



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON  
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118  
700 CAPITAL AVENUE  
FRANKFORT, KENTUCKY 40601  
(502) 696-5300  
FAX: (502) 564-2894

**20-ORD-171**

November 5, 2020

In re: Samuel Klusmeyer/Office of Attorney General

**Summary:** The Office of Attorney General (“Office”) did not violate the Open Records Act (“the Act”) when it denied a request for records contained in the criminal prosecution file created and maintained by the Office acting as a special prosecutor.

***Open Records Decision***

Samuel Klusmeyer (“Appellant”) requested from the Office records associated with the death of Ms. Breonna Taylor. Appellant gave as examples of the types of records he was seeking “audio recordings, uncompiled evidence presented and on file with the court (testimonies, statements, etc.), and any other evidence already presented to the media.” In a timely response, the Office denied the request under KRS 61.878(1)(h) because the prosecutorial files of Commonwealth’s Attorneys are categorically exempt from inspection. The Office also denied the request for records under KRS 17.150(2) due to the ongoing criminal prosecution of Brett Hankinson. *See Commonwealth v. Hankinson*, Jefferson Circuit Court Case No. 20-CR-001473.

Although Appellant initiated this appeal, he “do[es] not contest” the Office’s reliance on KRS 61.878(1)(h) to categorically deny inspection of the case file as an exempt prosecutorial file. *See City of Ft. Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 853 (Ky. 2013). Instead, Appellant expressed some confusion and believes that the relevant “prosecution has ended.” It has not. But whether or not it has ended is not dispositive of Appellant’s request.

Under KRS 61.878(1)(h) “records or information compiled and maintained by county attorneys or Commonwealth’s attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action.” Thus, KRS 61.878(1)(h) categorically exempts from inspection prosecutorial files maintained by county and Commonwealth’s attorneys regardless of the stage of the criminal proceeding.

KRS 61.878(1)(h) also permits the Office to deny inspection of its prosecutorial files. That is so because this Office is operating as a special prosecutor under KRS 15.210, and is cloaked with the same authority as the Jefferson County Commonwealth’s Attorney. *See Bowling v. Lexington-Fayette Urban County Government*, 172 S.W.3d 333, 339 (Ky. 2005) (stating that the Commonwealth’s Attorney and the Office of Attorney General “together represent the state’s prosecutorial function in this case[.]”); *see also e.g.* 17-ORD-012 (holding that this Office may rely upon KRS 61.878(1)(h) to deny inspection of prosecutorial case files created and maintained pursuant to the Attorney General’s special prosecutorial function). Therefore, even if any prosecution had concluded, as Appellant mistakenly believes, the Office could still rely upon KRS 61.878(1)(h) to deny inspection of its criminal prosecution file. Thus, the Office did not violate the Act in denying Appellant’s request.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court per KRS 61.880(5) and KRS 61.882. 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 proceeding.

Daniel Cameron  
Attorney General

/s/Marc Manley  
Marc Manley  
Assistant Attorney General

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Distributed to:  
Samuel Klusmeyer  
Charles English