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25-ORD-208

August 1, 2025

In re: Vivian Miles/Lexington Police Department

Summary: The Lexington Police Department ("the Department") violated the Open Records Act ("the Act") when it withheld a Laboratory Evidence Release Form in its entirety instead of redacting exempt portions and providing the remainder. The Department did not violate the Act when it withheld a list of sexual assault evidence collected from a victim under KRS 61.878(1)(a).

Open Records Decision

Vivian Miles ("the Appellant") submitted a request to the Department seeking records related to an investigation of a 2019 incident of assault, rape, and unlawful imprisonment of a named victim. At issue in this appeal is the Department's denial of the Appellant's request for a Laboratory Evidence Release Form ("the form") that includes a list of evidence collected from the victim. In its response to the request, the Department withheld this document under KRS 61.878(1)(h) because "the investigation . . . remains open [and] the potential remains for additional investigative leads to develop." The Department claimed the release of the form "poses a concrete harm to the agency" because it contains "sensitive and/or intimate details," the release of which would "create hazards, including but not limited to: public release of case details known only to those directly involved, tainting witness testimony, difficulties in locating cooperating witnesses for fear of retaliation, privacy concerns of the cooperating parties, and assessing the validity of new information." Additionally, the Department asserted "releasing information too early will cause a disadvantage for law enforcement personnel by alerting potential suspect(s) of their involvement." Lastly, the Department claimed "[n]ot only will the release of information on an individual that has not been charged criminally be a violation of their personal privacy, it will pose a concrete risk of tampering, altering or destroying evidence." The Department further noted "case sensitive information [had] been removed from the documentation under KRS 61.878(1)(a). This appeal followed.

As an initial matter, the Department must meet its burden of proof when invoking any exemption under the Act. *See* KRS 61.880(2)(c). In response to an inquiry from the Office, the Department asserted it would be "agreeable to providing a redacted copy" of the form that showed the Lab Case number, the Department Case number, and the dates, names, and signatures on the form. This redacted version would omit only the victim's name and the list of items collected from the victim.[1] Because the Department has admitted that it can provide the form with the described redactions, it has not met its burden of proof that the entire form is exempt from disclosure. *See* KRS 61.878(4) (requiring a public agency to produce a redacted version when the record contains both exempt and nonexempt material). Thus, the only relevant portions of the record the Department can claim as exempt are the victim's name and the list of items collected. Because the victim's name is already known to the Appellant, it is immaterial in this case whether the Department redacts that information.[2] Accordingly, the list of evidence collected is the focus of this appeal.

KRS 61.878(1)(a) exempts from disclosure "[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." It is well established that "persons who ha[ve] been sexually victimized" have a substantial privacy interest in "information about which the public would have little or no legitimate interest, but which would be likely to cause serious personal embarrassment." *Lexington–Fayette Urb. Cnty. Gov't v. Lexington Herald–Leader Co.,* 941 S.W.2d 469, 472 (Ky. 1997) (citing *Ky. Bd. of Exam'rs of Psychologists v. Courier–Journal & Louisville Times Co.,* 826 S.W.2d 324 (Ky. 1992)). Furthermore, the Sixth Circuit Court of Appeals has recognized that a rape victim "has a fundamental right of privacy in preventing government officials from gratuitously and unnecessarily releasing the intimate details of the rape." *Bloch v. Ribar,* 156 F.3d 673, 686 (6th Cir. 1998).

"Once a protectable privacy interest is established, proper application of the [Act] requires a 'comparative weighing of the antagonistic interests'—the privacy interest versus the policy of openness for the public good." *Cape Publ'ns v. City of Louisville,* 147 S.W.3d 731, 734 (Ky. App. 2003) (quoting *Ky. Bd. of Exam'rs,* 826 S.W.2d at 327)). "At its most basic level, the purpose of disclosure focuses on the citizens' right to be informed as to what their government is doing." *Zink v. Commonwealth, Dep't of Workers' Claims, Labor Cabinet,* 902 S.W.2d 825, 829 (Ky. App. 1994). The disclosure of police records serves this public interest by allowing the public to "scrutinize the police to ensure they are complying with their statutory

[1] Because the form contains information about three different cases, the Department would also redact certain information related to the other two cases. That information is not pertinent to the Appellant's request and therefore is not at issue in this appeal.

[2] It is well established, however, that the identity of a sexual assault victim may be redacted from law enforcement records under KRS 61.878(1)(a). *See Cape Publ'ns v. City of Louisville,* 147 S.W.3d 731 (Ky. App. 2003).

duties." *Cape Publ'ns,* 147 S.W.3d at 733 (quotation omitted). Therefore, the public interest in disclosure is not insubstantial.

The Department argues that because it has already provided records establishing that a SAECK was obtained, "[p]roviding what evidence was obtained as part of the SAECK kit, which incidentally provides details of a sexual assault, does not provide any additional meaningful support to" ensuring that the Department is "performing [its] duties effectively." In 03-ORD-153, the Office affirmed the nondisclosure of information "graphically documenting the details of the alleged crime" of rape because disclosure would serve "serve no public purpose *vis-à-vis* the public's oversight of" the agency. Similarly, in 19-ORD-199, having reviewed *in camera* an unredacted police report containing the details of an alleged sexual assault, the Office concluded that disclosing those details "'would not in any real way subject agency action to public scrutiny,' *Zink,* at 829[, and] would constitute a clearly unwarranted invasion of personal privacy." Here, likewise, the Office has reviewed the unredacted record *in camera* and concludes that the list of items collected for the SAECK would disclose intimate details of the crime, the disclosure of which would not materially advance the public interest and would therefore constitute an unwarranted invasion of the victim's personal privacy.

The Appellant argues that the Department cannot rely on KRS 61.878(1)(a) in this case because it previously provided her with a list of items collected from a SAECK in another case.[3] However, the Act requires a "case-by case analysis" of privacy claims. *Cape Publ'ns v. City of Louisville,* 191 S.W.3d 10, 14 (Ky. App. 2006). Therefore, the fact that the Department disclosed a particular record in another case does not control the privacy analysis in the case at issue. Accordingly, the Department properly invoked KRS 61.878(1)(a) to withhold the list of evidence collected from the victim.

In short, the Department violated the Act when it withheld the entirety of the Laboratory Evidence Release Form instead of providing a redacted copy. However, the Department did not violate the Act when it withheld the list of evidence collected from the victim under KRS 61.878(1)(a).[4]

A party aggrieved by this decision may appeal it by initiating an 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

[3] Similarly, the Appellant directs the Office to a regulation, 502 KAR 12:010 § 3(6), which "lists the items" that are collected during a sexual assault examination. However, that regulation only provides a *non-exclusive* list of "types of samples [that] *may be* collected during the examination." *Id.* (emphasis added). Thus, the regulation does not and could not set forth what items were collected in a particular case.

[4] Because KRS 61.878(1)(a) is dispositive, it is unnecessary to address the Department's alternative argument under KRS 61.878(1)(h).

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/ James M. Herrick
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