



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

21-ORD-049

March 15, 2021

In re: Tyler Fryman/Louisville Metro Police Department

Summary: Louisville Metro Police Department (“Department”) did not violate the Open Records Act (“the Act”) by denying a request for records relating to an incident that remains under criminal investigation.

Open Records Decision

On February 2, 2021, Tyler Fryman (“Appellant”) submitted a request to inspect certain records related to an officer’s alleged use of force in May of 2020. The Appellant specifically sought body camera or video footage, use of force reports, the Internal Affairs file, and a final determination from the chief of the Department related to any administrative discipline rendered in connection to the event. The Department denied Appellant’s request for the records under KRS 61.878(1)(h), (i), and (j).¹ The Department stated that the investigation is ongoing, the case file is incomplete, and that no final action has been taken. The Department further claimed that the premature release of the records may impact the memory of potential witnesses. This appeal followed.

On appeal, the Department now claims that the records are exempt under KRS 17.150(2), which provides that “[i]ntelligence and investigative reports maintained by criminal justice agencies are subject to public inspection if

¹ The Department also denied access to an officer’s personnel file, but has since made same available to Appellant. Therefore, the appeal of the denial of this record is now moot. 40 KAR 1:030 § 6.

prosecution is completed or a determination not to prosecute has been made.” In 20-ORD-090, this Office found 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 met this burden because it asserts that the requested records have been given to the FBI as part of that agency’s criminal investigation into the matter. The Department confirms that the criminal investigation is still being conducted by the FBI, and that no prosecutorial decision has been made.² As a result, the Department’s denial of Appellant’s request was justified under KRS 17.150(2). Upon completion of the ongoing investigations or a determination not to prosecute, any records that are responsive to Appellant’s request may 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), (i), and (j).

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

² The Appellant admits that he cannot challenge the fact that the investigation is still ongoing. Rather, the Appellant claims that under Department policy the investigation should have been concluded within 45 days, but the incident under investigation occurred almost a year ago. For its part, the Department claims the reason its administrative investigation has not yet concluded is because it is waiting on the results of the FBI’s criminal investigation. Whether or not the Department is complying with its own internal policy to conclude its administrative investigations timely is not a question for this Office to decide in an Open Records Act dispute.

21-ORD-049

Page 3

#054

Distributed to:

Tyler Fryman

Alice Lyon

Paul Guagliardo

Samantha Childress