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22-ORD-178

August 31, 2022

In re: Phillip Hamm/McCracken County Sheriff's Office

Summary: The McCracken County Sheriff's Office ("Sheriff's Office") did not violate the Open Records Act ("the Act") when it did not permit the subject of a body-worn camera recording to make a copy of the recording, in accordance with KRS 61.168(5)(d).

Open Records Decision

On February 22, 2022, Phillip Hamm ("Appellant") requested copies of various records pertaining to the execution of a search warrant at his home on February 17, 2022, including "body cam footage." The Sheriff's Office initially denied the request in its entirety.¹ In subsequent discussions with the Sheriff's Office, the Appellant asked for a copy of the body-worn camera footage, which he had previously viewed at the Sheriff's Office on July 7 and 8, 2022. On August 4, 2022, the Sheriff's Office notified the Appellant in writing that he would not be allowed to "record, duplicate or make copies of the videos at this time." This appeal followed.

The Appellant claims he is entitled to a copy of the camera footage under KRS 61.874(1), which provides that "[u]pon inspection, the applicant shall have the right . . . to obtain copies of all written public records. . . . If the applicant desires copies of public records other than written records, the custodian of the records shall permit the applicant to duplicate the records; however, the custodian may ensure that such duplication will not damage or alter the records." Thus, the Appellant argues that the right to obtain copies of public records under KRS 61.874(1) is "correlative to the right to inspect those records," and an agency may not refuse to allow a requester to obtain a copy of records once he has inspected them.

¹ The Sheriff's Office's denial of that request was the subject of this Office's decision in 22-ORD-109.

The Sheriff's Office, however, argues the Appellant may not obtain a copy of the footage because KRS 61.874(1) does not apply to copies of body-worn camera footage. Under KRS 61.168(2), "the disclosure of body-worn camera recordings shall be governed by the [Act]" *unless* KRS 61.168 states otherwise. Here, the Appellant's access to the recordings is governed by KRS 61.168(5)(d). Under that provision, if the footage "[i]s requested by a person . . . that is directly involved in the incident contained in the body-worn camera recording, it shall be made available by the public agency to the requesting party for viewing on the premises of the public agency, but *the public agency shall not be required to make a copy of the recording* except as provided in KRS 61.169."² KRS 61.168(5)(d) (emphasis added). Although KRS 61.874(1) applies generally to public records, KRS 61.168(5)(d) specifically applies to the public record the Appellant requested, body-worn camera footage. "When there appears to be a conflict between two statutes, as here, a general rule of statutory construction mandates that the specific provision take precedence over the general." *Com. v. Phon*, 17 S.W.3d 106, 107 (Ky. 2000). Accordingly, KRS 61.168(5)(d) and KRS 61.169 provide the procedures for obtaining copies of body-worn camera footage, not KRS 61.874(1).

Under KRS 61.168(5)(d), "[t]he requesting parties shall not be limited in the number of times they may view the recording[.]" Here, the Sheriff's Office has allowed the Appellant to view the footage twice and has offered to let him do so again. Having complied with KRS 61.168(5)(d), the Sheriff's Office is not required to provide a copy of the body-worn camera footage. Accordingly, the Sheriff's Office did not violate the Act when it denied the Appellant's request for a copy of the footage.³

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 within 30 days from the date of this decision. 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. The Attorney General will accept notice of the complaint e-mailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

s/James M. Herrick
James M. Herrick
Assistant Attorney General

² KRS 61.169 allows the involved party's attorney to obtain a copy of the recording upon certain conditions.

³ The Appellant also alleges that the video footage he was shown is incomplete, whereas the Sheriff's Office asserts that the Appellant viewed the complete and unredacted footage. This Office is unable to resolve factual disputes between a requester and a public agency. *See, e.g.*, 21-ORD-163.

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Distributed to:

Mr. Phillip Hamm
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Sheriff Matt Carter
Ms. Jana King