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25-ORD-284

September 30, 2025

In re: Erick Pacheco/Christian County Sheriff's Office

**Summary:** The Christian County Sheriff's Office ("the Sheriff's Office") did not violate the Open Records Act ("the Act") when it denied, under KRS 189A.100, a request for video recordings of a field sobriety test intended. The Sheriff's Office also did not violate the Act when it did not provide records it does not possess.

***Open Records Decision***

Erick Pacheco ("Appellant") submitted a request for records related to a "traffic stop" involving a certain individual. The Appellant specified that he sought "body camera footage" of the incident and all emails or text messages that either "led to the enforcement action" or are related to the named individual. In response, the Sheriff's Office denied the request under KRS 189A.100 because the video contains the "administration of a field sobriety test" and is therefore exempt from inspection. The Sheriff's Office further stated that it did not possess any responsive text messages or emails. This appeal followed.

KRS 189A.100 establishes the procedure law enforcement officers must use when administering field sobriety tests to suspects during investigations of alleged driving under the influence of alcohol (DUI). Officers are permitted to record the suspect while administering these tests. KRS 189A.100(2)(a). However, such footage "shall be used for official purposes only." KRS 189A.100(2)(b)5. The statute provides only three "official purposes" for which the footage may be used: (a) viewing "in court"; (b) viewing "by the prosecution and defense in preparation for a trial"; and (c) viewing "for purposes of administrative reviews and official administrative proceedings." *Id.* Otherwise, the recordings are to be considered "confidential records." *Id.*<sup>1</sup> The Office

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<sup>1</sup> The unauthorized release of such video footage is a misdemeanor criminal offense. KRS 189A.100(2)(b)7.

has previously held that such recordings are entirely confidential, and that a law enforcement agency is not authorized to release any portion of such videos. *See, e.g.*, 93-ORD-133; 10-ORD-088; 19-ORD-102; 21-ORD-102; 23-ORD-025; 25-ORD-070. The Act exempts from inspection any records that are confidential under state statute. KRS 61.878(1)(l).

The Appellant argues that the footage is not exempt because the individual who was the subject of the field sobriety test was not charged with a DUI. However, KRS 189A.100 does not require that charges be brought before its confidentiality mandate takes effect. Rather, KRS 189A.100(2)(a) authorizes law enforcement agencies to record the “pursuit of a violator or suspected violator,” the “traffic stop,” and either the administration of the field sobriety test or the suspect’s refusal to submit to such test. That footage “shall be used for official purposes only.” KRS 189A.100(2)(b)5. The Appellant does not assert that he is requesting this video for an “official purpose,” as defined in the statute. Thus, the Sheriff’s Office did not violate the Act when it withheld this video under KRS 189A.100(2).

Regarding the requested text messages and emails, the Sheriff’s Office states that one responsive text message had previously existed on the Sheriff’s personal phone but was deleted, prior to the receipt of the Appellant’s request, when the Sheriff replaced his personal phone. Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to make a *prima facie* case that the requested record does or should exist. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester makes a *prima facie* case that the records do or should exist, then the public agency “may also be called upon to prove that its search was adequate.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341).

Here, the Appellant has not made a *prima facie* case that the Sheriff’s Office currently possesses the identified text message or any other records responsive to the Appellant’s request for communications.<sup>2</sup> Although the Sheriff’s Office has acknowledged that the responsive text message did exist at one time, it has also adequately explained that the text message no longer exists, thereby explaining why the record was not located. Therefore, the Office cannot find that the Sheriff’s Office violated the Act when it did not provide records it does not 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

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<sup>2</sup> Rather, he only expresses his belief that the Sheriff’s Office should have taken steps to recover the text message.

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

#468

Distributed to:

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