



COMMONWEALTH OF KENTUCKY  
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**22-ORD-059**

April 7, 2022

In re: Joshua Brandon/Warren County Commonwealth's Attorney

**Summary:** The Warren County Commonwealth's Attorney ("the Commonwealth's Attorney") did not violate the Open Records Act ("the Act") when he withheld records pertaining to criminal litigation under KRS 61.878(1)(h).

***Open Records Decision***

On February 22, 2022, Joshua Brandon ("Appellant") requested that the Commonwealth's Attorney provide a copy of the discovery materials in a case in which the Appellant was the defendant. The Commonwealth's Attorney denied the Appellant's request on the grounds that the requested records were records pertaining to criminal litigation, which are exempt under KRS 61.878(1)(h). This appeal followed.

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 [the Act] and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action." The Appellant argues that he should be entitled to the records because they are not "someone else's discovery" but his own. The Act, however, makes no such distinction.<sup>1</sup> *See, e.g.*, 17-ORD-061 (upholding a Commonwealth Attorney's denial of pretrial discovery request under KRS 61.878(1)(h)). Accordingly, the Commonwealth's Attorney did not violate the Act when he denied the Appellant's request for criminal litigation records under KRS 61.878(1)(h).

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<sup>1</sup> The Kentucky Rules of Criminal Procedure govern a criminal defendant's right to obtain pretrial discovery from the Commonwealth, not the Open Records Act. *See* RCr 7.24.

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 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 e-mailed to OAGAppeals@ky.gov.

**Daniel Cameron**  
**Attorney General**

/s/ James M. Herrick

James M. Herrick  
Assistant Attorney General

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Distributed to:

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