



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-313

July 15, 2026

In re: Jeff Yocum/Louisville Metro Council

Summary: The Louisville Metro Council (“the Council”) did not violate the Open Records Act (“the Act”) when it withheld privileged attorney-client communications and furnished the name and location of the custodian of records maintained by another public agency.

Open Records Decision

Jeff Yocum (“the Appellant”) submitted a six-part request to the Council for records related to a civil action in which the Council was a party. Specifically, the Appellant requested (1) “[a]ll invoices, billing statements, and payment records for attorney fees, paralegal fees, and other legal services incurred by [the] Council, Jefferson County Attorney’s Office, or any outside counsel in connection with this case”; (2) “[d]etailed time records, billing entries, and attorney time sheets showing all hours billed and work performed on this matter”; (3) “[a]ll records of expenses, costs, and disbursements related to this litigation”; (4) “[a]ll contracts, engagement letter, or retention agreements with any outside attorneys or law firms hired for this case”; (5) “[a]ny and all internal memoranda, emails, or correspondence discussing the decision to file or continue this lawsuit, including any cost estimates or budget approvals”; and (6) the “[t]otal amount of taxpayer funds expended to date on this litigation.”

In response, the Council denied item 5 of the request, stating the responsive records consisted of 15 emails that “were confidential communications between the Council and the Jefferson County Attorney’s Office rendering professional legal services and are exempt as attorney-client communication pursuant to Kentucky Rule of Evidence 503, incorporated into the Open Records Act via KRS 61.878(1)(l).” Regarding the remaining records requested, the Council stated it was “not the custodian[] of these records” but “believe[d] the custodian of these records would be the Jefferson County Attorney’s Office.” The Council provided the name, address, phone number, and email address of the contact provided on the county attorney’s website. This appeal followed.

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 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 sufficient 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) (acknowledging the agency’s “proof may and often will include an outline, catalogue, or index of responsive records and an affidavit by a qualified person describing the contents of withheld records and explaining why they were withheld”).

Here, the Council identified the privileged records as “confidential communications between the Council and the Jefferson County Attorney’s Office rendering professional legal services.” While minimal, this description suffices to establish that the records withheld under the privilege were confidential communications with attorneys in their capacity of rendering professional legal services to the Council. Accordingly, the Council did not violate the Act when it withheld those communications under KRE 503.

As to the remaining items requested, KRS 61.872(4) provides, “If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency’s public records.” Here, the Council provided the name and location of the custodian of records for the Jefferson County Attorney’s Office, which possesses the records. Under KRS 69.210(1), the Jefferson County Attorney is statutorily obligated to “institute, defend, and conduct all civil actions in which the county or consolidated local government is interested before any

of the courts of the Commonwealth.” On appeal, the Council explains that “[a]s legal counsel for Metro Council in this matter, [the county attorney’s office] provides legal services internally or retains outside counsel,” and “[a]ll billing and financial statements for legal services go directly to the [county attorney’s office] for review and payment.” The Council states it cannot “produce documents that it does not possess.”

Although the Appellant does not dispute that the Jefferson County Attorney’s Office has actual possession of the requested records, he argues the records “are constructively in the possession of” the Council because the Council is the client in the civil action. “The concept of ‘constructive possession’ has not been employed by the courts or this Office in construing the Act.” 26-ORD-162. However, the definition of “public record” under the Act is not limited to the concept of “possession,” but includes all documents “which are prepared, *owned*, used, in the possession of *or* retained by a public agency.” KRS 61.870(2) (emphasis added). Accordingly, a public agency cannot exclude records it “own[s]” from the definition of “public records” merely by placing them in the possession of a private attorney. *See, e.g.*, 24-ORD-062; 20-ORD-115; 06-ORD-032.

Here, however, the Council did not claim the records are not public records because they are possessed by a private attorney. Rather, the Council claimed another public agency, the Jefferson County Attorney’s Office, is the agency in possession of those public records. By providing the name and location of the person it believed to be the custodian of the requested records, the Council complied with KRS 61.872(4). Therefore, the Council did not violate the Act.

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/ James M. Herrick
James M. Herrick
Assistant Attorney General

#531

Distributed to:

Jeff Yocum

Nicole H. Pang, Esq.

Alice Lyon, Esq.

Annale R. Taylor, Esq.

Donald Haas, Esq.

Michael Spenlau, Esq.

Anne Coorssen, Esq.