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21-ORD-041

March 8, 2021

In re: Newsy/Louisville Metro Police Department

Summary: Because the Louisville Metro Police Department (“Department”) failed to respond to an open records request within ten days, it violated the Open Records Act (“the Act”) as modified by Senate Bill 150.

Open Records Decision

On July 28, 2020, Newsy (“Appellant”), a media organization, requested a copy of the Department’s “Public Integrity Unit’s case tracking database” and any “document or data dictionary that explains/defines the database fields.” The Department did not respond to deny the request until September 28, 2020. This appeal followed.

The Appellant alleges that the Department’s response was untimely. Normally, a public agency must respond to an open records request within three business days. KRS 61.880(1). In response to the public health emergency caused by the novel coronavirus, however, the General Assembly modified that requirement when it enacted Senate Bill 150 (“SB 150”), which became law on March 30, 2020. SB 150 provides, notwithstanding the provisions of the Act, that “a public agency shall respond to the request to inspect or receive copies of public records within 10 days of its receipt.” SB 150 § 1(8)(a). The Department violated the Act when it failed to respond to the Appellant’s request within ten days.

On appeal, it is apparent that there was some misunderstanding about what records the Appellant was seeking. Although the Appellant sought records from a database, which it believed the Public Integrity Unity (“PIU”) had created, the Department has confirmed that PIU has not created such a database. Instead, the Department has agreed to provide the Appellant a copy of the Special Investigations Division (“SID”) database, which is organized much like what the Appellant described in its request. The Department will export the data and redact exempt fields, in compliance with *Department of Kentucky State Police v. Courier Journal*, 601 S.W.3d 501 (Ky. App. 2020).¹ Because the Department has not yet produced the records or made any redactions, any objections to the redactions, if any, are not yet ripe for review. *See* 20-ORD-111.²

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 proceeding.

¹ Because the Department is making responsive records available, any dispute about the Department’s reason for denying the request is moot. But this Office notes that the Appellant precisely described the records it sought. That said, it precisely described records that do not exist. The PIU has not yet created a database matching the Appellant’s description. Ultimately, the Department used the Appellant’s description to obtain records from a different database responsive to the Appellant’s request, so there is no basis to conclude that the Appellant failed to precisely describe the records sought.

² As in 20-ORD-111, this Office notes that under *Kentucky New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 89 (Ky. 2013), an agency may categorically redact discrete types of information, including dates of birth, addresses, and Social Security numbers. Under *Lawson v. Office of Attorney General*, 415 S.W.3d 59, 69 (Ky. 2013), a law enforcement agency may also redact the identities of witnesses, victims, and uncharged suspects. Furthermore, under KRS 61.878(1)(l), juvenile identities and records that relate to an expunged record are confidential under KRS 610.320(3) and KRS 431.073(7), respectively. But redactions made under KRS 61.878(1)(h) must be made case-by-case and the agency must consider the status of the prospective law enforcement investigation and any potential harm to the investigation. *See City of Ft. Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842 (Ky. 2013).

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