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26-ORD-301

July 9, 2026

In re: Kurt Wallace/Kentucky Association of Counties

Summary: The Kentucky Association of Counties ("KACo") violated the Open Records Act ("the Act") when its initial response did not adequately explain how the attorney-client privilege applied to the records it withheld. On appeal, KACo met its burden of proof that certain records were protected by the attorney-client privilege. KACo did not violate the Act when it did not provide records it does not possess.

Open Records Decision

On April 28, 2026, Kurt Wallace ("the Appellant") submitted a request to KACo for 17 categories of records "concerning legal services, payments, contracts, communications, assignments, claims, insurance defense, representation, or other services involving" five Bullitt County public agencies[1] and nine "VP Law-related persons or entities"[2] named in the request, for the period of January 1, 2025, through April 28, 2026.

KACo received the Appellant's request on April 29, 2026, and sent a timely response by letter dated May 6, 2026, citing KRS 61.872(5) and explaining that it does not store "litigation records" onsite but was "in the process of retrieving these records from the KACo All Lines Fund Trust [('KALF')] third[-]party administrator." KACo advised that, upon receipt of these records, it would "review the files, and

[1] The Appellant stated that he was referring to records "concerning any of the following": (1) Bullitt County Fiscal Court; (2) Bullitt County Attorney; (3) Bullitt County Sheriff; (4) Bullitt County Clerk; (5) Bullitt County Circuit Court Clerk; and (6) "any officer, employee, department, office, agent, insurer, representative; or contractor acting for or on behalf of any of the above."

[2] The Appellant defined "VP Law-related persons or entities" to include any of the following: (1) Carole Petitt; (2) VPLaw; (3) VP Law; (4) Vaughn Petitt Legal Group, PLLC; (5) Vaughn Petitt Legal Group; (6) Kimberly Shobe; (7) Matt Bestin; (8) Matthew Bestin; and (9) "any email address, domain, invoice, contract, payment record, engagement record, or communication using or referring to 'vplegalgroup,' vplegalroup,' ''VP Law,' 'VPLaw,' 'Vaughn Petitt,' 'Carole Petitt,' 'Kimberly Shobe,' or 'Matt Bestin.'"

determine which records, if any, are exempted from inspection (KRS 61.878 and KRS 65.312) and not subject to disclosure" under the Act. Further, KACo agreed to provide the Appellant with copies of responsive and nonexempt records no later than June 5, 2026. Following email correspondence between the parties, KACo provided the Appellant with copies of certain records that were readily available on May 7, 2026, including: (1) the KALF Approved Attorney Roster; (2) KALF Litigation Protocol; (3) Initial Litigation Plan – Exhibit A; (4) Quarterly Status Report – Exhibit B; (5) Mediation Report – Exhibit C; (6) Pretrial Report – Exhibit D; and (7) KALF Legal Billing Policy – 2025 Rates. On May 28, 2026, KACo sent its final response to the Appellant, including two files containing the remainder of the responsive and nonexempt records, specifically, 197 pages of KACo staff emails and 495 pages comprising the related case files.

In addition, KACo stated it was withholding "the remaining material" under KRS 61.878(1)(l) and KRE 503, "including the 'Work Product' doctrine and the 'Attorney-Client' privilege," citing prior decisions by the Office in further support of its position. KACo stated these records "contain communications between the attorney and client and reflect notes, working papers, memoranda or similar materials." Citing KRS 61.878(1)(a), KACo advised it had redacted "personal cell phone numbers, tax identification numbers, drivers' license numbers, dates of birth, and personal addresses" because those items of information "are personal to the individual."[3]

Last, KACo stated that it "located no other records" responsive to the Appellant's request. The Appellant subsequently acknowledged receipt of KACo's "partial response" on June 3, 2026, but stated that KACo had failed to identify the specific records being withheld and segregate the nonexempt portions of any existing, responsive records instead of denying access entirely; he further argued that KACo has a "duty to provide the insurance records in the ordinary course of business." In response, KACo advised that its May 28, 2026, reply "serves as KACo's full and complete response." This appeal followed.

On appeal, the Appellant challenges KACo's "partial denial, blanket withholding, inadequate exemption explanation, failure to segregate [nonexempt] material, and unsupported" assertion that it does not possess additional records responsive to his April 28 request. In his view, records that KACo has produced

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[3] KRS 61.878(1)(a) exempts from disclosure "[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." This exemption permits the categorical redaction of "discrete types of information routinely included in an agency's records and routinely implicating similar grounds for exemption," including date of birth, Social Security number, driver's license number, and home address. *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 89 (Ky. 2013); 26-ORD-127; 20-ORD-043. The Office has also recognized that personal telephone numbers and private email addresses may be categorically redacted. 20-ORD-043; 16-ORD-205.

confirm that "additional responsive records exist or should exist."[4] After identifying six examples of such emails,[5] the Appellant states that "other" emails produced "show KACo/Charles Taylor/VP Law assignments, reservation-of-rights communications, legal-defense coordination, claim setup, counsel assignment, and case management for Bullitt County matters." The Appellant maintains that these emails "prove" that responsive "assignment, claim, billing, legal-service, matter-number, source-of-funds, authorization, payment, and accounting records either exist, existed, are accessible [by] KACo, or are held by a custodian" that KACo was required to identify.[6] The Office disagrees.

