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26-ORD-155

April 7, 2026

In re: Frank Mungo/City of Danville

Summary: The City of Danville (“the City”) violated the Open Records Act (“the Act”) when it failed to adequately invoke KRS 61.878(1)(h) to withhold the requested records.

Open Records Decision

Frank Mungo (“Appellant”) submitted a nine-part request to the City for records related to “any 911 call made to the Danville 911 Center on January 11, 2026, from 8:00 pm until 11:00 pm.” In response, the City stated it was providing all records “with the exception of the officer involved shooting calls” between 9:37 p.m. on January 11, 2026, and 4:10 a.m. on January 12, 2026. As its basis for denial, the City stated that “[t]hose records are exempt due to an ongoing investigation pursuant to KRS 61.878(1)(h).” This appeal followed.¹

If an agency denies a request to inspect records, its written response must “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.” KRS 61.880(1). Although the explanation in support of denial may be “brief,” it cannot be “limited and perfunctory.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. App. 1996). In *Edmondson*, the agency’s response to a request merely stated that “the information you seek is exempt under KRS 61.878(1)(a)(k)(l) [sic].” *Id.* The agency failed to explain how any of the exemptions applied to the records withheld, and for that reason, the court held, it violated KRS 61.880(1). *Id.*

¹ In his appeal letter, the Appellant complained that he had not received certain categories of records. In its response on appeal, the City clarified that it had provided all responsive records except “radio traffic recordings” and the “officer involved shooting calls.” The Appellant has stated that the only remaining issue on appeal is the withholding of those records under KRS 61.878(1)(h).

The City argues that the records are exempt under KRS 61.878(1)(h). That statute 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.” The only basis the City gave for its invocation of KRS 61.878(1)(h) is the fact that the records are part of “an ongoing investigation.”

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, the City has only stated that the withheld records are part of an ongoing investigation. That explanation fails to describe the harm that could result from disclosure of how release of the withheld records could cause that harm. *See City of Fort Thomas*, 406 S.W.3d at 852. Accordingly, the City has not adequately invoked KRS 61.878(1)(h) to withhold the requested records.

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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Distributed to:

Frank Mungo, Appellant
Stephanie Dexter, Danville City Attorney
Ashley Phillips, Danville City Clerk
James Atkins, Mayor of Danville