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21-ORD-262

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In re: K.T./Lexington Police Department

Summary: The Lexington Police Department (“the Department”) did not violate the Open Records Act (“the Act”) when it redacted portions of body-worn camera video that depicted uncharged suspects, witnesses to the event, or the personally identifiable information of a juvenile. The Department also did not violate the Act when it was unable to provide the first 30 seconds of audio for each video.

Open Records Decision

K.T.¹ (“the Appellant”) submitted a request to the Department in which she sought all body-worn camera video (“video”) depicting an altercation between her juvenile son and a Department officer. The altercation occurred while the juvenile was in the custody of Department officers. In a timely response, the Department provided the Appellant with fifteen video files. However, discrete portions of the videos were blurred such that the Appellant could not see certain events being depicted. In its response, the Department explained that it had blurred certain portions of the videos under KRS 61.878(1)(a), such as the interior of police officer vehicles while the officers were in transit or reviewing information on their mobile computers, the completion of paperwork, and “matters unrelated to the requested incident.” The Department also explained that the first 30 seconds of each video did not

¹ This appeal involves records associated with the arrest of a juvenile. This Office declines to publish the full name of the Appellant, who is the mother of the juvenile, because release of the Appellant’s name could identify the juvenile. Cf. KRS 610.340(6) (“No person . . . shall disclose any confidential record or any information” contained within confidential juvenile court records”).

contain audio because the body-worn cameras “have a buffering capability” in which the camera retrieves and preserves video for the 30 seconds prior to the officer actually turning on the camera. “As a result, the audio during this timeframe does not exist and cannot be retrieved[.]” This appeal followed.

Once a public agency states affirmatively that it does not possess responsive records, the burden shifts to the requester to present a *prima facie* case that requested records do exist in the possession of the public agency. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov.*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester is able to make a *prima facie* case that the records do or should exist, then the public agency “may also be called upon to prove that its search was adequate.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341).

Here, to establish her *prima facie* case, the Appellant argues that the cameras were on because video exists for 30 seconds, yet no audio exists. But the Department has rebutted the Appellant’s *prima facie* case by explaining that the cameras are only capable of retrieving video that was preserved 30 seconds prior to an officer turning on the camera. Audio is not recorded prior to the officer turning on his camera. Thus, the Department has adequately explained why none of the videos contain audio for the first 30 seconds of the videos.²

The Appellant also claimed that the Department had blurred “the faces” of officers involved in the incident. The Department, however, stated that it did not blur “the faces” of the officers. Instead, under KRS 61.878(1)(a), the Department placed a filter on the video that blurred portions from view because the Department claimed that release of those portions would constitute an unwarranted invasion of personal privacy.

Public records that contain “information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy” are exempt from disclosure under KRS 61.878(1)(a). To determine whether a record may be properly redacted or withheld under KRS 61.878(1)(a), this Office measures the public’s right to know that public agencies are properly executing their functions against the “countervailing public interest in personal privacy” when the records in dispute contain

² The audio was absent for exactly 30 seconds at the beginning of both the redacted and unredacted videos provided to this Office. It appears that the absence of audio is indeed a technical limitation of the camera, and that the audio was not intentionally redacted by the Department.

information that touches upon the “most intimate and personal features of private lives.” *Ky. Bd. of Examiners of Psychologists v. Courier-Journal and Louisville Times Co.*, 826 S.W.2d 324, 328 (Ky. 1992). This balancing test requires a “comparative weighing of the antagonistic interests. Necessarily, the circumstances of a particular case will affect the balance [T]he question of whether an invasion of privacy is ‘clearly unwarranted’ is intrinsically situational, and can only be determined within a specific context.” *Id.* at 327-28.

To be sure, there are certain categories of personal information that public agencies may categorically redact. In *Kentucky New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76 (Ky. 2013), the Kentucky Supreme Court recognized that private citizens’ addresses, telephone numbers, social security numbers, and driver’s license numbers will hardly ever provide insight into whether a public agency is properly executing its function. The Court also recognized that law enforcement agencies could redact from public records information related to witnesses, uncharged suspects, and juveniles. *Id.* at 86.

Under KRS 61.880(2)(c), this Office asked the Department to provide copies of the videos in both redacted and unredacted form to determine whether the Department’s redactions were justified. This Office carefully reviewed the videos. Although this Office cannot disclose the contents of the videos, this Office’s review of the videos confirms that the Department blurred the following events: a traffic stop immediately prior to the incident involving the juvenile in which the driver’s vehicle was mistaken for the juvenile’s vehicle and the driver was released without citation;³ the interior of police vehicles both when an officer was accessing his mobile computer and while in transit to the scene; interviews with witnesses on their porches or inside their homes; and a portion of the screen that depicted the uniform citation involving the juvenile while the officer completed the citation. The officers’ faces were never singled out for redaction, and their faces were only blurred when the full screen was blurred while one of the events described above was occurring. No portion of the actual altercation between the officer and the juvenile was blurred.

³ This portion of the video lasted approximately seven minutes, and the audio was also redacted. For the remaining events, the video was blurred but the audio was provided to the Appellant. On careful review, it is understandable that a viewer might believe that the seven minutes of video depicted the juvenile and his vehicle because the vehicles are similar. It is for that reason that this uncharged suspect’s vehicle was stopped.

As stated in *Kentucky New Era*, information related to witnesses and uncharged suspects may be redacted from public records under KRS 61.878(1)(a). 415 S.W.3d at 86. Under this authority, the Department did not violate the Act when it blurred the faces of witnesses, and redacted that portion of the video depicting an exchange with an uncharged suspect. *See also* KRS 61.168(4)(h) (granting a law enforcement agency discretion to decline inspection of body-worn camera video that depicts the identities of witnesses). In addition, the video depicting the interior of police cars while the vehicles were in transit was unresponsive to the request.

Finally, the Office observed that the videos were blurred when the officer used his mobile computer to obtain information about the juvenile, and when the officer used such information to complete his uniform citation for the juvenile. Juvenile court records, such as the citation at issue here, must remain confidential under KRS 610.340. The same personally identifiable information about the juvenile also appeared on the computer in the officer's vehicle. For these reasons, the Department did not violate the Act when it blurred this information from view.⁴

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 accepts notice of the complaint through e-mail to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

/s/Marc Manley
Marc Manley
Assistant Attorney General

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⁴ Although not raised by the Department, KRS 61.168 is the specific statute that relates to public inspection of body-worn camera video. Although under KRS 61.168(4)(f), body-worn camera video depicting "a minor child, including but not limited to footage involving juvenile custody matters" is exempt from inspection, the parents of the minor may inspect such video on the premises of the law enforcement agency. KRS 61.168(5)(d).

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Distributed to:

K.T.

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