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25-ORD-072

March 20, 2025

In re: Jeffrey Gegler/Kentucky State Police

Summary: The Kentucky State Police (“KSP”) violated the Open Records Act (“the Act”) when it stated it was redacting records without citing a specific exemption to justify its redaction of the records.

Open Records Decision

Jeffrey Gegler (“Appellant”) submitted a request to KSP related to a particular Officer-involved shooting involving a sheriff’s office. The request sought the “All dispatch audio”; “vehicle cam and body cam video/audio”; “surveillance video/audio”; “CAD reports”; and “use of force, arrest, or other narrative reports from responding officers.” In response, KSP denied a portion of the request under KRS 61.878(1)(h).¹ This appeal followed.

On appeal, KSP has abandoned its reliance on KRS 61.878(1)(h). Thus, any dispute as to this aspect of KSP’s denial is moot.² See 40 KAR 1:030 § 6. However, KSP now states it will provide the Appellant with “responsive body-worn camera” and “in-car” video, but only after making “proper redactions pursuant to KRS 61.878(1) and (4).” If an agency denies all or part of a request, its response “shall include a statement of *the specific exception authorizing the withholding of the record* and a brief explanation of how the exception applies to the records withheld.” KRS 61.880(1) (emphasis added). Regarding its redaction of the video, KSP cited

¹ KSP provided a copy of the Kentucky Incident-Based Reporting System report with personal information redacted under KRS 61.878(1)(a), and it stated it does not possess a “use of force investigation” related to the identified incident. The Appellant has not challenged this portion of KSP’s response.

² KSP now states it does not possess any records responsive to his request for “surveillance video.” Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to present a *prima facie* case that the requested records do exist in the agency’s custody or control. See *Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant did not attempt to make such a *prima facie* case.

KRS 61.878(1), which generally identifies all records that are exempt from disclosure under the Act, and KRS 61.878(4), which requires that agencies make redactions to public records containing exempt and nonexempt material before making the nonexempt material available. Neither subsection of KRS 61.878 is a “specific exemption authorizing the” redaction of the video. Accordingly, KSP violated the Act because its response failed to comply with KRS 61.880(1).³

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
Zachary M. Zimmerer
Assistant Attorney General

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Distributed to:

Jeffrey Gegler

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³ The Office notes that KSP states it made available “dispatch audio records” and the “Computer-Aided Dispatch” report with personal information redacted under KRS 61.878(1)(a). Thus, KSP states it is providing “all nonexempt records responsive to” the Appellant’s request, and it therefore asserts this appeal is moot under 40 KAR 1:030 § 6. That regulation states, “If the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter.” “[T]he requested documents” have not been “made available” if an agency makes available only “all nonexempt records.” Rather, when records are redacted, some information is still being withheld. This appeal is therefore not moot.