



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN  
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE  
SUITE 200  
FRANKFORT, KY 40601  
(502) 696-5300

25-ORD-400

December 15, 2025

In re: Ryan Dischinger/Louisville Metro Government

**Summary:** The Louisville Metro Government (“Metro”) violated the Open Records Act (“the Act”) when it denied a request for video footage but did not meet its burden to invoke KRS 61.878(1)(m) and KRS 61.872(6).

***Open Records Decision***

On September 11, 2025, Ryan Dischinger (“Appellant”) submitted a request to Metro seeking Real Time Crime Center (RTCC) camera footage from a roughly four-block area in downtown Louisville and recorded on September 2, 2025. In response, Metro denied the request under KRS 61.878(1)(m), claiming disclosure of the footage “would allow the recipient to make a list of locations which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist attack.” Specifically, Metro claimed the records’ release “would provide persons with information as to where video surveillance technology does not apply and thus permit criminals to engage in criminal activity where they may be less likely to be caught and/or identified.” This appeal followed.

On appeal, Metro abandons its assertion that release of the requested records would “permit criminals to engage in criminal activity where they may be less likely to be caught.” Instead, Metro now asserts that the camera footage depicts city infrastructure and its release could lead to a terrorist act disrupting a system identified in KRS 61.878(1)(m)1.f.

KRS 61.878(1)(m)1. exempts “[p]ublic records the disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act.” The

Office has found that public agencies carry a heavy burden to explain how this exemption applies. *See, e.g.*, 09-ORD-100 (finding that an agency failed to carry its burden that the designs of a 300-foot radio antenna were exempt under KRS 61.878(1)(m)). That is because, by its express terms, KRS 61.878(1)(m) is a narrow exemption. It applies only to a potential “terrorist act,” defined, in relevant part, as “a criminal act intended to” “[d]isrupt a system identified in” KRS 61.878(1)(m)1.f.<sup>1</sup> The Office has found that records that merely expose a security vulnerability are not exempt under KRS 61.878(1)(m) in the absence of proof there is a “reasonable likelihood” that the information could be used to carry out a “terrorist act.” *See, e.g.*, 15-ORD-041 (rejecting a law enforcement agency’s claim that security footage inside the agency’s facility was exempt under KRS 61.878(1)(m), despite its potential to show the camera’s “blind spots”).<sup>2</sup>

According to Metro, the responsive footage captures city infrastructure such as “the roadways themselves, traffic signals, electrical systems, power and phone lines, fire hydrants, wastewater drains, and sewer manholes, as well as any activity to service or patrol such infrastructure by authorized persons.” According to Metro, there is a “reasonable likelihood” that a terrorist act would occur due to release of the footage because “a person could identify the locations and vulnerabilities of the cameras themselves, public utilities, roadways, power and phone lines, traffic patterns, emergency routes, police patrols, and any other activities that regularly take place anywhere within the range of the cameras in those four blocks.” The Office disagrees.

To start, the Office notes that Metro has not identified either specific or general vulnerabilities that the requested footage would reveal. Rather, Metro asserts that because of the scope of the request, a person could “document the exact locations of every transformer, fire hydrant, powerline, phone line, water and sewage drain, and

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<sup>1</sup> Under KRS 61.878(1)(m)1.f., the types of records exempted by KRS 61.878(1)(m)1. include “[i]nfrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.”

<sup>2</sup> The Office notes that this exemption is distinct from KRS 197.025(1). That statute provides that “no person shall have access to any records if the disclosure is deemed by the commissioner of the department or his designee to constitute a threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person.” Because KRS 197.025(1) empowers the “commissioner of the department or his designee” to determine if disclosure would constitute a security threat, the Office has deferred to the judgment of a correctional facility regarding whether disclosure of records is or is not a security threat. *See, e.g.*, 25-ORD-301 (finding that a correctional facility’s security footage was properly withheld under KRS 197.025(1)). Because KRS 61.878(1)(m) does not contain a similar grant of discretion, the Office cannot similarly give deference to Metro’s judgment.

traffic light in a large area, along with the locations of every camera with a view of those systems and 24 hours of video with which to evaluate traffic patterns, police patrols, and activity around them.” However, based on Metro’s description of the withheld footage, no camera captures footage in locations that are not already open to the public. Moreover, Metro has not explained what information is available in the footage that would not be observable by someone standing in the location where the cameras are located. Thus, it appears that the information contained in the footage is available to anyone who is physically present in the identified locations. At bottom, withholding records under KRS 61.878(1)(m)1.f. is authorized only when disclosure would have a *reasonable likelihood* of leading to a terrorist act. Here, it is unclear how the disclosure of video footage containing information that is already available to the public establishes a “reasonable likelihood” that the information could be used to carry out a “terrorist act.”

