



COMMONWEALTH OF KENTUCKY
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21-ORD-065

March 29, 2021

In re: Gary Woolbright/Commonwealth's Attorney for the 43rd Circuit

Summary: The Commonwealth's Attorney for the 43rd Circuit ("Commonwealth's Attorney") did not violate the Open Records Act ("the Act") when he denied an inmate's request for a record that would be contained within the Commonwealth's case files.

Open Records Decision

Inmate Gary Woolbright ("Appellant") requested from the Commonwealth's Attorney a copy of a motion allegedly made in his criminal trial in 2003. The Commonwealth's Attorney denied the Appellant's request, claiming that his files are exempt from the Act. He also stated that even if his case file were subject to inspection, the record sought either does not exist or is not in his possession.

Under KRS 61.878(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 [the Act]." Here, the Appellant seeks a motion allegedly made by the Commonwealth in the Appellant's 2003 criminal trial. If such a motion had been made, it would be contained within the Commonwealth's case files, which are categorically exempt under KRS 61.878(1)(h).¹ Therefore, the

¹ The Commonwealth's Attorney further states that this motion was made orally in chambers before the case was submitted to the jury. The Commonwealth's Attorney explained that the Appellant should obtain a copy of the video from his trial to see the oral motion. Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to present a *prima facie* case that the requested records do exist. *Bowling v. Lexington-Fayette Urban Cty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Commonwealth's Attorney admits such motion was made, but that it was done orally and that

Commonwealth's Attorney did not violate the Act when it denied the Appellant's request.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to 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 proceedings.

Daniel Cameron
Attorney General

/s/Marc Manley
Marc Manley
Assistant Attorney General

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Distributed to:

Gary Woolbright #163440
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no written record of the motion exists in its file. Therefore, the Commonwealth's Attorney has explained why no responsive record exists.