



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

24-ORD-155

July 2, 2024

In re: Makeda Charles/Jefferson County Attorney

Summary: The Jefferson County Attorney (“the County 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

Makeda Charles¹ (“Appellant”) submitted a request to the County Attorney for “unedited files” related to her criminal case; test messages, emails, zoom videos, and emails between the public defenders, prosecutors, and the judge involved in her criminal case; phone transcripts relate to her criminal case; and various court documents related to her criminal case. In response, the County Attorney stated that it possessed emails responsive to the Appellant’s request, but those emails were “compiled for the purpose of criminal prosecution” and are exempt under KRS 61.878(1)(h).² This appeal followed.

¹ The Office takes notice of its decision in 24-ORD-135 involving another appeal initiated by the Appellant. Based on the record developed in that appeal, the Office found that the Louisville Regional Airport Authority did not violate the Act when it denied a request for records because the Appellant is not a resident of the Commonwealth. The Act only gives a “resident of the Commonwealth” the statutory right to demand access to public records. KRS 61.872(2)(a). It does not, however, prohibit nonresidents from obtaining public records. Rather, “[t]he official custodian *may* require the applicant to provide a statement in the written application of the manner in which the applicant is a resident of the Commonwealth under KRS 61.870(10)(a) to (f).” *Id.* (emphasis added). Here, the County Attorney has not challenged the Appellant’s status as a “resident of the Commonwealth.” Thus, that issue is not properly before the Office and its decision in 24-ORD-135 is not dispositive here.

² The County Attorney informed the Appellant that he is not the custodian of “videos of court proceedings, or petitions, motions, and supporting documents filed in the case” and provided contact information for the Jefferson Circuit Court Clerk’s Office. *See* KRS 61.872(4) (“If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency’s public records.”).

KRS 61.878(1)(h) states that “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.” On appeal, the County Attorney explains that the emails “contained information compiled by [the County Attorney] in the course of criminal litigation.” Accordingly, the County Attorney did not violate the Act when he denied the Appellant’s request for criminal litigation records under KRS 61.878(1)(h).

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
Zachary M. Zimmerer
Assistant Attorney General

#266

Distributed to:

Makeda Charles
Alice Lyon
Nicole Pang
Natalie S. Johnson
Annale Taylor