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-491

October 30, 2026

In re: Jennifer Mortenson/External Fatality and Near Fatality Review Panel

Summary: The External Fatality and Near Fatality Review Panel ("the Agency") did not violate the Open Records Act ("the Act") when it withheld records which are exempt from disclosure under KRS 620.055(18).

Open Records Decision

On August 10, 2026, Jennifer Mortenson ("Appellant") submitted a request to the Agency seeking "recordings of the open portion of the 2026 meetings of the External Fatality and Near Fatality Review Panel."[1] On August 18, 2026, the Agency denied the request, explaining that the recordings are confidential under KRS 620.055(18). This appeal followed.

KRS 620.055(18) provides:

> The proceedings, records, opinions, and deliberations of the external child fatality and near fatality review panel *shall be privileged* and shall not be subject to discovery, subpoena, or introduction into evidence in any civil or criminal actions in any manner that would directly or indirectly identify specific persons or cases reviewed by the panel.

(Emphasis added.) KRS 620.055(18) is incorporated into the Act by KRS 61.878(1)(l), which exempts from disclosure "records or information the disclosure of which is

[1] The Agency states that it received the request on August 11, 2026.

prohibited or restricted or otherwise made confidential by enactment of the General Assembly."[2]

The Agency explains that the records the Appellant seeks are records belonging to it, which means they are "privileged" and exempt from disclosure. For her part, the Appellant argues that KRS 620.055(18) only restricts access to records in the context of civil or criminal litigation, and so does not apply to a request made under the Act. The Appellant is incorrect. KRS 61.878(1)(l) shields any records from disclosure under the Act if access to those records have been "prohibited or restricted or otherwise made confidential" by the General Assembly. Here, the General Assembly has restricted access to and made confidential the "proceedings, records, opinions, and deliberations of the external child fatality and near fatality review panel" by designating them as "privileged." As such, they are equally exempt under the Act. Accordingly, the Agency did not violate the Act when it denied the Appellant's request under KRS 620.055(18).

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.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

[2] The Agency originally cited KRS 61.878(1)(k) to explain its invocation of KRS 620.055(18). On appeal, the Agency correctly explains that the statute is incorporated by KRS 61.878(1)(l).

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Distributed to:

Jennifer Mortenson, Appellant
Nathan Goens, Assistant General Counsel, Justice and Public Safety Cabinet
Charles Bates, Staff Attorney III, Justice and Public Safety Cabinet
Sara Talarigo, Paralegal, Justice and Public Safety Cabinet
Ann Smith, Executive Staff Advisor, Justice and Public Safety Cabinet
Angela Dunham, Assistant General Counsel, Justice and Public Safety Cabinet