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**23-ORD-087**

April 17, 2023

In re: Western States Media/Louisville Metro Government

**Summary:** Louisville Metro Government (“Metro”) did not violate the Open Records Act (“the Act”) when it denied a request for automobile collision reports under KRS 189.635(5)(b).

***Open Records Decision***

In January 2023, Western States Media (“Appellant”) submitted multiple requests to Metro to obtain copies of “all Kentucky Uniform Police Traffic Collision Reports generated by law enforcement officers of the Louisville Metropolitan Police Department” (“LMPD”) during various dates in January. On January 25, 2023, Metro denied all of the Appellant’s requests in one collective response.<sup>1</sup> In support of its denial, Metro cited several provisions of KRS 189.635, including applicable and inapplicable provisions. Then, shortly after issuing its response, Metro issued a second response “closing” the request because “it appear[ed]” the Appellant was not a “resident of the Commonwealth” as defined under KRS 61.870(10). The Appellant then initiated its first appeal of Metro’s denial.

While the Appellant’s first appeal was pending, it submitted to Metro additional requests for collision reports on various dates. Again, Metro denied the Appellant’s request, this time stating only that traffic collision “information is maintained by” the Department of Kentucky State Police (“KSP”). Metro also provided a URL link to a website maintained by KSP. The KSP website, however,

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<sup>1</sup> The Appellant submitted his first request on January 13, 2023, but Metro’s first collective response was issued on January 25, 2023, more than five business days later. See KRS 61.880(1) (requiring an agency to respond to a request under the Act within five business days of receipt). However, it is not clear when Metro received the Appellant’s requests, and the Appellant does not challenge the timeliness of Metro’s response.

does not contain information on how to request collision reports or the contact information for its official custodian of records. Nevertheless, the Appellant had already obtained contact information for KSP's records custodian, because it also submitted requests to KSP seeking "all Kentucky Uniform Police Traffic Collision Reports generated by law enforcement officers of LMPD" in which the collisions occurred on an identified date. KSP denied the request, stating, in essence, that it was not the official records custodian of such reports. KSP directed the Appellant back to Metro, thus causing the Appellant to initiate its second appeal. The Office has consolidated both appeals because they involve the same issue and parties.<sup>2</sup> *See e.g.*, 23-ORD-003; 23-ORD-034.

The Appellant's first appeal primarily focuses on Metro's second response to the first request, in which Metro denied the request because it did not believe the Appellant qualified as a resident of the Commonwealth. However, on appeal, Metro claims its first response to the first request appropriately denied inspection under KRS 189.635. Metro now admits the Appellant satisfies the residency requirement because it is a "news-gathering organization" as defined under KRS 61.870(10)(g).<sup>3</sup> Because Metro's first response appropriately denied the first request, it is unnecessary to examine Metro's later denial of the request on grounds of residency.

Although KRS 61.870(2) generally defines "public records" subject to inspection under the Act, KRS 189.635 applies to a specific type of record—automobile collision reports. Whenever an automobile collision "result[s] in fatal or nonfatal personal injury to any person or damage to the vehicle rendering the vehicle inoperable," a person operating the vehicle is required to notify law enforcement. KRS 189.635(2). "A law enforcement officer having jurisdiction shall investigate the accident and file a written report of the accident with his or her law enforcement agency." *Id.* Under KRS 189.635(3), "[e]very law enforcement agency whose officers investigate a vehicle accident of which a report must be made as required in this chapter shall file a report of the accident with" KSP. If, however, an accident results in more than \$500 in property damage and a law enforcement officer does *not*

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<sup>2</sup> The parties to both appeals are Western States Media and Louisville Metro Government. Although the Appellant attempted to add KSP as a party to its second appeal, it failed to include a copy of the request it submitted to KSP. The Appellant provided only a copy of KSP's response, which quoted the Appellant's request for collision reports. While no party disputes the accuracy of KSP's quotation of the Appellant's request, a person seeking this Office's review of an agency's denial of a request to inspect records must strictly comply with KRS 61.880(2)(a). *See, e.g.*, 22-ORD-165. Accordingly, the Office lacks jurisdiction to consider whether KSP's response complied with the Act. Regardless, KSP states on appeal it has now provided copies of the requested records to the Appellant. Thus, even if the Appellant had complied with KRS 61.880(2)(a) in adding KSP as an agency-defendant, the appeal would be moot as to KSP. *See* 40 KAR 1:030 § 6. However, because Metro continues to deny that it is the official records custodian of the collision reports, the appeal is not moot as to it.

