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26-ORD-266

June 10, 2026

In re: Kevin Okum/Department of Kentucky State Police

Summary: The Kentucky State Police ("KSP") did not violate the Open Records Act ("the Act") when it did not provide copies of body-worn camera footage, the disclosure of which would harm its investigation.

Open Records Decision

On April 30, 2026, Kevin Okum ("the Appellant") submitted a request for body-worn camera footage recorded on the morning of April 29, 2026, at the Christian County Courthouse. In response, KSP denied the request under KRS 61.878(1)(h), explaining that the law enforcement investigation related to the footage had only begun six days earlier and that disclosure of the records would harm the investigation by "causing jurors to develop preconceived opinions regarding this incident." This appeal followed.

"Except as provided in [KRS 61.168], the disclosure of body-worn camera recordings shall be governed by" the Act. KRS 61.168(2). If the footage "[i]s requested by 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." KRS 61.168(5)(d). In his appeal letter, the Appellant stated for the first time that he is the subject of the requested recording. As such, KSP states that it has made the records available for inspection. However, the Appellant asserts that KSP must provide him with a copy of the record. Because it is the opinion of the Office that KSP has adequately explained how disseminating a copy of the footage would harm its investigation, KSP has not violated the Act by offering only in-person inspection of the footage.

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.

On appeal, KSP states that the "risk of harm" includes (1) compromising witness memories, (2) revealing the status and direction of the investigation, and (3) prejudicing the jury before evidence can be presented to it. The Office has found that a law enforcement agency adequately invoked KRS 61.878(1)(h) when it explained that disclosure of requested records "could compromise the recollections of witnesses or cause potential jurors to develop preconceived opinions," 25-ORD-300, or when disclosure could expose leads in the investigation not yet known to the public, 25-ORD-177. Therefore, because KSP has articulated the risks of harm to its investigation associated with the specific records requested, it has met its burden under KRS 61.878(1)(h). Accordingly, KSP did not violate the Act when it did not provide copies of records exempt under KRS 61.878(1)(h).

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.

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/s/ Zachary M. Zimmerer
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Distributed to:

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