On appeal, KACo reiterates that it has provided the Appellant with copies of "all responsive records within KACo's files, with the exception of those records that are exempt under the 'Work Product' doctrine and the 'Attorney-Client' privilege." Regarding the records it withheld, KACo provides the following additional context:

> KACo, on behalf of KALF, assigns defense counsel to KALF clients as appropriate and in accordance with KALF client insurance policies. Upon a matter being assigned to defense counsel, defense counsel is obligated to follow the "KALF Litigation Protocol" and file, as appropriate, an "Initial Litigation Plan," "Quarterly Status Reports," "Mediation Reports" and "Pretrial Reports." These documents provide KACo and Charles Taylor, the KALF Third Party Administrator, with

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[4] Under the circumstances presented, the Office's duty is not "to conduct an investigation in order to locate records whose existence or custody is in dispute," 01-ORD-36, nor is the Attorney General "empowered to substitute its judgment for that of a public agency in deciding which records are necessary to ensure full accountability." 08-ORD-206; 19-ORD-234; 12-ORD-231.

[5] The Appellant cites the following examples:

1. January 22, 2025: Crystal Hellard of KACO emailed Carol Petitt asking: "Can you assist Bullitt County with this pre-litigation matter/preserve evidence, please?" The subject was "NEW ASSIGNMENT — Charles Michael & Kurt Wallace v. Bullitt County Sheriff's Office & Detention Center, et al." Carol Petitt responded: "Yes ma'am, thank you!";
2. January 22, 2025: Jeremy Russell of Charles Taylor identified claim numbers for the Charles Michael and Kurt Wallace assignments: GC20241686846 and GC20241686847.
3. January 27, 2026: Crystal Hellard of KACO emailed Jeremy Russell, copying Carol Petitt and Kimberly Shobe, stating: "Please set up a claim, and I will assign to Carol."
4. January 27, 2026: Crystal Hellard sent Carol Petitt an "official assignment" for "Kurt Wallace v. Bullitt County Sheriff's Office, et al."
5. January 27, 2026: Jeremy Russell identified a new claim number, GC20251721155.
6. January 27, 2026: Lee Money instructed Carol Petitt and Kimberly Shobe to reference "Matter Number 7108 in LSS for billing purposes."

[6] On appeal, KACo reiterates it obtained the records it provided from its third-party administrator, Mr. Taylor, and is "unaware of any other party that would have responsive records."

> the defense attorney's viewpoint of the case at various stages of the litigation process. These evaluations, strategies, plans of action, legal theories, conclusions and mental impressions qualify as work product/attorney-client privileged material. These are the documents that KACo withheld under the "Work Product" doctrine and the "Attorney-Client" privilege. As previously noted, [Appellant] has a copy of the Litigation Protocol, and blank copies of the Initial Litigation Plan, the Quarterly Status Report, the Mediation Report and the Pretrial Report.

KACo further notes that it "does not direct, mandate, or interfere in how a county responds to" a request made under the Act.

Upon receipt of a request for public records, a public agency must decide within five business days "whether to comply with the request" and notify the requester, in writing, "of its decision." KRS 61.880(1). A public agency cannot simply ignore portions of a request. *See*, *e.g.*, 26-ORD-127; 24-ORD-086; 21-ORD-090. If the requested records exist but a statutory exception applies to justify withholding the records, the agency must cite the statutory exception and explain how it applies to records or portions thereof being withheld. KRS 61.880(1); KRS 61.880(2)(c). Conversely, if the records do not exist, then the agency must affirmatively state that such records do not exist following its diligent search. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). A public agency violates KRS 61.880(1) "if it fails to advise the requesting party whether the" records exist but discharges its duty under the Act in advising that records being sought do not exist following a reasonable search, and explaining why, if appropriate.[7] 98-ORD-154 (citation omitted); 19-ORD-234; 14-ORD-204. This KACo has done.[8]

KACo "cannot afford a requester access to a record that it does not have or that does not exist, 99-ORD-98, and the agency discharges its duty under the Open Records Act by affirmatively so stating." 26-ORD-233; 16-ORD-246 (citing 99-ORD-150). Further, a public agency is not statutorily required to "prove a negative" to refute an unsubstantiated claim that certain records exist. *Bowling*, 172 S.W.3d at 341; 26-ORD-127; 11-ORD-037. Once a public agency states affirmatively that records do not exist within its possession, custody, or control, the burden shifts to the

[7] Moreover, when some of the records have been disclosed, as in this case, the Office has generally declined to "adjudicate a dispute regarding a disparity, if any, between records for which inspection has already been permitted, and those sought but not provided." OAG 89-81; 19-ORD-234.

