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26-ORD-161

April 13, 2026

In re: Travon Byers/Kentucky State University

Summary: Kentucky State University ("the University") violated the Open Records Act ("the Act") when it failed to give a sufficiently detailed explanation of how an exception to the Act applied to the records withheld. However, the University did not violate the Act when it could not provide video footage that no longer exists.

Open Records Decision

On July 15, 2025, at 8:52 p.m., Travon Byers ("the Appellant") submitted a request to the University for all records relating to an incident in which a named individual's car tires were slashed on July 14, 2025, including "[a]ll video footage, including but not limited to security camera footage or any other recordings, related to the incident." In a timely response issued on July 23, 2025,[1] the University denied the request under KRS 61.878(1)(h) because "the release of video footage and other records at this time would constitute a premature release of information that could harm the prospective law enforcement action." However, the University added, "[o]nce KSU Campus Police (or any other appropriate law enforcement agency) has taken final action in this matter, the records will become open for inspection." The University stated it would "retain" the Appellant's request and "KSU Police ha[d] been advised to provide the records to [the Appellant] promptly after such final action is taken."

On or about January 29, 2026, the Appellant inquired as to the status of his request. On February 20, 2026, the University provided its records related to the incident, including a report indicating that surveillance footage was reviewed by campus police during the investigation. The University stated, "No documents [were] being withheld." After further inquiries from the Appellant about the video footage, the University determined that "the video evidence was deleted as part of the regular

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[1] Because the Appellant submitted his request after business hours on July 15, 2025, it is deemed to have been received on the next business day, July 16.

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retention loop/cycle" after police had concluded it did not "provide sufficient evidence to identify" the suspects. This appeal followed.

The Appellant asks the Office to determine whether the University complied with the Act "in its handling of the request." 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 University initially 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." In *City of Fort Thomas v. Cincinnati Enquirer,* 406 S.W.3d 842, 852 (Ky. 2013), the Supreme Court of Kentucky 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." 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, however, the University denied the Appellant's request without identifying the types of records it possessed and articulating the particular risk of harm associated with each category of records. Thus, the University violated the Act in its initial response to the request. *See, e.g.,* 26-ORD-055.

The Appellant also asks the Office to "[d]etermine whether responsive records were properly preserved after the request was submitted," particularly regarding the video footage. On appeal, the University reiterates "that the video no longer exists as it was deleted as part of its regular cycle of retention after law enforcement reviewed the video." The University further states, "Processes have been put in place to ensure that all videotapes and records are maintained and preserved if subject to an ongoing open records request, so that this will not happen again." Once a public states affirmatively that records no longer exist, the burden shifts to the requester to make

a *prima facie* case that the records do or should exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov't,* 172 S.W.3d 333, 341 (Ky. 2005). If the requester is able to make a *prima facie* case that the records should still exist, then the agency must provide "a written explanation for their nonexistence." *Eplion v. Burchett,* 354 S.W.3d 598, 603 (Ky. App. 2011) (quoting 10-ORD-078). And, if the requester has made a *prima facie* case, "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 (Ky. 2013) (citing *Bowling,* 172 S.W.3d at 341).

Here, the Appellant asserts the surveillance footage should still exist because it was the subject of a pending open records request. The General Assembly has recognized "an essential relationship between the intent of [KRS Chapter 61] and that of KRS 171.410 to 171.740, dealing with the management of public records," including records retention schedules. KRS 61.8715. In some instances, an applicable retention schedule may create "a limited duty to preserve surveillance video records for purposes of pending litigation or pending open records requests." 20-ORD-067. In the State University Model Records Retention Schedule, such a duty is imposed upon certain record series, including body-worn camera recordings and personal information security breach records.[2] However, surveillance camera footage is subject to no such requirement.[3] Moreover, even when the retention schedule imposes this limited duty, "the Act itself does not independently require a public agency to preserve records beyond the duration of the applicable retention schedule." *Id.*

Therefore, despite the prior representations by the University that the requested records would be provided to him after final action was taken, the Appellant has not made a *prima facie* case that the surveillance footage still exists. *See, e.g.,* 23-ORD-090 (finding no violation of the Act when an agency stated that a record "was disposed of" and the requester did "not cite to any authority, such as the [agency's] record retention schedule, that would require the [agency] to retain and

[2] *See* State University Model Records Retention Schedule, "Body-Worn Camera Recordings (Audio/Video)," Series U1313 ("Evidentiary recordings used in any investigation, pending investigation, litigation or open records requests must be kept until all investigative or legal activity is completed."); *id.*, "Personal Information Security Breach Investigation/Notification File," Series U0138 ("If any investigation, litigation, or open records request involving these records is taking place or is pending, maintain until all investigative or legal activity is completed, then destroy."), *available at* https://kdla.ky.gov/records/RetentionSchedules/Documents/State%20Records%20Schedules/KYUniversityModel.PDF (last accessed March 25, 2026).

[3] *See id.*, "Surveillance and Access Security File," Series U0132 ("Retain video/audio recordings for seven (7) days, then destroy or overwrite."), *available at* https://kdla.ky.gov/records/RetentionSchedules/Documents/State%20Records%20Schedules/KYUniversityModel.PDF (last accessed March 25, 2026).

possess the record"). Accordingly, the University did not violate the Act when it could not provide records that no longer exist.[4]

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/ James M. Herrick
James M. Herrick
Assistant Attorney General

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Distributed to:

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[4] The Appellant further asks the Office to require the University "to disclose any remaining responsive records related to the video footage." However, the University stated it had provided all records responsive to the request, and the Appellant has not made a *prima facie* case that additional responsive records exist. The Appellant also asks the Office to "[r]equire disclosure of any records relating to the deletion of the video, including retention policies, deletion logs, or other documentation reflecting when the footage was removed from the system." These documents, however, are outside the scope of the Appellant's request.

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