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26-ORD-109

March 19, 2026

In re: La'Daya Daniels/Ashland Police Department

Summary: The Ashland Police Department ("the Department") violated the Open Records Act ("the Act") when it withheld records under KRS 61.878(1)(h) but failed to identify the types of records or explain how the release of the records would harm it in a prospective law enforcement action. The Department did not violate the Act when it denied a request for records it does not possess.

Open Records Decision

La'Daya Daniels ("Appellant") submitted a request to the Department for "all public records related to any [Department] responses to" a specific address on any date "officers were called or responded." The Appellant explained that her request was related to incidents involving her and another individual.[1] The Department denied the Appellant's request under KRS 61.878(1)(h) because two "cases are currently open, actively being investigated, and have been sent to the prosecuting attorney's office for review" and "[r]eleasing the entire case before the investigation has been completed . . . would negatively impact the investigation and judicial process."[2] The Department also informed the Appellant that it is not the custodian of records for "911 tapes, dispatch records, or CAD logs" and suggested the Appellant contact the Boyd County Regional Public Service Communication Center and provided their address. This appeal followed.

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[1] The Appellant also requested "any 911 calls regarding [the Appellant] at this residence." The Appellant specified that any response from the Department should include "all incident or offense reports, calls for service records, CAD logs, 911 recordings, and names of responding officers."

[2] The Department informed the Appellant that, once the case has been adjudicated or prosecution has been declined, it could "reevaluate the release of the requested information." The Department further stated it could provide redacted copies of the records to the Appellant after payment of a copying fee.

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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 an 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 denying a request 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, the Department's stated basis for denial in its initial response was that "cases are currently open, actively being investigated, and have been sent to the prosecuting attorney's office for review" and that "[r]eleasing the entire case before the investigation has been completed . . . would negatively impact the investigation and judicial process."

KRS 61.878(1)(h) 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." "[T]he mere fact that a law enforcement action remains prospective is [not] enough to establish that disclosure of anything from a law enforcement file constitutes 'harm' under the exemption." *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 852 (Ky. 2013). 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, the Department denied the Appellant's access to "information in its entirety," without identifying the types of records contained in that "information" or explaining what risk of harm associated with each type. Thus, the Department's initial invocation of KRS 61.878(1)(h) violated the Act.

On appeal, the Department continues to deny the Appellant's request under KRS 61.878(1)(h) by asserting only that "[p]remature disclosure of the investigative files would jeopardize the investigation and potential prosecution, and could negatively impact the integrity of the judicial process." Simply put, the Department asserts only that harm could result from disclosure without identifying the harm or

its relation to the records requested. That is not enough to invoke KRS 61.878(1)(h).[3] Therefore, the Department violated the Act when it withheld records under KRS 61.878(1)(h) without sufficiently explaining its reliance on that exemption.

Turning to the Appellant's request for 911 audio, dispatch records, and CAD logs, the Department stated affirmatively, both initially and on appeal, that it does not possess these records. Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to make a *prima facie* showing that the records exist and that they are within the public agency's possession, custody, or control. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). If the requester makes a *prima facie* showing that the records do or should exist and are in the agency's possession, "then the agency may also be called upon to prove that its search was adequate." *City of Fort Thomas*, 406 S.W.3d at 848 n.3 (citing *Bowling*, 172 S.W.3d at 341). To make a *prima facie* showing that the agency possesses or should possess the requested records, the requester must provide a statute, regulation, or factual support for that contention. *See, e.g.,* 23-ORD-207; 21-ORD-177; 11-ORD-074.

Here, the Appellant does not attempt to make a *prima facie* showing that the Department possesses any responsive 911 audio, dispatch records, or CAD logs. Therefore, the Department did not violate the Act when it could not provide the Appellant with records that 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 any subsequent proceedings. The Attorney General will accept notice of the complaint emailed to OAGAppeals@ky.gov.

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[3] The Department also asserts that "Kentucky law and longstanding Attorney General precedent recognize that records compiled in the course of detecting and investigating criminal activity may be withheld in their entirety while an investigation is active and pending prosecutorial review." But without explaining the harm associated with disclosure, the Office cannot affirm the Department's reliance on KRS 61.878(1)(h).

Russell Coleman
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/s/ Matthew Ray
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Distributed to:

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