



COMMONWEALTH OF KENTUCKY  
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**22-ORD-109**

May 23, 2022

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

**Summary:** The McCracken County Sheriff's Office ("the Sheriff's Office") violated the Open Records Act ("the Act") when it denied a request for records without citing an exception to the Act or explaining how the exception applied to the records withheld.

***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, as well as "any documents that mention [the Appellant] being involved in any type of drug activity." In response, the Sheriff's Office stated that "the documentation [the Appellant] requested will have to be obtained through filing [a] Motion of Discovery in [his] court process." This appeal followed.

When a public agency denies a request under the Act, it must cite the applicable exception to the Act and give "a brief explanation of how the exception applies to the record withheld." KRS 61.880(1). Here, the Sheriff's Office neither cited an exception to the Act nor explained how the exception applied to the requested records. The fact that the Appellant is involved in criminal litigation, with the opportunity to conduct discovery, does not alleviate the Sheriff's Office's duty to comply with the Act. *See, e.g.*, 03-ORD-226 (noting that "although the Attorney General has recognized the potential pitfalls of using the Open Records Act as a discovery tool, he has not recognized the right of a public agency to deny access to public records on these grounds").

Thus, the Sheriff's Office violated the Act when it denied the Appellant's request without citing an exception under KRS 61.878.

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 proceeding.

**Daniel Cameron**  
Attorney General

s/James M. Herrick  
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Distributed to:

Mr. Phillip Hamm  
Ms. Jana King  
Matt Carter, Sheriff  
Sam Clymer, Esq.