 23-ORD-057 (holding a picture on a police officer's personal cell phone became a public record when he used it to obtain a witness's identification of a suspect that was later used to secure a search warrant). Because communications on internet-based social media accounts are stored on the social media provider's server and are merely accessed by its users through an internet browser or mobile application, they are not "owned" or "possessed" by a user. *See, e.g.*, 15-ORD-190 (finding the Kentucky Department of Education did not own or possess emails stored on local school district-owned servers even though the Department had an administrative password that permitted the Department to access the local district's emails). Nevertheless, social media communications may be "prepared," "used," or "retained by a public agency" within the meaning of KRS 61.870(2). *See* 22-ORD-184.

The definition of "public agency" under the Act includes "[e]very state or local government officer." KRS 61.870(1)(a). Thus, the Commonwealth's Attorney is a "public agency" by virtue of his office. But whether a social media account belonging to a government officer is the account of a "public agency" can be a fact-intensive inquiry. *See* 22-ORD-184 n.3. "[M]any public officials use both a 'personal' account and an 'official' account[, and] accounts not in the possession of a [public] agency or for the work [of] government, including personal accounts, are just that: personal accounts not subject to the Act." *Id.*

In 22-ORD-184, the social media account at issue was a Twitter account titled "KY Secretary of State Michael Adams," which was embedded on the homepage of the Secretary's official website. Because the account bore the Secretary's official title and was embedded on a government website, the Office found the Secretary "prepared," "used," and "retained" the posts "in his official capacity as a state officer," making them public records. *Id.* Conversely, in 24-ORD-246, the social media account at issue was a city councilwoman's personal campaign page. There, the Office reasoned that, although the account bore her official title, it was also described as a "personal page";

was not “embedded in or otherwise linked to a government website”; and had not “been used by the Councilwoman in her official capacity.” 24-ORD-246. Thus, the Office concluded that the account was not prepared, used, or retained by the councilwoman in her capacity as a local officer and was not subject to the Act. *See id.*

Here, the social media account is much more like the account at issue in 24-ORD-246. The Commonwealth’s Attorney explains that the account is “is a personal social media account maintained by [the Commonwealth’s Attorney] solely for political campaign purposes, and with respect to which no public funds are expended, and which is not used in connection with his official duties as Commonwealth’s Attorney.” Moreover, the Commonwealth’s Attorney describes the content found on that account as “campaign announcements, fundraisers and endorsements, such as would not be contained on an official business account.” As such, the Office concludes that such an account is not “prepared,” “used,” and “retained” by the Commonwealth’s Attorney “in his official capacity as a state officer,” making its contents a public record. *Id.*

The Appellant argues that the Supreme Court of Kentucky’s recent decision in *Fish & Wildlife* commands a different result. He is incorrect.

Under *Fish & Wildlife*, a record is only a public record within the meaning of the Act if it is “prepared, owned, used, in the possession of or retained by a public agency.” 2026 WL 1108344, at *4 (quoting KRS 61.870(2); emphasis omitted). But the social media account at issue is not “prepared, owned, used, in the possession of or retained by” the Commonwealth’s Attorney. Accordingly, the Commonwealth’s Attorney’s campaign Facebook account is not subject to the Act, and so he did not violate the Act when he did not provide records related to that account.³

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.

³ The Appellant also asserts that *Lindke v. Freed*, 601 U.S. 187 (2024), requires the Office to conclude the Facebook account at issue is a public record. The issue in that case was whether public officials who blocked individuals from viewing their personal social media accounts had engaged in state action subject to the requirements of the First Amendment. That decision has no impact on whether a record is a “public record” under the Act.

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/s/ Zachary M. Zimmerer
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Distributed to:

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