COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

26-ORD-156

April 8, 2026

In re: Zackary McKee/Louisville Metro Government

Summary: The Louisville Metro Government ("Metro") violated the Open Records Act ("the Act") when it did not cite the exemption authorizing its denial of the request. On appeal, Metro adequately invoked KRS 61.878(1)(h) to withhold the requested body-worn camera footage.

Open Records Decision

On January 2, 2026, Zackary McKee ("Appellant") submitted a request to Metro seeking, in relevant part, body-worn camera footage related to a named individual between December 25, 2025, and January 2, 2026. In a January 6, 2026, response, Metro stated that it would "begin to process [the Appellant's] request" once he provided the affidavit authorized by KRS 61.169(1)(d). On January 14, 2026, upon the Appellant's completion of that affidavit, Metro stated that "[d]ocuments are being processed for this request, as well as body cam video . . . with the exception of video for the incident on December 26, 2025[,] as it is currently an open investigation." 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). On appeal, Metro admits that its response did not cite an exception to the Act. Therefore, Metro's initial response did not comply with KRS 61.880(1).

[1] Metro also invoked KRS 61.872(5) to delay its production of other responsive records. That delay has not been challenged on appeal.

AN EQUAL OPPORTUNITY EMPLOYER M/F/D

On appeal, Metro now explains that the withheld body-worn camera footage is exempt under KRS 61.878(1)(h). 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.* 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." *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 851 (Ky. 2013).

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 *Shively* was 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.

Turning to the merits of this appeal, Metro explains that the footage is evidence "regarding a police officer's on-duty conduct on December 26, 2025." The footage contains "evidence of the conduct under investigation, which is alleged to violate police departmental policies." Metro explains that disclosure could harm its investigation by "impact[ing] witnesses' recollection of events during testimony or future statements," which "could affect witnesses' testimony and credibility, including that of the requester's client, thus harming the investigation into alleged misconduct." The Office has found that KRS 61.878(1)(h) was adequately invoked when the agency explained that disclosure could prejudice the memories of potential witnesses. *See* 26-ORD-097. Therefore, Metro has adequately invoked KRS 61.878(1)(h) to withhold the requested footage.

To rebut Metro's invocation of KRS 61.878(1)(h), the Appellant relies on KRS 61.884, KRS 61.169, KRS 61.878(1)(q), and KRS 61.168(5)(d), asserting that each statute requires that Metro make the footage available to him. The Office will address each in turn.

Under KRS 61.884, "[a]ny person shall have access to any public record relating to him or in which he is mentioned by name, upon presentation of appropriate identification, *subject to the provisions of KRS 61.878*" (emphasis added). The Appellant asserts the withheld footage involves his client. But even accepting that assertion as true, KRS 61.884 only makes the records available "subject to the provisions of KRS 61.878." Because the Office has concluded that Metro has adequately invoked KRS 61.878(1)(h) to withhold that footage, KRS 61.884 does not require its disclosure.

Similarly, although KRS 61.169 provides that "a recording that may be viewed under KRS 61.168(5)(d) shall, upon request, be made for and provided to an attorney," subject to certain conditions, it also is "[s]ubject to the provisions of KRS 61.870 to 61.884." Therefore, because the Office has concluded that Metro has adequately invoked KRS 61.878(1)(h) to withhold that footage, KRS 61.169 does not require its disclosure.

Next, the Appellant relies on KRS 61.878(1)(q), which exempts from disclosure "photographs or videos that depict the death, killing, rape, or sexual assault of a person." KRS 61.878(1)(q). "However, such photographs or videos 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 . . . [t]he legal representative of any involved party." KRS 61.878(1)(q)1.c. Here, the Appellant

argues that he is the legal representative of an individual involved in the withheld footage. But that is irrelevant. The reason is that KRS 61.878(1)(q)1.c. is an exception to only KRS 61.878(1)(q). Thus, if Metro had denied the Appellant's request *on the basis of KRS 61.878(1)(q)*, then the Appellant could have invoked KRS 61.878(1)(q)1.c. to inspect the records anyway. But here, Metro did not invoke KRS 61.878(1)(q) as its basis for denying the request. Rather, it invoked KRS 61.878(1)(h), which the Office has found to apply here. As such, KRS 61.878(1)(q)1.c. does not require disclosure of the video footage.

Finally, under KRS 61.168(5)(d), "[i]f the recording contains video or audio footage that . . . [i]s requested by a person . . . or the personal representative of a person . . . that is directly involved in the incident contained in the body-worn camera recording, it shall be made available by the public agency to the requesting party for viewing on the premises of the public agency, but the public agency shall not be required to make a copy of the recording except as provided in KRS 61.169." Metro acknowledges that the Appellant, as the representative of the individual involved in the recorded incident, has the right to view the footage on its premises and states that it has "contacted the requester to arrange viewing of unredacted footage on the agency's premises and will not limit Appellant on how many times he may view the footage."[2] However, this provision does not required Metro to provide the Appellant with an unredacted copy of the footage. Therefore, Metro did not violate the Act when it withheld the footage.

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

---

[2] Because Metro has made the footage available for viewing, any dispute regarding Metro's original complete denial of the request is moot. *See* 040 KAR 1:030 § 6.

#067

Distributed to:

Zackary McKee, Appellant
Alice Lyon, Assistant Jefferson County Attorney
Nicole Pang, Assistant Jefferson County Attorney
Natalie S. Johnson, Assistant Jefferson County Attorney
Annale Taylor, Assistant Jefferson County Attorney
Donald Haas, Assistant Jefferson County Attorney
Michael Spenlau, Assistant Jefferson County Attorney
Anne Coorsen, Assistant Jefferson County Attorney

An Equal Opportunity Employer M/F/D