



COMMONWEALTH OF KENTUCKY
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21-ORD-029

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In re: Lawrence Trageser/Spencer County Sheriff's Department

Summary: The Spencer County Sheriff's Department ("Department") violated the Open Records Act ("the Act") when it denied inspection of records under KRS 61.878(1)(h) without explaining how inspection of the records would harm an ongoing investigation.

Open Records Decision

Lawrence Trageser ("Appellant") requested from the Department copies of all records identifying all vehicles, boats, or trailers that the Department has seized in connection with drug investigations conducted between January 1, 2019 and March 2, 2020. The Appellant also sought copies of any records documenting the Department's sale of the seized items, or records detailing the value of the seized items. In a timely written response, the Department stated only that "[t]hese records are exempt from inspection under KRS 61.878(1)(h). After final disposition of the cases involving these items, [the Department] will be able to comply with your request." This appeal followed.

When a public agency denies a request to inspect records, it must cite the exception authorizing the denial and briefly explain how the exception permits the agency to withhold the records. KRS 61.880(1). Under KRS 61.878(1)(h), a law enforcement agency may deny inspection of records obtained during a criminal investigation if inspection of those records would "harm the agency by revealing the identity of informants not otherwise known

or by premature release of information to be used in a prospective law enforcement action[.]” A public agency may not simply assert that KRS 61.878(1)(h) applies to certain records. Instead, the agency must articulate a “concrete risk of harm” to the agency’s investigation. *City of Ft. Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 851 (Ky. 2013). “A concrete risk, by definition, must be something more than a hypothetical or speculative concern.” *Id.*

Here, the Department did not articulate any harm at all. Rather, the Department simply cited KRS 61.878(1)(h) and gave no explanation as to how it applied to the requested records. For this reason, it violated the Act.

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
Attorney General

/s/Marc Manley
Marc Manley
Assistant Attorney General

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Distributed to:

Lawrence Trageser
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