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22-ORD-061

April 7, 2022

In re: WDRB News/Louisville Metro Police Department

Summary: The Louisville Metro Police Department (“the Department”) violated the Open Records Act (“the Act”) when it withheld records related to the location of gunshot detecting microphones in Louisville that are in plain view on the public streets.

Open Records Decision

WDRB News (“the Appellant”) submitted a request to the Department seeking copies of several records related to “ShotSpotter.” ShotSpotter is a gunshot detection system that uses microphones placed throughout Louisville. The microphones can detect the sound of a gunshot, and can apparently pinpoint the location where the shot was fired. ShotSpotter then immediately sends a notification to Department officers of the location of the gunshot to initiate a law enforcement response. Although the Department provided the Appellant with many responsive records related to contracts and invoices for the ShotSpotter system, the Department denied the Appellant’s request for a map of the locations where the microphones are placed under KRS 61.878(1)(m). The Department claimed that release of the locations of the ShotSpotter microphones could lead to a terrorist attack. This appeal followed.

On appeal, the Appellant explains that the ShotSpotter microphones are placed on telephone poles in Louisville and can be seen by anyone walking the streets. The Appellant also provides a newspaper article that identified two neighborhoods in Louisville where ShotSpotter microphones would be installed. In response, the Department abandons its claim that the map of ShotSpotter locations is exempt under KRS 61.878(1)(m). The Department instead claims on appeal that the ShotSpotter locations are exempt under

KRS 17.150(2)(c), because the release of such information could endanger the safety of officers.

Under KRS 17.150(2), law enforcement “intelligence and investigative reports” are “subject to public inspection if prosecution is completed or a determination not to prosecute has been made.” Thus, if a criminal prosecution has not been completed, or a determination to decline prosecution has not been made, then the intelligence and investigative reports are not subject to inspection. However, as explained in 22-ORD-025, in some instances a law enforcement agency may deny inspection of intelligence and investigative reports even if prosecution has been concluded or if no prosecution is forthcoming. For example, intelligence reports may still be withheld from inspection if their release would “endanger the life or physical safety of law enforcement personnel.” KRS 17.150(2)(c). The law enforcement agency carries the burden of explaining “with specificity” how the exemption applies. KRS 17.150(3).

In 22-ORD-025, the Department had withheld an intelligence analysis related to certain protests in Louisville. The intelligence analysis included a description of tactics used by protestors and the Department’s plans to counter those tactics. This Office found that if the Department’s tactics for responding to protestors were revealed, then Department officers could be placed in physical danger when implementing those tactics. Here, the Department claims that knowledge of the ShotSpotter microphone locations could allow potential criminals to plot an officer’s response route to a location where the shots are fired and prepare an ambush.

The Department’s claim that officers would be endangered by release of these records is speculative. First, the ShotSpotter microphones are already visible to the public, as they are mounted to telephone poles on the public streets in plain view. Second, the Department has previously disclosed at least two neighborhoods where the microphones will be placed. Moreover, the same danger the Department claims will arise if the locations of the microphones are known exists currently under the 911 dispatcher system. Both systems inform an officer of a location where shots were fired, except the former does so automatically while the latter is dependent on a witness calling 911. In either event, however, the nearest officer will have to leave his or her present location and arrive at the scene. The potential harm to an officer is the same regardless of which system informs the officer of the location to where he or she must respond. The Department has not carried its burden of proving with specificity

that release of these records will endanger officer safety. Accordingly, it violated the Act by withholding the requested records.

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

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