



COMMONWEALTH OF KENTUCKY  
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20-ORD-039

March 10, 2020

In re: Charles Robert Moss/Kentucky Correctional Psychiatric Center

*Summary:* Kentucky Correctional Psychiatric Center (“KCPC”) properly relied upon KRS 26A.200 and complied with an order from the Ballard Circuit Court in denying an inmate’s request for a copy of his pre-trial competency evaluation.

*Open Records Decision*

The question presented in this appeal is whether the KCPC violated the Act in partially denying Charles Moss’ January 23, 2020 request for a copy of his “entire medical record file.”<sup>1</sup> The only record in dispute is the Appellant’s pre-trial competency evaluation. By letter dated February 3, 2020, KCPC advised Mr. Moss that pre-trial patients “are evaluated as a direct result of a court order. These evaluations determine competency to stand trial or treatment that will enable the patient to be brought to competency to stand trial. The court order specifies the distribution of information gathered during this process.” KCPC further explained that information contained in the report cannot be released to any individual that is not specified in the court order and included a copy of the relevant distribution list as verification. Acknowledging the record in dispute is a “public record” within the meaning of KRS 61.870(2), KCPC nevertheless argued that “the court’s order removes it from application of the Act.” In support of its position, KCPC

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<sup>1</sup> KCPC is “a maximum-security facility operated by the Department for Behavioral Health, Developmental and Intellectual Disabilities, Cabinet for Health and Family Services [“CHFS”).” 19-ORD-114, p. 1.

also cited KRS 26A.200 and prior decisions by this Office, including 04-ORD-021 and 08-ORD-067.

On appeal, the CHFS Office of Legal Services (“OLS”) further argued, “[t]he order only permitted the evaluation to be released to the attorneys for both sides, prosecution and defense, as well as the Court itself.” Relying upon 08-ORD-067, KCPC noted that releasing the requested evaluation to any other person or entity “could ‘expose employees of KCPC to liability or place them in contempt of court.’”

KRS 26A.200(1) provides that “[a]ll records which are made by or generated for or received by any agency of the Court of Justice, or by any other court or agency or officer responsible to such court ... shall be the property of the Court of Justice and are subject to the control of the Supreme Court.” The Kentucky Supreme Court has declared that records generated by the courts and judicial agencies are not subject to the Act. In *Ex parte Farley*, 570 S.W.2d 617, 624 (Ky. 1978), the Court held that “the custody and control of records generated by the courts in the course of their work are inseparable from the judicial function itself, and are not subject to statutory regulation.” Because Appellant’s pre-trial competency examination was generated at the direction of a court, it is the property of the court and is not subject to the Act.

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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/s/ Michelle D. Harrison

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Distributed to:

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