[8] Upon receipt of KACo's appeal response, the Appellant raised allegations of records concealment, fabrication, etc., none of which are justiciable in this forum. *See* KRS 61.880(2)(a); 18-ORD-020; 17-ORD-086; 14-ORD-083. The Office "is not empowered to resolve . . . non-open records related issues in an appeal initiated under KRS 61.880(1)." 19-ORD-234; 14-ORD-023; 99-ORD-121.

requester to make a *prima facie* case that the requested records are in the agency's possession, custody, or control. *See Bowling*, 172 S.W.3d at 341.

If the requester makes a *prima facie* case that the records do or should exist, then the public 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); 26-ORD-233. However, a requester's bare assertion that a public agency must possess the requested records is not adequate to make a *prima facie* case that the agency does, in fact, possess the records. *See, e.g.*, 25-ORD-209; 22-ORD-040. Rather, to make a *prima facie* case the agency possesses or should possess the requested records, the requester must provide a statute, regulation, or factual support for that contention. *See, e.g.*, 21-ORD-177; 11-ORD-074. "Merely asserting that additional records exist does not establish a *prima facie* case that they do or that an agency has failed to conduct an adequate search." 24-ORD-023; *see, e.g.*, 26-ORD-233; 23-ORD-042.

Here, the Appellant has not made a *prima facie* showing that KACo possesses additional, responsive records beyond those withheld under the attorney-client privilege codified at KRE 503, which is incorporated into the Act by KRS 61.878(1)(l). Even assuming the Appellant reasonably inferred that KACo should possess additional records, KACo has rebutted the presumption that it possesses those records by confirming, both initially and on appeal, that it has provided the Appellant with copies of all existing, responsive, and nonexempt records it possesses following a diligent search. *See Eplion v. Burchett*, 354 S.W.3d 598, 603 (Ky. App. 2011) (holding that "when it is determined that an agency's records do not exist, the person requesting those records is entitled to a written explanation for their nonexistence"); 24-ORD-101 (the appellant had perhaps made a *prima facie* case that minutes of a meeting *should* exist under KRS 61.835 but the agency rebutted that presumption by stating that it did not create any minutes). In the absence of any objective proof to refute KACo's position, the Office has no basis upon which to find that KACo violated the Act in this regard.

Next, the Appellant contends that KACo's "blanket denial" failed to sufficiently explain how the cited exceptions apply to categories of records it withheld and, therefore, violated KRS 61.880(1). 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). In other words, 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). A public agency is not "obliged in all cases to justify non-disclosure on a line-by-line or document-by-document basis." *City of Fort Thomas*, 406 S.W.3d at 851. Rather, "with respect to voluminous [open records] requests . . . it is enough if the agency identifies the particular kinds of records it holds and explains how [an exemption applies to] the release of each assertedly exempt category." *Id.* Of course, "if the agency adopts this generic approach, it must itself identify and review its responsive records, release any that are not exempt, and assign the remainder to meaningful categories. A category is meaningful if it allows the court to trace a rational link between the nature of the document and the alleged" exception. *Id.* (quotation omitted); 26-ORD-024.

Here, KACo's initial response cited KRS 61.878(1)(l) and KRE 503 as the bases for withholding records that "contain communications between the attorney and client and reflect notes, working papers, memoranda or similar materials." KACo did not provide any description of the contents of those communications or context by which to assess the propriety of its claim. Without any description of the content of such communications, the Office cannot assess the applicability of the attorney-client privilege. The public agency bears the burden of justifying its action. KRS 61.880(2)(c). Accordingly, KACo's initial response lacked the specificity that KRS 61.880(1) requires and violated the Act.

The attorney-client privilege exempts from disclosure "confidential communication[s] made for the purpose of facilitating the rendition of professional legal services to [a] client." KRE 503(b). KRS 61.878(1)(l) operates in tandem with KRE 503 to exclude from disclosure public records that are protected under the attorney-client privilege. *Hahn v. Univ. of Louisville*, 80 S.W.3d 771 (Ky. App. 2001). "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 the lawyer, KRE 503(b)(1), as well as between representatives of the client, KRE 503(b)(4). "Representative of the client" is defined broadly to include a "person having authority to obtain professional legal services, or to act on advice thereby rendered on behalf of the client." KRE 503(a)(2)(A).

On appeal, KACo provides the necessary context to analyze the propriety of its reliance on KRE 503 and KRS 61.878(1)(l). Upon KACo's assignment of defense counsel to a KALF client, defense counsel is obligated to follow the KALF Litigation Protocol, which includes filing certain documents, that "provide KACo and Charles Taylor, the KALF Third Party Administrator, with the defense attorney's viewpoint of the case at various stages of the litigation process." KACo clarifies that it withheld these "evaluations, strategies, plans of action, legal theories, conclusions and mental impressions qualify as work product/attorney-client privileged material." KACo has also provided the Appellant with blank copies of these documents to further demonstrate the privileged nature of the contents. Based upon the foregoing, the Office finds that KACo ultimately justified its withholding of these records under KRE 503 and KRS 61.878(1)(l). Accordingly, KACo did not violate the Act when it withheld those communications.

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.

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/s/ Michelle D. Harrison
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