



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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20-ORD-015

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In re: In re: Eric Anthony/Green River Correctional Complex

Summary: Green River Correctional Complex (“GRCC”) violated the Open Records Act (“Act”) when it failed to explain how the exception it relied upon to deny an inmate’s open records request applied to the records withheld. However, GRCC did not violate the Act in withholding portions of the requested records that contained information GRCC deemed would constitute a threat to the security of the inmate requester, other inmates, correctional staff, and the institution if disclosed. KRS 197.025(1), incorporated into the Act by KRS 61.878(1)(l), authorized GRCC to deny access to the records withheld. Issues regarding those records to which GRCC already granted the requester access have been rendered moot per 40 KAR 1:030 § 6.

Open Records Decision

The question presented in this appeal is whether GRCC violated the Act in partially denying Eric Anthony’s (“Appellant”) November 7, 2019, request for a copy of the audio recording of the September 10, 2019, adjustment hearings pertaining to Disciplinary Report (“DR”) Numbers GRCC-2019-00946 and GRCC-2019-02955, a copy of certain photographs relating to DR No. GRCC-2019-00946, a copy of the Internal Affairs (“IA”) Report [of] Investigation for DR No. GRCC-2019-02955 prepared by Lieutenant Joseph Foe, and one copy of “the written or audio[-]recorded statements produced by former officer Brandon Geary, pertaining to [DR No.] GRCC-2019-02955.” By letter directed to Appellant on

December 9, 2019, GRCC advised that a copy of the photograph relating to DR No. GRCC-2019-00946 was enclosed. However, GRCC denied the remainder of the request, including “audio recordings, [IA] reports, and anything pertaining to former officer Brandon Geary’s case,” because disclosure “would constitute a threat to the security of inmates, the institution, institutional staff, or others, and cannot be provided due to KRS 197.025(1) and KRS 61.878(1)(l).” This appeal followed.

In response to this appeal, GRCC reconsidered its original position and agreed to provide Appellant with a copy of the audio recordings pertaining to DR No. GRCC-2019-02955 and DR No. GRCC-2019-00946 in addition to a copy of the requested IA Report “with redacted [sic] for information that does not make specific reference to you and disclosure of which would pose a security risk to the institution.” However, GRCC continued to maintain that former officer Geary’s recorded statement “cannot be redacted, and disclosure would pose a security risk to the institution.”¹

In relevant part, KRS 61.880(1) provides that a “response denying, in whole or in part, inspection of any record 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 record withheld.” “The language of the statute directing agency action is exact. It requires the custodian of records to provide particular and detailed information in response to a request for documents.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. App. 1996). A “limited and perfunctory response,” however, does not “even remotely compl[y] with the requirements of the Act” *Id.* See *City of Ft. Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 852 (Ky. 2013). GRCC violated KRS 61.880(1) by failing to provide a brief explanation as to how KRS 197.025(1) and (2) applied to the requested records in its December 9, 2019 final disposition of the request. GRCC merely cited the

¹ GRCC asserted this appeal is moot as to recordings of the adjustment hearings and the redacted IA Report it agreed to provide upon receipt of payment. However, 40 KAR 1:030, § 6, provides, “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.” Accordingly, issues regarding the photograph and the audio recordings that GRCC provided in their entirety have been rendered moot per 40 KAR 1:030 § 6; issues regarding the redacted IA Report and the audio recording of former officer Geary’s statement have not been. “[U]nless *all* records identified in an open records request are released, not just those the agency deems nonexempt, the issue before the Attorney General is not moot.” 09-ORD-007, p. 5; 18-ORD-211.

statutes. Although GRCC ultimately provided sufficient explanation to justify its denial as to records that remained in dispute to this Office following additional questioning, the fact such questioning was necessary demonstrates the deficient explanation afforded Appellant prior to appeal.

