

Bond Case Briefs

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OPENS RECORD ACT - KENTUCKY

City of Fort Thomas v. Cincinnati Enquirer

Supreme Court of Kentucky - August 29, 2013 - S.W.3d - 2013 WL 4609021

Following unsuccessful appeal to Attorney General, newspaper brought action against city under Open Records Act (ORA), challenging city's denial of newspaper's request to inspect and copy entire police file generated during homicide investigation.

The Supreme Court of Kentucky held that:

- Law-enforcement exemption under ORA is appropriately invoked only when the agency can articulate a factual basis for applying it, only, that is, when, because of the record's content, its release poses a concrete risk of harm to the agency in the prospective enforcement action; and
- Mere fact that a law-enforcement action remains prospective is not enough to establish that disclosure of anything from a law enforcement file constitutes "harm" under law-enforcement exemption, overruling *Skaggs v. Redford*, 844 S.W.2d 389; but
- Trial court did not abuse its discretion in denying newspaper's request for attorney fees and costs.

Even if an agency, in response to an ORA, adopts the approach of identifying the generic kinds of documents for which the law-enforcement exemption is claimed, and the generic risks posed by disclosure of these categories of documents, agency must identify and review its responsive records, release any that are not exempt, and assign the remainder to meaningful categories. A category is meaningful if it allows the court to trace a rational link between the nature of the document and the alleged likely harm to the agency.

An agency asserting the law-enforcement exemption in an action under ORA should provide the requesting party and the court with sufficient information about the nature of the withheld record, or the categories of withheld records, and the harm that would result from release of record to permit the requester to dispute the claim and the court to assess it. If disclosure even to that limited extent would defeat the exemption, then in camera inspection may be necessary, but those cases should be the exception.