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26-ORD-500

November 3, 2026

In re: Joe Sonka/Office of the Governor

Summary: The Office of the Governor ("the Agency") did not violate the Open Records Act ("the Act") by withholding in their entirety records that are exempt from inspection under KRS 61.878(1)(i).

Open Records Decision

On August 26, 2026, Joe Sonka ("Appellant") submitted a request to the Agency seeking communication records that mention "the Lee Specialty Clinic, Henry Hood or Matt Holden," which were sent or received by 12 specific individuals between April 1, 2026, and the date of the request. On September 11, 2026,[1] the Agency issued its final response, which in relevant part, withheld 29 records under KRS 61.878(1)(i) and (j), explaining that the withheld records included "draft press statements and internal recommendations." This appeal followed.

The Appellant does not challenge the Agency's reliance on KRS 61.878(1)(i) and (j). Instead, he argues that, even if the body of the Agency's communications is exempt from disclosure, KRS 61.878(4) requires it to redact the body of such communications and provide portions of email communications containing the "time/date, sender, recipient, [and] subject line" of the email.

KRS 61.878(1)(j) exempts from inspection "[p]reliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended." This exception is distinct from KRS 61.878(1)(i), which exempts from inspection "[p]reliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public

[1] The Agency delayed its final response under KRS 61.872(5). The Appellant has not challenged that delay.

agency." The distinction is important because Kentucky courts have held "investigative materials that were once preliminary in nature lose their exempt status once they are adopted by the agency as part of its action." *Univ. of Ky. v. Courier-Journal & Louisville Times Co.*, 830 S.W.2d 373, 378 (Ky. 1992). But neither KRS 61.878(1)(i) nor (j) discusses preliminary "investigative materials." Rather, KRS 61.878(1)(i) relates to preliminary drafts and notes, which by their very nature, are rejected when a final report is approved. In other words, a first draft is not "adopted" when a second draft is written, and so the first draft is always exempt under KRS 61.878(1)(i). *See, e.g.*, 21-ORD-089 (holding the agency properly relied on KRS 61.878(1)(i) to deny inspection of the "first draft" of a report that was later adopted).

The same is true of "notes," which include most interoffice emails and chat messages. *See, e.g.*, 22-ORD-176 n.6; OAG 78-626. To the extent specific thoughts or beliefs contained within drafts and notes are "adopted," they are adopted in whatever final document the agency produces from those drafts and notes. That final document represents the agency's official action and is therefore subject to inspection. But the initial and preliminary thoughts on what the final product should contain, which are expressed during the drafting process in emails, do not lose their preliminary status once the final end-product is produced. To do so would destroy the "full and frank discussion[s] between and among public employees and officials" as they "hammer[ ] out official action," which is the very purpose of KRS 61.878(1)(i). 14-ORD-014.

Under KRS 61.878(4), "[i]f any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination." The Office has previously considered whether an agency must disclose the "time/date, sender, recipient, [and] subject line" of interoffice emails between its employees. *See, e.g.*, 23-ORD-077. There, the Office concluded that:

> [T]he information the Appellant demands the University separate from the emails is itself exempt. As stated previously, the purpose of KRS 61.878(1)(i) and (j) is to allow employees to freely communicate thoughts and ideas. . . . Thus, the subject lines of emails describing the contents of opinions, drafts, or legal advice [are] part and parcel of the drafts and opinions expressed in the email. And although the identities of those who authored such drafts or expressed such opinions may not divulge as much information as the subject line, the release of such information could still burden the agency's ability to engage in frank discussions.

Id. The Office concludes the same here. The purpose of the preliminary exceptions are "[t]o preserve the integrity of a public agency's internal decision making process by promoting full and frank discussion between and among public employees and officials and by equipping them with the tools needed in hammering out official action." 14-ORD-014. Here, although the information the Appellant asserts must be disclosed would not entirely reveal the content of the Agency's internal discussions, it would undermine the ability of it to engage in "full and frank discussion[s]."

For his part, the Appellant directs the Office to its decision in 23-ORD-188. There, the appellant had requested email correspondence related to a technology audit conducted by an outside entity. The Office found that the agency had not violated the Act "by redacting under KRS 61.878(1)(i) drafts of the recommendations and key findings contained in the emails." 23-ORD-188. However, the Office also held that the agency violated the Act by redacting from email addresses the names of representatives from the auditor stating that "[t]here is nothing 'preliminary' about a person's name or email address." *Id.* Relying on this statement, the Appellant asserts that the Agency must disclose at least the names and email addresses of the parties to the requested emails.

The Appellant is incorrect. The emails at issue in 23-ORD-188 are different than both those that were at issue in 23-ORD-077 and those that are at issue in this appeal. The emails at issue in 23-ORD-188 were between public officials and outside auditors it had retained. The names of the auditors would give no insight to the content of the emails in which they were found. In contrast, the emails at issue in 23-ORD-077 and in this appeal consist solely of internal discussions among public officials. The mere fact that a public official either sent or received an email gives a degree of insight into the content of that discussion. Thus, disclosure of sender and recipient names and email addresses in the latter case can undermine the "full and frank discussion[s]" of public officials while the former does not feature the same risk. It is for that reason that the names of the agency's auditors in 23-ORD-188 were not "preliminary" but the names of parties to purely internal agency discussions in 23-ORD-077 were "preliminary." Here, the requested emails are akin to those at issue in 23-ORD-077.

At bottom, the Office's statement in 23-ORD-188 was not intended to set out a bright-line rule regarding whether names can or cannot be redacted pursuant to KRS 61.878(1)(i) or (j). Rather, whether such information is exempt from disclosure is dependent on the particular records being withheld. Moreover, the larger context

of the Office's statement in 23-ORD-188 is informative. There, the Office considered whether a public agency could redact the names of outside auditors it had retained using public funds. On that question, the Office principally viewed the issue through the lens of KRS 61.878(1)(a) and rightly stated that a "person's name is the least private thing about him and typically cannot be withheld." 23-ORD-188. Here, the Agency is not seeking to keep secret the names of individuals it has retained with public funds. Rather, it is only protecting the ability of its officials to engage in "full and frank discussion[s]." As such, the Office concludes that the Agency did not violate the Act by withholding in their entirety 29 records that are preliminary under KRS 61.878(1)(i).

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
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Distributed to:

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