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23-ORD-141

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In re: Julius Catlett, Jr./Hopkinsville Police Department

Summary: The Hopkinsville Police Department (the “Department”) did not violate the Open Records Act when it denied a request for a copy of body-worn camera footage depicting the interior of a residence.

Open Records Decision

On April 17, 2023, inmate Julius Catlett, Jr. (“Appellant”) submitted a request to the Department for copies of body-worn camera footage recorded during the search of a residence in connection with his criminal case.¹ In a timely response², the Department denied his request for a copy of the footage under KRS 61.168(4)(a) because it depicts the interior of a residence. However, the Department offered to make the footage available for the Appellant’s inspection at the Department’s headquarters because the request was made by a person directly involved in the incident. *See* KRS 61.168(5)(d). This appeal followed.

¹ The Appellant also sought copies of any “witness statements,” whether written or recorded, involving the same case. The Department advised that copies of those records would be made available to the Appellant upon his payment of the associated copying costs. The Appellant does not challenge that aspect of the Department’s response. However, he also claims to have submitted a second request to the Department for records containing the names of the officers who executed a search warrant. Although the Appellant provides a copy of the Department’s response to his second request, he did not provide the Office with a copy of his second request. Accordingly, he has failed to provide the necessary documents to invoke this Office’s review of the Department’s disposition of his second request. *See* KRS 61.880(2)(a) (requiring a person to submit to the Attorney General a copy of both the request and the agency’s response).

² In the Department’s response issued by the City Clerk on May 1, 2023, the Clerk stated the Department received the request on April 24, 2023, and forwarded it to her that day. Because the Department received the request on April 24, 2023, its response was timely issued within five business days. *See* KRS 61.880(1).

The Appellant argues that he is unable to view the requested footage in-person at the Department because he is currently incarcerated. However, under KRS 61.168(4)(a), “a public agency may elect not to disclose bodyworn camera recordings containing video or audio footage that . . . [i]ncludes the interior of a place of a private residence where there is a reasonable expectation of privacy, unless the legal owner or lessee with legal possession of the residence requests in writing that the release be governed solely under the provisions of KRS 61.870 to 61.884.” Notwithstanding KRS 61.168(4)(a), if the requester is “a person . . . that is directly involved in the incident contained in the bodyworn camera recording, it shall be made available by the public agency to the requesting party for viewing on the premises of the public agency, but the public agency *shall not be required to make a copy* of the recording except as provided in KRS 61.169.” KRS 61.168(5)(d) (emphasis added). Copies of such footage shall only be provided to an attorney representing the person meeting the requirements of KRS 61.168(5)(d), and only after the attorney executes an affidavit making certain assurances. *See* KRS 61.169.

Here, KRS 61.168(5)(d) states the Department “shall not be required to make a copy” of the footage for the Appellant. Rather, the statute only requires the Department to make the footage available for his inspection at the Department’s headquarters. KRS 61.168(5)(d) does not contain an exception for those who are unable to appear in-person at the agency’s headquarters due to their incarceration. Moreover, the Appellant is not an attorney, and therefore, KRS 61.169 does not require the Department to provide him with a copy of the footage. Accordingly, the Department did not violate the Act when it denied the Appellant’s request.

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.

Daniel Cameron
Attorney General

s/ Marc Manley
Marc Manley
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Distributed to:

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