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26-ORD-357

August 7, 2026

In re: Samantha Jones/University of Kentucky

Summary: The University of Kentucky (“the University”) violated the Open Records Act (“the Act”) when it denied a request for video footage from its law enforcement unit under KRS 61.878(1)(k) and 20 U.S.C. § 1232g (FERPA).

Open Records Decision

Samantha Jones (“the Appellant”) submitted a request to the University for certain records related to the arrest of a student by the University’s police department on November 6, 2022. At issue in this appeal is the Appellant’s request for “body cam footage of first 2 responding officers, dash cam footage of arresting officer, body cam footage of arresting officers[,] CCTV/surveillance footage of incident if available, [and] footage from bystanders if available.” In its response, the University provided “documents from the University’s Police Department,” but stated it was withholding “some footage” under the Family Educational Rights and Privacy Act.¹ This appeal followed.

The Appellant claims, and the University does not dispute, that no video footage at all was provided to her. Of the different types of videos requested by the Appellant, the University has not specified which types it does or does not possess, except to confirm that there is “body cam footage” from the University’s police department. Therefore, it is presumed for purposes of this appeal that all the video at issue is body-worn camera footage from University police officers. Under KRS 61.168(5)(b), if a body-worn camera recording “[d]epicts an incident which leads to the detention or arrest of an individual or individuals, the disclosure of the record shall be governed solely by the provisions of [the Act], including all of the exceptions contained therein.”

¹ The University also stated it was withholding the footage under KRS 61.878(1)(a) as “an invasion of personal privacy” because it “contains other students.” But on appeal, the University no longer relies on KRS 61.878(1)(a), so its application will not be addressed further herein.

On appeal, the University relies exclusively on the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, to sustain its denial of the Appellant's request. As a federal law prohibiting disclosure of certain public records, FERPA is incorporated into the Act by KRS 61.878(1)(k). Under the relevant part of FERPA, 20 U.S.C. § 1232g(b)(1), "[n]o funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information . . .) of students without the written consent of their parents to any individual, agency, or organization, other than to" specified individuals under conditions not relevant here. When a student reaches the age of 18, "the rights accorded to, and consent required of, parents" under FERPA are transferred to the student. 34 C.F.R. § 99.5.

For records to be protected under FERPA, they must be "education records" as defined by FERPA. Under the statute, "the term 'education records' means, *except as may be provided in subparagraph (B)*, those records, files, documents, and other materials which . . . contain information directly related to a student [and] are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. § 1232g(a)(4)(A) (emphasis added). But, under 20 U.S.C. § 1232g(a)(4)(B)(ii), "[t]he term 'education records' does not include . . . records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement." Here, the University does not claim its police department created the body-worn camera recordings at issue for any purpose other than law enforcement. "Because law enforcement records are by definition not education records, the FERPA does not protect law enforcement records or place restriction on their disclosure." *U.S. v. Miami Univ.*, 294 F.3d 797, 814 (6th Cir. 2002).

Under 34 C.F.R. § 99.8(b)(2)(ii), "[r]ecords of a law enforcement unit" do *not* include "[r]ecords created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than a law enforcement unit." Thus, for example, if a law enforcement unit provides its records to a school official for use in a disciplinary proceeding, they are not records of a law enforcement unit for purposes of FERPA. *See* 03-ORD-201 (citing *Miami*, 294 F.3d at 814); 05-ORD-136; 12-ORD-112. Here, however, the University does not claim its police department ever provided the body-worn camera footage to another "component" of the University, or that the footage is maintained by any official outside the police department. In an open records appeal, "[t]he burden of proof in sustaining the action shall rest with the agency." KRS 61.880(2)(c). Because the University has not met its burden to show that FERPA applies to the withheld video footage, the University violated the Act when it withheld the video footage on that basis.

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/ James M. Herrick
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Distributed to:

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