<sup>3</sup> Further entwining the statutes applicable to this appeal, KRS 61.870(10)(g) incorporates by reference the definition of "news-gathering organization" as defined in KRS 189.635(b)1.a.–e.

investigate the incident, the “person operating the vehicle” is required to file such a report with KSP. KRS 189.635(4). Thus, there are two types of collision reports.

The first type includes reports submitted to KSP by law enforcement agencies after receiving them from the investigating officer. KRS 189.635(3). For these records, LMPD would possess a copy, but the official collision report is filed with KSP, making KSP the official custodian of the official collision report. The second type of report involves less significant collisions, because they do not involve “fatal or nonfatal personal injury” and do not cause a vehicle to be inoperable, but nevertheless cause more than \$500 in property damage. Those collisions do not require a law enforcement officer to investigate, but a person operating a vehicle involved in such a collision has a statutory obligation to file his or her own report with KSP. KRS 189.635(4). Presumably, LMPD would not possess any copies of these reports because they are to be filed directly by the vehicle operator with the KSP. Again, KSP is the official custodian of this second type of collision report.

The distinction between the two types of collision reports is important. As noted above, LMPD would presumably not possess a copy of the second type of collision report, because those are filed by vehicle operators directly with KSP under KRS 189.635(4). “All accident reports filed with the Department of Kentucky State Police in compliance *with subsection (4) of this section* shall not be considered open records under KRS 61.870 to 61.884 and shall remain confidential.” KRS 189.635(5)(a) (emphasis added).<sup>4</sup> Metro relies, in part, on KRS 189.635(5)(a) to deny inspection of the requested collision reports. But KRS 189.635(5)(a) does not apply to Metro’s records, because it covers only those reports involving less serious collisions that LMPD would not have investigated.

Rather, KRS 189.635(5)(b), which Metro also cited in its first response, applies to Metro’s copies of the collision reports. That provision states, “All *other* accident reports required by this section, *and the information contained in the reports*, shall be confidential and exempt from public disclosure under KRS 61.870 to 61.884” except when disclosed “as provided in *this section*,” *i.e.*, KRS 189.635. KRS 189.635(5)(b) (emphasis added). Thus, Metro shall deny inspection of the reports under KRS 189.635(5)(b), except when another provision of KRS 189.635 permits disclosure.

Two subsections of KRS 189.635 operate to permit inspection of collision reports by “news-gathering organizations,” but neither give *Metro* the authority to grant inspection. The first is KRS 189.635(7), which requires KSP to promulgate

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<sup>4</sup> Nevertheless, KRS 189.635(5)(a) further states that KSP “may” make the reports available under KRS 189.635(8), which is the subsection governing news-gathering organizations’ access to collision reports. This is further evidence that KSP is the official custodian of the collision reports, because it is the agency with discretion to decide whether to provide reports filed under KRS 189.635(4) to the press.

administrative regulations that “set out a fee schedule for accident reports made available pursuant to subsections (5) and (8) of this section.” And KRS 189.635(8) is the subsection providing the procedures for a news-gathering organization’s access. Specifically, when a news-gathering organization seeks collision reports, it must submit the request to *KSP*, the proper custodian of the records. That is because news-gathering organizations may only have access to the collision reports when submitting a “request under *this subsection*” (*i.e.*, KRS 189.635(8)), and its request “*shall* be completed using a form promulgated by” *KSP*. KRS 189.635(8)(d) (*emphasis added*).

In sum, KRS 189.635(5)(b) prevents Metro from disclosing LMPD’s copies of collision reports because “the information contained in the reports” has been submitted to *KSP* in an official report under KRS 189.635(3). But *KSP* can nevertheless make that information available to a news-gathering organization if the organization complies with KRS 189.635(8)(d). The Appellant did not comply with KRS 189.635(8)(d) because it did not send its first request to *KSP* or fill out the appropriate form and pay the appropriate fees. *See* 502 KAR 15:010 § 5; *see also* 18-ORD-024 (finding a local law enforcement agency did not violate the Act when a purported news-gathering organization failed to complete the required *KSP* form). Accordingly, Metro did not violate the Act when it denied the Appellant’s requests under KRS 189.635(5)(b).

A party aggrieved by this decision may appeal it by initiating 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](mailto:OAGAppeals@ky.gov).

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