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**20-ORD-107**

July 28, 2020

In re: *The Courier-Journal*/Louisville Metro Police Department

**Summary:** Louisville Metro Police Department (“Department”) did not violate the Open Records Act (“the Act”) by denying requests for administrative incident reports and body camera footage under KRS 17.150(2). The Department 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 the Department’s denial of its requests for administrative incident reports related to the execution of two search warrants at two locations, including Ms. Breonna Taylor’s home address, on March 13, 2020. Appellant also requested to inspect body camera footage related to the execution of the search warrant at the second location and the subsequent arrest of Jamarcus Cordell Glover on the same date. The Department denied both requests on the basis of KRS 61.878(1)(h)<sup>1</sup> and KRS 17.150(2), “until such time as prosecution is completed or declined,” because the incident was under investigation by the Department’s Public Integrity Unit (“PIU”). The Department further stated that the premature release of the records

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<sup>1</sup> In its denial of the body camera footage, LMPD mistakenly cited KRS 61.878(1)(a) instead of KRS 61.878(1)(h).

“could result in prejudice to the potential witnesses and has the potential to adversely color a witness’ recollection of the events.”

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).

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). The Department asserts that the incident reports pertain to the potential prosecution of the officers involved, while the body camera footage is relevant to the pending prosecution of Jamarcus Cordell Glover and an ongoing investigation of the incident by the FBI. The Department 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 these parties, this Office concluded that this substantiating information provides the necessary specificity that a prosecutorial decision has not been made. As a result, the Department’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, the Department has established conclusively that potential prosecutions, both state and federal, remain entirely 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 to 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.

Daniel Cameron  
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/s/ James M. Herrick

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