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26-ORD-067

March 2, 2026

In re: Morgan Watkins/Bowling Green Police Department

Summary: The Bowling Green Police Department ("the Department") did not violate the Open Records Act ("the Act") when it withheld records the disclosure of which could harm its investigation by premature disclosure of information to be used in a prospective law enforcement action under KRS 61.878(1)(h).

Open Records Decision

On November 17, 2025, Morgan Watkins ("the Appellant") submitted a request for records "that detail the locations of Flock Safety license plate readers/LPR cameras used by the [D]epartment." In response, the Department denied the request under KRS 61.878(1)(h), explaining that "subjects that are wanted or driving stolen vehicles can avoid the flock cameras if their locations are public knowledge." This appeal followed.

KRS 61.878(1)(h) exempts from disclosure "[r]ecords of law enforcement agencies . . . 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." However, this exemption "shall not be used by the custodian of the records to delay or impede the exercise of rights granted by" the Act. *Id.* To successfully invoke this exception, an agency must "show (1) that the records to be withheld were compiled for law enforcement purposes; (2) that a law enforcement action is prospective; and (3) that premature release of the records would harm the agency in some articulable way." *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 851 (Ky. 2013).

Here, the Appellant has requested a record documenting the locations of the Department's Flock Safety cameras. It is apparent to the Office that this is a record "compiled for law enforcement purposes." *City of Fort Thomas*, 406 S.W.3d at 851. According to the Department, the relevant law enforcement action at issue is the ongoing use of Flock Safety cameras to track wanted individuals or individuals driving stolen vehicles. Indeed, the Department states that it "only uses the cameras to detect vehicles that have been entered as stolen or wanted in relation to a criminal matter or warrant." Therefore, the "the sole purpose of the Flock cameras is detection and investigation of criminal activity."

For her part, the Appellant directs the Office to its prior decision in 05-ORD-078. There, the Office found a law enforcement agency could not invoke KRS 61.878(1)(h) to withhold an audio recording of the Department's radio traffic. The Office's decision was based on the records being "recorded in the ordinary course of police business" and not "actively, specifically, intentionally, and directly compiled, as an integral part of a specific detection or investigation process." *See* 05-ORD-078. According to the Appellant, Flock Safety cameras, "like radio traffic and telephone calls, also collect data ordinarily as part of routine police operations, as opposed to for targeted investigation."

But the record requested in this appeal is unlike the audio recording at issue in 05-ORD-078, which was "recorded in the ordinary course of police business." The record requested by the Appellant—a record documenting the locations of the Department's Flock Safety cameras—was created as part of a specific law enforcement action by the Department: installing Flock Safety cameras to safely and effectively track wanted individuals or individuals driving stolen cars. That is the "law enforcement purpose" that led to the creation of this record. As such, the requested records is a record "compiled in the process of detecting and investigating statutory . . . violations." KRS 61.878(1)(h).

The Department further explains that its use of the Flock Safety cameras is ongoing, meaning the law enforcement action remains prospective. The Appellant disagrees, arguing that the Department cannot withhold records "in perpetuity." But, on appeal, the Department explains that its Flock Safety cameras do produce "data and records related to specific investigations that will have ends."[1] Thus, such records are distinct from records detailing the locations of the cameras which are related to the general law enforcement action using the cameras. The Office agrees. The ongoing use of Flock Safety cameras to investigate and detect statutory violations associated with stolen vehicles is a "prospective law enforcement action." KRS 61.878(1)(h).

[1] As an example, the Department states that "a Flock camera record that assisted with the locations of a stolen vehicle that fled the scene of a shooting would be available once the person had been apprehended and charges have been filed."

When a public agency relies on KRS 61.878(1)(h) to deny inspection, it must "articulate a factual basis for applying it," such that the risk of harm exists "because of the record's content." *Id.* at 851. 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 risks of harm associated with their release." *Id.* (quoting *City of Fort Thomas*, 406 S.W.3d at 852).

After the *City of Fort Thomas* and *Shively* cases were decided, 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," rather than when disclosure "could harm the agency or its investigation." 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 prior language of the statute required "a concrete risk of harm to the agency," as opposed to "a hypothetical or speculative concern." 406 S.W.3d at 851. "Under 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.

Here, the Department has explained that disclosure of the records would "impede their use by law enforcement" because "subjects that are wanted or driving stolen vehicles can avoid the cameras if their locations are public knowledge." Although brief, this statement clearly describes the harm that could result from disclosing records containing the cameras' locations. This description is sufficient to invoke KRS 61.878(1)(h). Thus, the release of records detailing the locations of the Department's Flock Safety cameras "could pose an articulable risk of harm" to the Department. Accordingly, the Department properly invoked KRS 61.878(1)(h) to withhold the requested record and did not violate the Act.

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.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
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Distributed to:

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