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26-ORD-055

February 20, 2026

In re: Nick Horne/Kentucky State Police

Summary: The Kentucky State Police (“KSP”) violated the Open Records Act (“the Act”) when it initially failed to give a sufficiently detailed explanation of how an exception to the Act applied to the records withheld. However, KSP did not violate the Act when it met its burden to show that KRS 61.878(1)(h) applied to the withheld records. KSP violated the Act when it denied inspection of body-worn camera footage requested by the attorney of the deceased person depicted in the video.

Open Records Decision

Nick Horne (“the Appellant”) submitted a request to KSP, identifying himself as “an attorney representing the family of” the decedent in an officer-involved shooting incident that occurred on August 18, 2025. The Appellant requested, *inter alia*, “[t]he investigative file for the [incident], and all documents and evidence contained in that file”; “[v]ideo and audio recordings of or relating to the [incident], including body cameras and dash cameras, communications with dispatchers and their supervisory personnel, and recordings from all other cameras or recording devices in the area”; “[t]he Computer-Aided Dispatch (CAD) reports for the incident”; “[r]ecordings and transcripts of 911 calls”; “[i]ncident and accident reports”; “[p]hotographs of the scene”; “[t]he autopsy and related reports and photographs”; and “[i]nterviews conducted.”¹

¹ The Appellant requested two other categories of records, which KSP subsequently provided and are therefore not at issue in this appeal. See 40 KAR 1:030 § 6 (“If the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter.”).

In a timely response, KSP provided the first page of the Kentucky Incident-Based Reporting System (“KYIBRS”) report² but denied the remainder of the request under KRS 61.878(1)(h) “because the premature disclosure of records generated in the course of this investigation, for which prosecution has not been declined yet, would cause irreparable harm, including but not limited to, creating bias in the jury pool from which the Grand Jury will be selected if the Commonwealth’s Attorney decides to prosecute this matter.” 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.* An agency response denying a request for records must explain the denial by “provid[ing] particular and detailed information,” not merely a “limited and perfunctory response.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). “The agency’s explanation must be detailed enough to permit [a reviewing] court to assess its claim and the opposing party to challenge it.” *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013).

Here, KSP denied the Appellant’s request under KRS 61.878(1)(h), which exempts from disclosure “[r]ecords of law enforcement 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 could pose an articulable risk of harm to the agency or its investigation by revealing the identity of informants or witnesses not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication.” In *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 852 (Ky. 2013), the Supreme Court of Kentucky rejected the argument “that the mere fact that a law enforcement action remains prospective is enough to establish that disclosure of anything from a law enforcement file constitutes ‘harm’ under the exemption.” Instead, the agency must “identif[y] the particular kinds of records it holds and explain[] how the release of each assertedly exempt category would harm the agency in a prospective law enforcement action.” *Id.* at 851. Here, however, KSP denied a request for an entire investigative file without identifying the types of records contained in that file and explaining the risk of harm associated with each category. Thus, KSP violated the Act.

On appeal, however, KSP identifies the records in the investigative file as follows:

² KSP redacted some information from the report under KRS 61.878(1)(a). The Appellant has not challenged those redactions.

1. CAD reports of both the fleeing/evading incident [and] the officer-involved shooting[;]
2. Photographs of the scene[;]
3. Autopsy report, photographs for autopsy, and toxicology report;
4. Audio and transcripts of interviews of civilians, witness, and involved officers;
5. Video and audio recordings from body-worn cameras,^[3] in-car cameras, and store surveillance video;
6. Audio recording of [a] telephone call . . . reporting original complaint[;] and
7. KSP radio transmissions during the incident.

KSP states these records were compiled during its ongoing investigation of the incident and disclosure “at this stage of the investigation and prosecution could irreparably harm the investigation by compromising the recollections of those witnesses that investigators have not interviewed yet and those who might ultimately be testifying at trial.”

More specifically, KSP asserts “[i]tems 1, 4, 6, and 7 contain statements from witnesses and involved parties, including their rendition of facts underlying the events being investigated. Additionally, items 2, 3, 5, and 7 contain specific factual details of the events being investigated as well as the conclusions of law enforcement agents related to the investigation.” KSP argues that the “premature disclosure of these records, which would disseminate witnesses’ independent renditions of the facts underlying the event being investigated, facts known by law enforcement, about the cases, and investigative conclusions that have not yet been made public[,] could make determining the veracity of [other witnesses] impossible” and “would also divulge investigatory leads, which could harm future investigative steps.” Further, KSP states “disclosure of these records could also pose a significant risk of causing the jurors to develop preconceived opinions regarding this incident prior to being presented with all of the relevant evidence in its entirety.”

