



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

22-ORD-183

September 7, 2022

In re: Lisa Marie Scott/Department of Financial Institutions

Summary: The Department of Financial Institutions (“Department”) did not violate the Open Records Act (“the Act”) when it relied on KRS 286.6-185(4) to deny a request for its correspondence closing an investigation into a credit union.

Open Records Decision

On July 15, 2022, Lisa Marie Scott (“Appellant”) submitted to the Department a request seeking “the open record regarding our complaint filed against” a specific credit union. The Department immediately responded and asked the Appellant to clarify the scope of her request. The Appellant then stated she was “inquiring what penalty” the credit union had received following a complaint the Appellant had filed.

In a timely response, the Department provided 132 pages of responsive records. However, the Department claimed that other responsive records were exempt from inspection under KRS 61.878(1)(e) and KRS 286.6-185(4) because the records related to the regulation of financial institutions. The Department withheld other responsive records that were privileged attorney-client communications or that constituted preliminary drafts, notes, or memorandums in which recommendations were expressed, under KRE 503 and KRS 61.878(1)(i) and (j), respectively. This appeal followed.

On appeal, the Appellant has not identified the records she believes to have been improperly withheld nor has she stated why she believes the Department’s denial was improper. In response to the Department, the Appellant states that the 132 documents the Department provided to her were the same documents she had sent to the Department to initiate her complaint against the credit union. Because the Appellant had told the Department she was inquiring about “the penalty” the

Department may have issued against the credit union, it appears the Appellant is appealing the Department's withholding of the closing letter it sent to the credit union closing the investigation. The Department claims that this record is exempt from inspection under KRS 61.878(1)(e) and KRS 286.6-185(4) because the record relates to the regulation of financial institutions.

KRS 286.6-185(4) provides that, “[e]very official report concerning a credit union and every report of an examination shall be prima facie evidence of the facts therein stated Such reports shall not be made public except when required in proper legal proceedings.” The Department withheld the closing letter to the credit union because “it mentioned information related to current and future examinations of the credit union.”

When interpreting statutes, the courts and this Office must strive to give every word in the statute meaning and to avoid absurd results. *See Schoenbachler v. Minyard*, 110 S.W.3d 776, 783 (Ky. 2003). Although “proper legal proceedings” is not defined by the statute, the phrase clearly does not include requests to inspect records or appeals to this Office. KRS 286.6-185(4) was enacted in 1984, after the establishment of the Act. Ky. Acts. Ch. 408 § 19. Moreover, if “proper legal proceedings” include requests under the Act, then there would be no purpose in making such reports confidential in the first place. Accordingly, the Department did not violate the Act when it withheld the closing correspondence under KRS 286.6-185(4).¹

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/Marc Manley
Marc Manley
Assistant Attorney General

¹ Because the Department properly withheld the closing correspondence under KRS 286.6-185(4) it is unnecessary to determine whether the closing correspondence could also be withheld under KRS 61.878(1)(e).

#288
Distribution:

Lisa Marie Scott
Allison E. Reed
Holly Ross