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24-ORD-213

September 27, 2024

In re: Matthew Belrose/Hardin County 911 Center

Summary: The Hardin County 911 Center (“the Center”) violated the Open Record Act (“the Act”) when it withheld records under KRS 61.878(1)(j).

Open Records Decision

Matthew Belrose (“Appellant”) submitted a request to the Center for “[a]ny communications that led to the dispatch of [the] Sheriff Deputy” to a particular elementary school on July 15, 2024, and specified that his request was related to his interaction with that Deputy. The Center stated that it did not receive any 911 calls on that date but withheld other responsive records “pursuant to KRS 61.878(1)(j) as [the record] contains” preliminary recommendations and opinions expressed by law enforcement. This appeal followed.

On appeal, the Center explains that the only responsive records that exist are the “radio traffic between law enforcement and dispatch and the Computer Aided Dispatch (CAD) entry reflecting those conversations.” The Center maintains that those records are exempt under KRS 61.878(1)(j) because the officer and dispatcher “express opinions related to the facts as known to them at the time.”

KRS 61.878(1)(j) exempts from disclosure “[p]reliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended.” If a public agency adopts such opinions or recommendations as the basis of a final action, the exempt status of the record is lost. *See Univ. of Ky. v. Courier–Journal & Louisville Times Co.*, 830 S.W.2d 373, 378 (Ky. 1992). The Office has previously held that “computer aided dispatch reports, . . . 911 calls[,] and police video footage . . . are not drafts, or memorandums recommending a policy or course of action. [They] are evidence of a past event and [are] not subject change.” 21-ORD-052.

Here, the Center is withholding recordings of conversations between its law enforcement and dispatch employees and the CAD reports documenting those conversations. The Center provided the Office with the recordings to facilitate its review. *See* KRS 61.880(2)(c). Having reviewed the recordings, it is clear they are not exempt under KRS 61.878(1)(j). In each of the recordings, law enforcement and dispatch employees discuss the Appellant's actions and share information regarding how the July 15, 2024, incident will be handled. But these conversations include only discussions of the Appellant's actions that necessitated a law enforcement response and the officer's prospective plans. The recordings do not contain preliminary recommendations or opinions about what course of action should be taken.¹ Thus, the recorded conversations between law enforcement and dispatch and the CAD entry documenting those conversations are not exempt under KRS 61.878(1)(j). Accordingly, the Center violated the Act when it withheld the records pursuant to that exemption.

A party aggrieved by this decision may appeal it by initiating an action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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/ Zachary M. Zimmerer
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Distributed to:

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¹ Moreover, even if the recordings did constitute preliminary recommendations or opinions, that exempt status was lost when the officer undertook the course of action discussed in the conversations with dispatch. *See Univ. of Ky.*, 830 S.W.2d at 378.

