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26-ORD-112

March 23, 2026

In re: Phillip Hamm/McCracken County Sheriff's Office

Summary: The McCracken County Sheriff's Office ("the Sheriff's Office") violated the Open Records Act ("the Act") when its initial response did not adequately explain how KRS 61.878(1)(h) applied to the records withheld. On appeal, the Sheriff's Office has adequately invoked KRS 61.878(1)(h) to withhold the responsive records in its possession. The Sheriff's Office also violated the Act when it did not advise that certain requested records do not exist.

Open Records Decision

Phillip Hamm ("Appellant") submitted a request to the Sheriff's Office for eight categories of records.¹ The Sheriff's Office denied the request because "1) all of the referenced records were collected by the [Sheriff's Office] pursuant to a criminal

¹ Specifically, the Appellant requested: "1. [a]ny documentation related to communication with law enforcement agencies in the State of Arizona regarding a traffic stop involving [a specific person] on or around May 23, 2025"; "2. [c]opies of any information, data, printouts, screenshots, or images obtained from license plate reader systems, including but not limited to FLOCK Safety cameras, concerning a [specific] 2018 Dodge Challenger Hellcat"; "3. [c]opies of any photographs taken during surveillance conducted on or about May 28, 2025, involving a [specific] 2018 Dodge Challenger Hellcat"; "4. [c]opies of any notes, reports, or documentation collected from interactions with [a specific person] of Cold Springs Road, as described in the affidavit in support of a search warrant for [a specific address]"; "5. [a]ny documentation containing the phrase "Confidential Source #377", dated prior to May 30, 2025, including but not limited to reports, affidavits, investigative notes, emails, or internal communications." "6. [c]opies of any emails from Arizona law enforcement agencies, dated between May 20, 2025[,] and May 30, 2025, regarding the traffic stop of a [specific] 2018 Dodge Challenger Hellcat"; "7. [c]opies of phone records showing any incoming calls to the . . . Sheriff's Office from any Arizona law enforcement agencies on May 23, 2025, including call logs, dispatch records, or telephone metadata sufficient to identify the date, time, originating agency, and duration of such calls"; and "8. [c]opies of any photographs taken during surveillance of [a specific address] on May 29, 2025, during the controlled purchase operation referenced in the affidavit in support of the search warrant for [a specific address]."

investigation, 2) there is an ongoing criminal prosecution of the subject of the records . . . and 3) the premature release of the records sought could harm both the . . . prosecution and the [Sheriff's Office]." 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, the Sheriff's Office 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."

The Supreme Court of Kentucky has 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." *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. Moreover, 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).

Here, in its original response and on appeal, the Sheriff’s Office described three types of potential harm. First, release of the records “could prejudice potential witnesses and could adversely color their recollection of the events.” Second, the records’ “release could result in pretrial publicity based on incomplete information, which could cause a tainted jury pool.” Third, “records related to ‘Confidential Source #377’ contain information related to ongoing investigations into criminal activity by” the Sheriff’s Office and release of those records “could harm those ongoing investigations” or reveal “the identity of informants, not otherwise known.”

To start, each of the Sheriff’s Office’s descriptions of harm is sufficient to invoke KRS 61.878(1)(h). *See* 25-ORD-290 (“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.” However, an agency invoking KRS 61.878(1)(h) must still explain the relationship between the records being withheld and the articulated harm. *See Shively*, 701 S.W.3d at 439. In the Sheriff’s Office’s original response, although it described the harms implicated by release, it stated those harms generally, without explaining what records were implicated by the request and how release of those records could result in those harms. Therefore, the Sheriff’s Office’s original response failed to adequately invoke KRS 61.878(1)(h).

But on appeal, the Sheriff’s Office has remedied that deficiency. The Sheriff’s Office responds individually to each part of the Appellant’s request and explains which of the three described harms would result from the release of that particular group of records. Here, this is sufficient to invoke KRS 61.878(1)(h). Accordingly, the Office cannot find that the Sheriff’s Office violated the Act by withholding its records under KRS 61.878(1)(h).

Finally, the Sheriff’s Office states for the first time on appeal that it does not possess records responsive to parts 2, 3, and 8 of the request. “A public agency violates KRS 61.880(1) ‘if it fails to advise the requesting party whether the’ records exist.” *Univ. of Ky. v. Hatemi*, 636 S.W.3d 857, 873 (Ky. App. 2021) (quoting 20-ORD-010). Here, the Sheriff’s Office failed to inform the Appellant that certain requested records did not exist. Instead, it issued a nonspecific denial of all responsive records.

Thus, the Sheriff's Office violated the Act when it initially failed to state whether or not responsive records existed.

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/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

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