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25-ORD-309

October 14, 2025

In re: Mark Graham/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 a request for video recordings of a field sobriety test under KRS 189A.100.

Open Records Decision

Mark Graham ("Appellant") submitted a request for records related to a traffic stop involving a certain individual. The Appellant specified that he sought "body camera footage" and "dash camera footage" of the traffic stop and of the five minutes before and after the traffic stop.¹ The Appellant also requested "cell phone records," including call logs and text messages, related to the identified traffic stop. In response, the Sheriff's Office denied the request under KRS 189A.100 because the video contains the "administration of sobriety tests" and is therefore exempt from inspection. The Sheriff's Office further stated that it did not possess any responsive text messages or other phone records. 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.*² The Office

¹ The Appellant's request is substantially the same as the request at issue in 25-ORD-284.

² 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 arrested or charged with a DUI. However, KRS 189A.100 does not require charges to be filed for the footage to be confidential. 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. Indeed, the Office has previously held that KRS 189A.100 does not require charges to be brought before the confidentiality provision applies. *See* 25-ORD-284. The Appellant does not assert 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).³

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

³ The Appellant also asserts that the Sheriff’s Office failed to cite an exemption for its withholding of “incident reports and breathalyzer logs.” But the Appellant did not request “incident reports and breathalyzer logs.” Thus, the Sheriff’s Office could not have violated the Act for failing to provide them.

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Distributed to:

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