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24-ORD-175

August 2, 2024

In re: Laura O'Brien/Oldham County Police Department

**Summary:** The Oldham County Police Department (“the Department”) violated the Open Records Act (“the Act”) when it denied a request for body-worn camera footage under KRS 189.635. To the extent body-worn camera footage may contain personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, the Department may redact such footage in accordance with KRS 61.878(1)(a) and (4).

***Open Records Decision***

On July 1, 2024, Laura O'Brien (“Appellant”) requested records from the Department relating to a collision on June 18, 2024, in which the Oldham County Judge/Executive was involved, including “the police body camera footage with recording from the Officer’s arrival to his/her departure from the scene of the accident.” The Department initially denied the request as to the accident report under KRS 189.635, but it did not specifically address the request for body-worn camera footage. In response to a follow-up inquiry, the Department denied the Appellant’s request on the grounds that “[c]ollisions are excluded from Open Records and therefore the Body Cam videos related to collisions are also excluded.” This appeal followed.

KRS 189.635(4)(a) provides that “[e]very law enforcement agency whose officers investigate a vehicle accident of which a report must be made as required in this chapter shall file a report with the [D]epartment [of Kentucky State Police (“KSP”)] within ten (10) days after investigation of the accident upon forms supplied by [KSP].”<sup>1</sup> Under KRS 189.635(6)(b), all “accident reports required by [KRS 189.635(4)], and the information contained in the reports, shall be confidential

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<sup>1</sup> KRS 189.635 was recently amended, resulting in a renumbering of its provisions. *See* 2024 Ky. Acts ch. 23 § 1. That amendment, which took effect on July 15, 2024, does not substantively affect the outcome of the present appeal. For ease of reference, the current version of the statute is cited here.

and exempt from public disclosure under [the Act],” except when produced pursuant to a subpoena or court order or provided to certain listed parties.<sup>2</sup> As an enactment of the General Assembly making certain records confidential, KRS 189.635(6) is incorporated into the Act by KRS 61.878(1)(l).

On appeal, the Department argues that KRS 189.635(6) makes confidential any records “that may accompany a collision investigation, such as photographs, diagrams, witness information, written statements, and body-worn camera recordings.” Basing its argument on the fact that KRS 189.635(6) makes confidential “the information contained in the reports,” the Department claims “[b]ody-worn camera recordings relating to a collision will include the contents of a collision report” and are therefore exempt under the Act. This is an excessively broad construction of KRS 189.635(6).

A body-worn camera recording from an officer responding to an accident cannot literally “include the contents of a collision report,” because the collision report has not yet been filled out. The Kentucky Uniform Police Traffic Collision Report is a written document containing various fields to be completed by the investigating officer.<sup>3</sup> While the investigative activity captured by the body-worn camera recording may elicit some information that is ultimately included in the collision report, the recording itself is not the information that appears in the completed report. Under KRS 189.635(6)(b), “the information contained in the reports” means the information that “has been submitted to KSP in an official report under KRS 189.635[(4)].” 23-ORD-087.<sup>4</sup>

The General Assembly’s purpose for making accident reports confidential under KRS 189.635(6) is not, as the Department claims, “to protect the privacy and confidentiality of such investigations.” It is, rather, “[p]rotecting the privacy of accident victims.” *Amelkin v. McClure*, 330 F.3d 822, 829 (6th Cir. 2003), *cert. denied*, 540 U.S. 1050 (2003) (emphasis added). Thus, the Department is not entitled to withhold the entire body-worn camera recording from public inspection merely because it relates to a collision. But, under KRS 61.168(2), “the disclosure of body-worn camera video recordings shall be governed by” the Act except as otherwise provided in KRS 61.168. As such, those recordings may contain some “information of

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<sup>2</sup> KRS 189.635(6)(a) contains a similar provision for accident reports required by KRS 189.635(5), whereas KRS 189.635(6)(b) applies to “[a]ll other accident reports required by [KRS 189.635].” The relevant language of the two subsections is the same.

<sup>3</sup> A sample Kentucky Uniform Police Traffic Collision Report is available at [https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/ky\\_ksp74\\_rev7\\_2008\\_sub4\\_2012.pdf](https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/ky_ksp74_rev7_2008_sub4_2012.pdf) (last accessed August 2, 2024).

<sup>4</sup> Thus, electronic data extracts of accident reports, obtained through KSP’s Collision Report Analysis for Safer Highways (“CRASH”) database, have the same confidentiality as the reports themselves. *See, e.g.*, 17-ORD-157; 07-ORD-153.

a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy” under KRS 61.878(1)(a). In that event, the Department may protect the privacy of accident victims by redacting such information from the recordings as required by KRS 61.878(4). *See, e.g.,* 24-ORD-086; 23-ORD-346.

Under KRS 61.871, “free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.” The Department’s expansive interpretation of KRS 189.635(6), which would encompass all records and information relating to the investigation of a collision, is inconsistent with a strict construction of the exceptions. Accordingly, the Department violated the Act when it withheld the body-worn camera recordings in their entirety in reliance on KRS 189.635(6).

A party aggrieved by this decision may appeal it by initiating an 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 emailed to OAGAppeals@ky.gov.

**Russell Coleman**  
**Attorney General**

/s/ James M. Herrick  
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Distributed to:

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