In *Shively Police Department v. Courier Journal, Inc.*, 701 S.W.3d 430 (Ky. 2024), the Supreme Court re-examined KRS 61.878(1)(h) and its proper invocation by law enforcement agencies. The law enforcement agency in *Shively* described two potential risks of harm: “that the requested records could potentially compromise the recollections of some unnamed or unknown witnesses and that the release of the records might taint a future grand jury proceeding.” *Id.* at 439. The Court held that, although those “may, perhaps, be legitimate concerns,” the agency had “failed to provide even a ‘minimum degree of factual justification,’ that would draw a nexus between the content of the specific records requested in this case and the purported

³ KSP states it has subsequently made body-worn camera footage available to the Appellant, with the exception of “videos [that] capture the officer-involved shooting.” To the extent that video footage has been disclosed, the portions of this appeal relating to that footage are moot. 40 KAR 1:030 § 6. The body-worn camera footage is addressed in more detail below.

risks of harm associated with their release.” *Id.* (quoting *City of Fort Thomas*, 406 S.W.3d at 852).

After *Shively* was decided, and in response to that decision, the General Assembly amended KRS 61.878(1)(h) in 2025. The previous version of the statute allowed the exemption only when “the disclosure of the information *would* harm *the agency*,” whereas the current version of the exemption applies when disclosure “*could* harm *the agency or its investigation*” (emphasis added). The use of “would” instead of “could” in the previous version indicates “a more stringent standard.” 06-ORD-265 n.10. In *City of Fort Thomas*, the Court held that the previous version required “a concrete risk of harm to the agency,” as opposed to “a hypothetical or speculative concern.” 406 S.W.3d at 851. But “[u]nder the amended version of the statute, where an agency need only articulate the possibility that release of information poses a threat of harm to the agency (or its investigation), the ‘risk of harm’ that must be articulated will look more like ‘hypothetical or speculative’ harms.” 25-ORD-290.⁴ Thus, the Office has upheld a law enforcement agency’s reliance on KRS 61.878(1)(h) during an “early stage of its investigation” on the grounds that release of specific records “could compromise the recollections of witnesses or cause potential jurors to develop preconceived opinions.” 25-ORD-300. Because KSP has articulated the risks of harm to its investigation associated with the specific records requested, it has met its burden under KRS 61.878(1)(h). Accordingly, KSP did not violate the Act when it withheld the requested records, other than body-worn camera footage, under KRS 61.878(1)(h).

With regard to body-worn camera footage, KSP points out that, under KRS 61.878(1)(q), “[e]xcept as provided in KRS 61.168, photographs or videos that depict the death [or] killing [of] any person” are exempt from disclosure, but they “shall be made available by the public agency to the requesting party for viewing on the premises of the public agency, or a mutually agreed upon location, at the request of [any] victim depicted in the photographs or videos, his or her immediate family, or legal representative [or] the legal representative of any involved party.” KRS 61.878(1)(q)1.a., 1.c. However, as expressly noted in KRS 61.878(1)(q), body-worn camera footage is more specifically governed by KRS 61.168.

As KSP has subsequently made the body-worn camera footage available for the Appellant’s inspection, except for videos that depict the fatal shooting, the question is whether the Appellant may view those specific videos. The Appellant claims he is entitled to view the footage under KRS 61.168(5)(d), which permits viewing of body-worn camera footage when “requested by [the] personal representative of a person or entity that is directly involved in the incident contained in [the] recording.” The definition of “personal representative” under KRS 61.168 includes “a court-appointed

⁴ 25-ORD-290 more fully discusses the amendments to KRS 61.878(1)(h).

guardian, attorney, or agent possessing written authorization to act on behalf of a person that is involved in an incident,” or, if the person depicted is deceased, “the personal representative of the estate of the deceased person, the deceased person’s surviving spouse, *parent*, or adult child, *the deceased person’s attorney*, or the parent or guardian of a surviving minor child of the deceased.” KRS 61.168(1)(c) (emphasis added).

Here, the Appellant asserts the request “was made on behalf of [the decedent’s] mother, and by [the decedent’s] attorneys.” KSP, however, has allowed the Appellant to view the body-worn camera footage only “upon receipt of his written confirmation that he represents [the decedent’s] estate.” But the Appellant has already confirmed that he is “the deceased person’s attorney,” which is a separate category under KRS 61.168(1)(c) from “the personal representative of the estate of the deceased person.”⁵ In addition, the Appellant made the request on behalf of “the deceased person’s surviving . . . parent.” Accordingly, KSP violated the Act when it required the Appellant to confirm his representation of the decedent’s estate before viewing the withheld camera footage.

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 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.

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/s/ James M. Herrick
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⁵ As the decedent’s attorney, the Appellant is also the “legal representative of any involved party” under KRS 61.878(1)(q)1.c.

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