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26-ORD-486

October 29, 2026

In re: Brian Chism/City of Brandenburg

Summary: The City of Brandenburg ("the City") did not violate the Open Records Act ("the Act") by withholding confidential communications made for the purpose of facilitating the rendition of legal services by counsel to its client, the City. The City's original response violated KRS 61.880(1) by failing to cite KRE 503 and explain how it applied to the records that the City was withholding.

Open Records Decision

On August 5, 2026, Brian Chism ("the Appellant") submitted a request to the City asking for copies in electronic format of "invoices and quotes from the last year that are to/from Arete Advisors LLC, as well as all written communications with this vendor to include but not limited to emails, paper documents, phone call records, text messages, etc." By letter dated August 7, 2026, the City Clerk denied the Appellant's request, advising that "Arete Advisors, LLC was hired directly by counsel for the City for an on-going legal matter that has not been resolved. The information sought is protected under KRE 503, Attorney-Client privilege." On August 20, 2026, the Appellant initiated this appeal, challenging the City's blanket denial of the request and noting that "[n]o records were produced, no records were produced in redacted or partial form, and no description was given of the volume, type, date range, or content of anything being withheld."

Under the Act, a public agency must respond to a request for records "within five (5) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request." KRS 61.880(1). A public agency response "denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld." KRS 61.880(1). The City's original response was timely and referenced KRE 503,[1] but did not provide any explanation of how

[1] KRS 61.878(1)(l) incorporates KRE 503 into the Act.

KRE 503 applied to specific records or categories thereof, as KRS 61.880(1) expressly requires. *See also* KRS 61.880(2)(c). 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, "[t]he 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). The City's original response lacked the "brief explanation" of how KRE 503 applies here, and it failed to cite KRS 61.878(1)(l), the relevant exception. Therefore, its "limited and perfunctory response" violated the Act.

However, the City has more fully explained its denial on appeal. 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). "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).

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). 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. *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848–49 (Ky. 2013) (providing that 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"); 25-ORD-077.

Upon receiving notification of this appeal from the Office, the City Attorney responded on the City's behalf, first explaining that on or about April 24, 2026, the City hired the law firm of Constangy, Brooks, Smith & Prophete, LLP ("the law firm") "to render legal advice to the City regarding compliance with regulatory and statutory obligations, including information security standards, and to mitigate the risk of third-party liability and potential litigation in connection with an actual, alleged, or potential information security incident." The law firm then "directly engaged Arete Advisors, LLC on behalf of the City of Brandenburg to assist counsel in obtaining

sufficient information to render legal advice to the City of Brandenburg." The City also briefly describes four categories of records responsive to the Appellant's request: (1) "Exhibit A, Statement of Work (Arete Advisors, LLC), which is an exhibit to the Master Services Agreement by and between the City of Brandenburg and [the] law firm"; (2) "Emails with the subject heading 'City of Brandenburg | Legal Thread | Privileged & Conf.' by and between employees of Arete Advisors, attorneys with [the law firm], and the Mayor, City Clerk, City Attorney Jessica Brown Roberts, and Chief of Police Brian Haag"; (3) "Two (2) emails with the subject heading 'City of Brandenburg | Improving Security Posture['] and attachments by and between employees of Arete Advisors, LLC and the Mayor, City Clerk, City Attorney Jessica Brown Roberts, and Chief of Police Brian Haag"; and (4) "Two invoices from Arete Advisors, LLC. A copy of the invoices [is] attached hereto and provided to the requestor, with banking, tax identification, and the scope of work redacted."

The City maintains that "[a]ny and all communication under the agreement with Arete Advisors, LLC to include, but not limited to the emails and statement of work set forth above are protected by the attorneyclient privilege, and all written documentation and reporting is protected by the attorney work product doctrine." The Office assumes that the City is also invoking KRE 503 and KRS 61.878(1)(l) to justify the redactions of information regarding the "scope of work"[2] performed from the invoices provided on appeal.

On appeal, the City has remedied the deficiencies in the original response by explaining the nature of its relationship with the law firm. The City further explains that the law firm, acting in its capacity as legal counsel for the City, hired Arete Advisors directly on the City's behalf to assist in gathering the information required for the law firm to effectively represent the City regarding its legal obligations, including compliance with information security standards, and to mitigate the risk of third-party liability or potential litigation.

In addition, the City describes the four categories of records that it withheld under KRE 503, which include a Statement of Work attached to its Agreement with the law firm and relating to Arete Advisors, and emails by and between employees of Arete Advisors (representatives of the City's legal counsel), attorneys with the law firm, and representatives of the City, specifically, the Mayor, City Clerk, City

[2] The Office has long recognized the public's right to inspect records of disbursements made by a public agency to attorneys hired to represent it. 10-ORD-130; 05-ORD-155; 00-ORD-104; 95-ORD-18; OAG 82-169. In other words, KRE 503 "does not extend to contracts and billing records of attorneys working for a public agency." 10-ORD-140; 97-ORD-66. In the event such invoices "disclose substantive matters protected by the attorney-client privilege, and exempt under KRS [61.878(1)(l)], the exempt material should be separated from the non-exempt materials, and the non-exempt materials [should be] released for public inspection [per KRS 61.878(4)]." *Id.* Here, the City failed to separate the exempt material from the responsive billing records, *i.e.*, invoices, but remedied this error on appeal by providing the Appellant with copies of those records after making permissible redactions.

Attorney, and Chief of Police. The City also withheld two specific emails, entitled "City of Brandenburg | Improving Security Posture," to and from those parties. Accordingly, these records each constitute a confidential communication from legal counsel (or its representative) to a client (or its representatives), made for the purpose of rendering professional legal services and, thus, are protected from public disclosure under KRE 503 and KRS 61.878(1)(l). The City did not violate the Act by withholding the responsive records it describes on appeal under KRE 503 and KRS 61.878(1)(l).

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/ Michelle D. Harrison
Michelle D. Harrison
Assistant Attorney General

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Distributed to:

Brian Chism, Appellant
David Pace, Mayor of Brandenburg
Amy Haynes, Brandenburg City Clerk
Jessica Brown Roberts, Brandenburg City Attorney