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26-ORD-452

October 7, 2026

In re: Adam Praleikas/Cabinet for Health and Family Services

Summary: The Cabinet for Health and Family Services ("the Cabinet") violated the Open Records Act ("the Act") when it failed to properly invoke KRS 61.878(1)(h) to withhold records.

Open Records Decision

Adam Praleikas ("the Appellant") submitted a request to the Cabinet for the "[c]omplete releasable DCBS/CPS record for the report received on or about 09/03/2026 involving" the Appellant and his family, "including intake/referral, factual allegation, screening/acceptance/classification, assignments/reassignments, contact chronology, TWIST notes/service recordings, supervisory approvals, emails/communications, attempted-visit documentation, timestamps, status/disposition, and available audio/history information." The Cabinet denied the request under KRS 61.878(1)(h) on the grounds that "the premature release of information will harm the investigation." Specifically, the Cabinet stated, "[t]he documents [the Appellant] requested contain information pertinent to an ongoing investigation, including names of involved persons and pertinent details unknown to potential witnesses," and "[d]isclosing this information will deprive the Cabinet and the relevant law enforcement agencies the opportunity to receive untainted information from potential witnesses and the subjects of the investigation." This appeal followed.

KRS 61.878(1)(h) exempts from disclosure records of "law enforcement agencies or agencies involved in administrative adjudication 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 merits of this appeal, the Cabinet states that "the requested records have been compiled for the agency's adjudication of abuse and neglect allegations, and the action is still prospective since a determination has yet to be made." The Cabinet asserts that "[p]rematurely releasing these records to the Appellant could harm the investigation since there are pertinent details unknown to him and other potential witnesses," and "[t]he Appellant's access to the records, while the investigation is ongoing, runs the risk of biased and tainted statements from other witnesses in his proximity," thus "undermining the credibility of the Cabinet's investigation by making it difficult to determine the trustworthiness of witnesses who have yet to be interviewed or identified." Additionally, the Cabinet claims "prematurely releasing these records runs the risk of disseminating incomplete or inaccurate information, which can be harmful to the integrity of the Cabinet's investigation."

The potential harms identified by the Cabinet have previously been recognized as valid risks of harm to the agency or its investigation under KRS 61.878(1)(h). *See, e.g.,* 25-ORD-290. However, an agency invoking this exemption must "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 [a reviewing] court to trace a rational link between the nature of the document and the alleged likely harm to the agency." *City of Fort Thomas,* 406 S.W.3d at 851 (internal quotation omitted). Thus, even under the 2025 amendment to the Act, "an agency that states only that release of responsive records could harm it or its investigation without identifying a relationship between the records and the possible harm has not adequately invoked KRS 61.878(1)(h)." 25-ORD-290 n.6. Here, although the Cabinet has identified potential harms, it has not explained what categories of records it possesses and how the release of each category could pose an articulable risk of such harm. Absent some explanation of how the release of the responsive records themselves poses the identified risk, the Office cannot find that the Cabinet has adequately invoked KRS 61.878(1)(h). *See, e.g.,* 25-ORD-386. Because the Cabinet's invocation of KRS 61.878(1)(h) was inadequate, the Cabinet violated the Act when it denied the Appellant's request.

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/ James M. Herrick
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