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26-ORD-308

July 15, 2026

In re: Aaron Maynard/Lexington Police Department

Summary: The Lexington Police Department (“the Department”) did not violate the Open Records Act (“the Act”) when it did not provide copies of investigative records, the disclosure of which would harm its investigation. The Department also did not violate the Act when it did not provide dashboard camera footage it does not possess.

Open Records Decision

Aaron Maynard (“Appellant”) submitted a request to the Department for records related to a motor vehicle collision that occurred on April 10, 2023, and involved a specific individual. Specifically, the Appellant sought (1) “The Kentucky Uniform Police Traffic Collision Report,” (2) “All body-worn camera footage recorded by responding officers,” (3) “Any dash camera video,” (4) “CAD logs and dispatch records,” (5) “Crash reconstruction reports, photographs, and supplemental reports,” and (6) “Any witness statements or other investigative materials that are releasable under the Kentucky Open Records Act.” In response, the Department denied the request, stating the records are exempt under KRS 189.635(6)(b).¹

On appeal, the Department raises KRS 61.878(1)(h) as an additional basis for withholding the records. 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

¹ The Department’s response cited “KRS 189.635(6)(9).” On appeal, the Department states this was a typographical error.

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, the Department explains that the incident identified by the Appellant is “related to an open criminal investigation” and identifies four risks of harm that could result from disclosure: (1) the disclosure of “case details known only to those directly involved,” (2) “tainting witness testimony,” (3) creating difficulty “in locating cooperating witnesses for fear of retaliation” and “privacy concerns of the cooperating parties,” and (4) harm to “assessing the validity of new information.” 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 expose leads in the investigation not yet known to the public, 25-ORD-177, create a risk of witness retaliation, *see* 25-ORD-044, or could “could compromise the recollections of witnesses or cause potential jurors to develop preconceived opinions,” 25-ORD-300. Therefore, because the Department 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, the Department did not violate the Act when it did not provide copies of records exempt under KRS 61.878(1)(h).²

Last, the Department states that it does not possess any dashboard camera video related to the specified incident. Once a public agency states affirmatively that no additional records 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 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 (citing *Bowling*, 172 S.W.3d at 341). Here, the Appellant has not made a *prima facie* case that the Department possesses responsive dash camera video. Therefore, the Department did not violate the Act when it did not provide records it does not possess.

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/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

² Because records associated with the Department’s ongoing investigation are exempt under KRS 61.878(1)(h), the Office need not address the Department’s alternative bases for denial under KRS 189.635(6)(b) or KRS 189A.200(2).

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Distributed to:

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