



COMMONWEALTH OF KENTUCKY
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23-ORD-164

July 10, 2023

In re: Sydney LaRue/Louisville Metro Police Department

Summary: This Office is unable to find that the Louisville Metro Police Department (the “Department”) violated the Open Records Act (“the Act”) because the Office is unable to resolve the factual dispute raised by the Appellant.

Open Records Decision

On May 31, 2023, Sydney LaRue (“Appellant”) submitted a request to the Department for a copy of all “wearable video system,” *i.e.*, body-worn camera, footage related to a motor vehicle accident involving two individuals on a specific date. In a timely response, the Department notified the Appellant that the records were “not otherwise available” because of its backlog of requests for video records. Because “an estimated 400” such requests for video records came before the Appellant’s, the Department estimated it would require up to six months to process the request. The Appellant then initiated this appeal claiming that the Department’s response was inadequate.

After the appeal was initiated, the Department provided the Appellant with the requested body-worn camera footage. Accordingly, to the extent the Appellant claims the Department’s imposition of a six-month delay was unreasonable, that issue is moot. *See* 40 KAR 1:030 § 6. However, the Appellant now claims the footage she received “cut out at an inopportune time” and the Department told her “that there was no more footage available because the officer had either stopped the camera from recording or the battery had died.” The Appellant then asked that this Office review this matter to “confirm that no more footage exists.”

Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to present a *prima facie* case that the requested records do exist in the agency's custody or control. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). The Appellant has not made a *prima facie* case that additional video footage should exist. To support her claim, she provides only a copy of an accident report stating the body-worn camera “was activated.” However, the Department claims it provided the footage to which the report refers, and no additional footage exists. Simply put, given the constraints of this Office’s review under KRS 61.880(2), it cannot decide factual disputes between the parties, such as whether all responsive records have been provided. *See, e.g.*, 19-ORD-083; 03-ORD-61; OAG 89-81. Here, the Appellant asks the Office to make a factual determination regarding the existence of additional records. Accordingly, the Office cannot find that the Department violated the Act when it provided all responsive records it claims to possess.

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
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s/ Matthew Ray
Matthew Ray
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Distributed to:

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