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25-ORD-189

July 22, 2025

In re: Caleb Hurt/Livingston County Sheriff's Office

Summary: The Livingston County Sheriff's Office ("the Sheriff's Office") violated the Open Records Act ("the Act") when it did not properly invoke KRS 61.878(1)(h) to withhold records.

Open Records Decision

On April 14, 2025, Caleb Hurt ("Appellant") submitted a request to the Sheriff's Office seeking records related to an officer-involved shooting which occurred on or about March 17, 2025.¹ In response, the Sheriff's Office denied the request under KRS 61.878(1)(h), paraphrasing the text of the statute. This appeal followed.

Upon receiving a request to inspect public records, a public agency must determine within five business days whether to grant the request or deny it. KRS 61.880(1). If the agency chooses to deny the request, it "shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld." *Id.* Although KRS 61.880(1) requires the explanation in support of denial to be "brief," the response cannot be "limited and perfunctory." *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. App. 1996). In *Edmondson*, the agency's response to a request stated only that "the information you seek is exempt under KRS 61.878(1)(a)(k)(l) [*sic*]." *Id.*

Here, the Sheriff's Office's initial response merely paraphrased the text of KRS 61.878(1)(h)², which exempts from disclosure "[r]ecords of law enforcement

¹ Specifically, the Appellant sought "All reports, videos, CAD Reports, interviews and recorded statements, Bodycam and Dashcam recordings, identity of reporting party or parties, APB issued by Marshall County, and Communications related to the Critical Investigation Response Team investigation of the shooting" of a particular individual.

² During its 2025 regular session, the General Assembly enacted House Bill 520, 2025 Ky. Acts ch. 97 ("HB 520"), which amended KRS 61.878(1)(h). The newly amended version of the statute went into

agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication.” KRS 61.878(1)(h). However, if a law enforcement agency relies on KRS 61.878(1)(h) to deny investigative records, it must articulate, based on the content of the records, how their release will pose a concrete risk of harm to the investigation. *See City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 851 (Ky. 2013). Therefore, the Sheriff’s Office’s “limited and perfunctory” response, which merely paraphrased the exception³ and failed to articulate how release of the records would harm its investigation, did not comply with the Act.

On appeal, the Sheriff’s Office states only that “the incident in question is still under investigation” and the premature release of records “could have negative consequences on a fair and impartial investigation.” This statement asserts that disclosure of the records “could” harm the Sheriff’s Office’s investigation, but still fails to articulate *how* release of the records would harm its investigation. Accordingly, the Sheriff’s Office has not properly invoked KRS 61.878(1)(h).

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.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

effect on June 27, 2025. Because the Appellant’s request was submitted before HB 520 went into effect, the former version of the statute is at issue in this appeal.

³ The Office notes that the Sheriff’s Office, in its April 21 denial, paraphrased the text of KRS 61.878(1)(h) as amended by HB 520, which had not yet gone into effect.

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Distributed to:

Caleb Hurt, Esq.

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