Instructive here is 09-ORD-100. That decision concerned a request for records related to “the planning, funding, and decision to locate and construct a free standing 300 plus foot antenna tower on county owned land.” Under KRS 61.878(1)(m)1.f., the agency withheld records, the disclosure of which it said would have a reasonable likelihood of threatening public safety “by exposing vulnerability[ies] in this emergency communication system.” *Id.* The agency described these records as containing “engineering, structural, civil, or any other engineering or design or operational information.” In 09-ORD-100, the Office found the agency had not met its burden because it did not establish how disclosure of the records would be reasonably likely to lead to a terrorist act. Rather, the agency merely maintained that its disclosure could result in a terrorist act. Here, Metro has not clearly articulated how disclosure of video footage of public spaces would lead to a terrorist act. Instead, it only asserts that such a result is possible. But given the heavy burden this Office has consistently found applies to this exemption, the Office cannot find that the assertion of a mere possibility adequately invokes KRS 61.878(1)(m).

This is especially true because Metro’s argument for withholding the video footage at issue here would seemingly apply to footage created by any outdoor camera in its possession. It is “the basic policy of [the Act] that free and open examination of public records is in the public interest.” KRS 61.871. The Act therefore presumes that a public agency must produce records upon request. To that end, the General Assembly has required that “the exceptions provided for by KRS 61.878 or otherwise provided by law shall be *strictly construed.*” *Id.* (emphasis added). Notably, Metro has not claimed that any of the responsive RTCC footage records a critical infrastructure

system specifically.<sup>3</sup> Thus, if Metro is correct, it would appear that any outdoor camera in Metro’s possession would similarly implicate KRS 61.878(1)(m). Given the statutory requirement that the Act’s exemptions be strictly construed, as well as the historically heavy burden applicable to agencies invoking KRS 61.878(1)(m), the Office declines to find the exemption applicable here.

Metro attempts to bolster its argument under KRS 61.878(1)(m) by explaining that “[a] person with 24 hours of video from every camera in the area could thus evaluate police response times, staging strategies, and operational patterns.” But such information is not related to potential terrorist acts targeting critical systems; rather, it is related to crime response, which is not exempted by KRS 61.878(1)(m). *See* 22-ORD-025 (law enforcement records describing tactical responses to riots were not exempt under KRS 61.878(1)(m), though a different exemption may apply). Here, Metro has argued that KRS 61.878(1)(m)1. authorized its denial because the records implicate “critical utility systems” under KRS 61.878(1)(m)1.f. The Office does not doubt Metro’s assertion that the requested footage would provide information about “police response times, staging strategies, and operational patterns.” But that information does not fit within KRS 61.878(1)(m)1.f. or any other category of record exempted by KRS 61.878(1)(m)1.<sup>4</sup>

Alternatively, Metro contends that the records are exempt under KRS 61.872(6). Under that statute, a public agency may deny a request to inspect records “[i]f the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency.” However, an agency must substantiate its denial “by clear and convincing evidence.” *Id.*

As support for its contention, Metro relies on a line of decisions in which the Office stated that KRS 61.872(6) is successfully invoked “[i]f the agency can establish, by clear and convincing evidence, that an application for public records would place an unreasonable burden on it because the agency would be forced to overhaul an

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<sup>3</sup> Rather, Metro explains that the RSCC footage is viewed by staffers “in order to aid in LMPD officer dispatching and response in addition to general monitoring to identify any incidents requiring emergency response.”

<sup>4</sup> The Office notes that the type of video footage at issue here is a unique category of law enforcement records that does not have a specific statute or exemption governing its disclosure. KRS 61.878(1)(h) relates to law enforcement records regarding an active investigation. KRS 17.150(2) relates to law enforcement records after the resolution of an investigation and prosecution. KRS 61.168 governs when body-worn camera footage may be withheld. And KRS 189A.100 relates to the disclosure of videos showing the administration of field sobriety tests.

existing system each time the records were requested and released.” 04-ORD-058. According to Metro, granting the Appellant’s request would “interfere with RTCC’s role in investigating and deterring crime,” and so Metro “would then have to overhaul the camera system by moving those cameras to counteract the disclosure of their locations and maintain RTCC’s efficacy.”

Although this argument explains the reasoning behind Metro’s preference for moving the implicated cameras after disclosure of the video footage, it has not established that it “would be *forced* to overhaul” its RTCC camera system. Metro’s preference, although it does have merit, is not based on action it legally *must* take. In any event, Metro has not identified the number of cameras implicated by the Appellant’s request, and so it is not apparent how much of a burden their relocation would impose on Metro. As such, Metro has not established *by clear and convincing evidence* that granting the Appellant’s request would be unreasonably burdensome.<sup>5</sup>

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

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<sup>5</sup> Metro has not stated whether the requested footage contains exempt material that will necessitate review and redactions, nor has it explained how many hours of footage is at issue. As such, the Office makes no finding regarding whether Metro producing the requested video footage would itself involve an unreasonable burden.

#553

Distributed to:

Ryan J. Dischinger

Alice Lyon, Assistant Jefferson County Attorney

Nicole Pang, Assistant Jefferson County Attorney

Natalie S. Johnson, Assistant Jefferson County Attorney

Annale Taylor, Assistant Jefferson County Attorney

Donald Haas, Assistant Jefferson County Attorney

Michael Spenlau, Assistant Jefferson County Attorney

Anne Coorsen, Assistant Jefferson County Attorney