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**20-ORD-029**

February 28, 2020

In re: Leonel Martinez/Western Kentucky Correctional Complex

**Summary:** Western Kentucky Correctional Complex (“WKCC”) met its burden of proof and properly relied upon KRS 197.025(1) to deny an inmate request for an institutional search logbook.

***Open Records Decision***

Leonel Martinez (“Appellant”) appeals WKCC’s denial of his November 20, 2019 request for a “copy of the search log include [sic], supervisor who issued the order, 11-7-19.” On November 21, 2019, WKCC responded to the request stating, “[t]he department has determined that the disclosure of the institutional search log would constitute a threat to the institution and cannot be provided pursuant to KRS 197.025(1), KRS 61.878(1)(l).” On December 9, 2019, Appellant appealed, stating that his request does not constitute, “any threat to any institution.” WKCC responded, citing decisions of this Office deferring to the Department of Corrections (“DOC”) on matters relating to KRS 197.025(1).

On appeal, WKCC states that Appellant’s request implicated an institutional search logbook that contains, “count procedures, multiple inmate searches with the results, and inmate movement within the institution.” WKCC stated that the responsive logbook identifies seven other inmates randomly searched on the same date, and the WKCC Deputy Warden of Security confirmed security related reasons for withholding those identities. WKCC provided Appellant a copy of the responsive logbook entry with identities of other inmates redacted, and asked that this Office find the appeal moot under 40 KAR 1:030 § 6.

However, partial disclosure of a requested record does not make the requested document “available” to render the appeal moot under 40 KAR 1:030 § 6. Therefore, this appeal is not moot.

Nevertheless, WKCC properly withheld the responsive logbook. KRS 197.025(1) provides:

KRS 61.870 to 61.884 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.

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.

This Office recognizes that KRS 197.025(1) “vests the commissioner with broad, although not unfettered, discretion to deny inmates access to records.” 96-ORD-179, p. 3. As such, the Act requires that WKCC provide a brief explanation as to how release of the requested records would constitute a threat to the institution or institutional staff or inmates. On appeal, WKCC satisfied this burden of proof by explaining the security related risks that release of the logbook would create. Further, the logbook in this case is analogous to other types of institutional security records that this Office has found exempt under the Act. *See, e.g.*, 04-ORD-180 (finding exempt under the act entry/exit logs, daily rosters, call-in logs, and time and attendance records for security staff); 08-ORD-148 (finding duty watch logs exempt); 09-ORD-047 (finding security activity logs exempt). This Office has declined to substitute its judgment for that of DOC regarding security matters, and will not do so here. *See, e.g.*, 04-ORD-017. Accordingly, WKCC properly relied upon KRS 197.025(1) to deny the request for the institutional search logbook.

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.

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