In its first response to this Office, GRCC enclosed a copy of an e-mail from Lt. Foe confirming that “names and other information” were redacted from the IA Report “for the safety of other inmates.” A copy of the heavily redacted IA Report was also attached to GRCC’s response. GRCC further argued that disclosure of the audio recording of former officer Geary’s statement, which cannot be redacted, “would pose a great risk to the other inmate involved[.]”

Pursuant to KRS 61.880(1)(c) and 40 KAR 1:030 § 3, this Office subsequently asked GRCC for additional information. Specifically, this Office requested that GRCC identify which portions of the “Report of Investigation” it withheld pursuant to KRS 197.025(1), and specify how disclosure would pose a security risk to GRCC in as much detail as possible without defeating the purpose for which GRCC claimed that exemption. In addition, this Office asked GRCC to specify which portions of the IA Report it withheld pursuant to KRS 197.025(2). Finally, this Office asked GRCC to provide a blank copy of the Report for context in which to review the redacted version it released to Appellant. GRCC promptly complied. By e-mail dated January 21, 2020, GRCC provided a supplemental response from Lt. Foe. He stated:

The paragraphs of the report that were redacted contained information from inmates that were interviewed and gave information on various details of how the Officer was getting the drugs into the prison, they also contain information about the investigation leading to the arrest of the Officer as well as the name[s] of the Inmates that gave information on [Appellant]. The redacted portions of the report are not in relation to [Appellant’s] involvement and would pose a grave risk to the other Inmates that gave information that had nothing to do with [Appellant] as well as risking other confidential parts of the investigation about the former Officer.

Based on this additional explanation, and our inspection of the blank Report provided, this Office finds GRCC's argument persuasive.

KRS 197.025(1) provides:

KRS 61.884 and 61.878 to the contrary notwithstanding, no person shall have access to any records if the disclosure is deemed by the commissioner of the department or his designee to constitute a threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person.

In construing the expansive language of this provision, the Attorney General has recognized that KRS 197.025(1) "vests the commissioner [or his designee] with broad, although not unfettered, discretion to deny inmates access to records." 96-ORD-179, p. 3; 03-ORD-190; 19-ORD-110. Application of this provision "is not limited to inmate records, but extends to 'any records' the disclosure of which is deemed to constitute a threat to security." 96-ORD-204, p. 2; 03-ORD-190 (affirming denial of request for incident reports because allowing inmates to view such reports would provide "'a means by which inmates could get information that may become the basis for retaliation against other inmates or security staff of the institution'"). Since its enactment in 1990, this Office has upheld denials by correctional facilities of inmate requests and requests from the public for a variety of records based on KRS 197.025(1), including, but not limited to extraordinary occurrence reports ("EORs")(07-ORD-039, 16-ORD-071, 17-ORD-097); personnel statements contained in EORs (10-ORD-056, 10-ORD-063, 12-ORD-123); information regarding other individuals contained in EORs (08-ORD-251); conflict sheets (OAG 91-136, 11-ORD-177); and psychological evaluations of inmates (92-ORD-1314).

Here, GRCC determined, in a proper exercise of its discretion, that disclosing portions of the requested IA Report would pose a security threat to GRCC staff, other inmates, and the institution; likewise, GRCC determined that disclosing the audio recording of former officer Geary's statement would also pose a great security risk. The Attorney General has consistently recognized that KRS 197.025(1) vests the commissioner or his designee with broad discretion in making this determination. 03-ORD-190, p. 5; 96-ORD-179; 00-ORD-125; 11-ORD-177; 17-ORD-097. As before, this Office declines to substitute its judgment for that of the

correctional facility or DOC. In summary, GRCC properly relied upon KRS 197.025(1) in redacting significant portions of the requested IA Report and in withholding the audio recording of former officer Geary's statement.

Either party may appeal this decision may appeal by initiating action in the appropriate circuit court per 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
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/s/ Michelle D. Harrison

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Distributed to:

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