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20-ORD-106

July 28, 2020

In re: *The Courier-Journal*/Louisville Metro Emergency Services

Summary: Louisville Metro Emergency Services (“LMES”) did not violate the Open Records Act (“the Act”) by denying a request for a dispatch report and recordings of radio transmissions under KRS 17.150(2). LMES substantiated on appeal that disclosure would impede pending investigations by the Federal Bureau of Investigation (“FBI”) and the Office of the Attorney General by revealing information to be used in prospective law enforcement actions.

Open Records Decision

The Courier-Journal (“Appellant”) initiated this appeal from a denial of its request for a Computer-Assisted Dispatch (“CAD”) report concerning the execution of search warrants at two locations, including Ms. Breonna Taylor’s home address, on March 13, 2020; and recordings of all radio transmissions from that date related to the execution of those warrants, “including but not limited to the reports of an officer shot and a subject killed by police.”¹ The initial denial stated that the records were “part of an active LMPD [Louisville Metro Police Department] investigation under KRS 61.878(1)(h).”

¹ Appellant also requested all 911 calls related to the incident at 3003 Springfield Drive. As the Department has subsequently released those recordings, that portion of the appeal is moot. 40 KAR 1:030 § 6.

On appeal, LMES additionally invokes KRS 17.150(2) on behalf of LMPD. LMES asserts that it functions as “the communication center for LMPD,” essentially acting as its “police radio room” under the governing agreement between the two agencies. Thus, LMES contends, “[f]or all practical purposes, LMES/police communication records and CAD records are LMPD records.”

Although KRS 17.150(1) identifies several different criminal justice agencies, it is not an exhaustive list and includes “every other person or criminal justice agency.” LMES provides essential law enforcement services on behalf of LMPD, and considers itself to be “a police radio room.” Considering the services LMES provides LMPD, including answering emergency calls that request a law enforcement response, LMES is “[an]other criminal justice agency” under KRS 17.150(1). However, even if this were not the case, it is well established that a public agency may invoke KRS 17.150(2) as to its records on behalf of a criminal justice agency that is conducting an active investigation. *See, e.g.,* 19-ORD-025 (holding that the Cabinet for Health and Family Services could invoke KRS 17.150 on behalf of the Office of Medicaid Fraud and Abuse).

Under KRS 17.150(2), “[i]ntelligence and investigative reports maintained by criminal justice agencies are subject to public inspection if prosecution is completed or a determination not to prosecute has been made.” In 20-ORD-090, this Office ruled that “the completion of a prosecution or a decision not to prosecute is a condition precedent to public inspection” of records within the scope of KRS 17.150(2). This Office has previously ruled that CAD reports were included in the category of “intelligence and investigative reports.” *See, e.g.,* 17-ORD-144; 11-ORD-171. Police radio traffic relating to a specific investigation has likewise been found to be within the scope of KRS 17.150(2). *See, e.g.,* 16-ORD-240.

When an agency relies upon KRS 17.150(2) to deny a request to inspect records, “the burden shall be on the custodian to justify the refusal of inspection with specificity.” KRS 17.150(3). LMES asserts that the information contained in the CAD report and radio recordings “is evidence and will likely be used in any prospective law enforcement action or criminal prosecution.” Specifically, LMES states that “the police officers involved are potential subjects of both criminal and administrative investigations.” Furthermore, LMES has provided letters from the FBI and the Office of the Attorney General stating that both agencies are actively investigating the incident in question for potential criminal prosecution.

In 20-ORD-104, an appeal involving Appellant and LMPD, this Office concluded that this substantiating information provides the necessary specificity that a prosecutorial decision has not been made. As a result, LMPD's denial of Appellant's request for a Professional Integrity Unit investigative file relating to the March 13 officer-involved shooting was justified under KRS 17.150(2)(d). Likewise, in the present appeal, LMES has established conclusively that potential prosecutions, both state and federal, remain possible concerning the March 13 incident and that disclosure of the records in dispute would impede the ability of the Attorney General and the FBI to investigate the incident by disclosing information that may be used in potential prosecutions. As in 20-ORD-104, upon completion of the ongoing investigations or a determination not to prosecute, any records that are responsive to Appellant's request will be subject to disclosure unless those records are specifically excluded from application of the Act by another statutory exception. Because KRS 17.150(2) is dispositive of this appeal, this Office declines to make any finding relative to KRS 61.878(1)(h).

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. 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.

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