



COMMONWEALTH OF KENTUCKY
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20-ORD-020

February 5, 2020

In re: Leonel Martinez/Kentucky State Penitentiary

Summary: Kentucky State Penitentiary (“KSP”) did not violate the Open Records Act (“Act”) when it denied an inmate’s request for copies of merit status policies because the records did not contain a specific reference to him, as permitted by KRS 197.025(2).

Open Records Decision

On December 3, 2019, inmate Leonel Martinez (“Appellant”) submitted a Request to Inspect Public Records form to KSP, requesting to inspect any policy issued by the Department of Corrections (“DOC”) regarding inmates receiving merit status from a Unit Administrator. On January 6, 2020, KSP denied the request, stating, “[t]he records you request concerning DOC policy and other inmate status on merits by UA Robertson do not contain a specific reference to you and the records are exempt from disclosure to you under KRS 61.878(1)(l) and KRS 197.025(2).

On January 7, 2020, Appellant appealed, stating that the merit status policy violated inmate’s rights under the 14th Amendment of the United States Constitution. On January 15, 2020, KSP responded, stating that a long line of decisions by this Office support the application of KRS 197.025(2) in denying requests for records that do not contain a specific reference to the requesting inmate. On January 27, 2020, Appellant replied, stating that the policy applies to Hispanic inmates and therefore, specifically references him because he is Hispanic.

KSP properly denied the request pursuant to KRS 197.025(2), incorporated into the Open Records Act by operation of KRS 61.878(1)(l). KRS 197.025(2) provides:

KRS 61.970 to 61.884 to the contrary notwithstanding, the department shall not be required to comply with a request for any record from any inmate confined in a jail or any facility or any individual on active supervision under the jurisdiction of the department, unless the request is for a record which contains a *specific reference* to that individual.

(Emphasis added). This Office has consistently recognized that KRS 197.025(2) expressly authorizes correctional facilities under the jurisdiction of DOC, whether state or local, to deny an inmate's request unless the record contains a specific reference to that inmate. 00-ORD-2; 04-ORD-076; 08-ORD-187; 14-ORD-235. Even if the policy does apply to the group Appellant alleges, the statutory text is clear that the requested record must specifically apply to Appellant for him to gain access to it. 15-ORD-088.

This Office has also upheld DOC's position that policies and procedures are not the type of records that contain a specific reference to an individual inmate. 10-ORD-109; 17-ORD-054. Regardless of the hardship Appellant believes KRS 197.025(2) imposes, he is expressly precluded from access to records that do not contain a specific reference to him by the mandatory language of the statute. Appellant's arguments regarding the constitutionality of the policy are outside the purview of an open records appeal. *See* KRS 61.880(2)(a); 08-ORD-149. Accordingly, KSP did not violate the Act in denying the request.

A party aggrieved by this decision shall 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.

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Assistant Attorney General

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