



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

20-ORD-045

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In re: Uriah M. Pasha/Department of Corrections, Division of Probation and Parole

Department of Corrections (“DOC”), Division of Probation and Parole (“Division”) did not violate the Open Records Act (“Act”) in denying inmate’s request for a copy of his presentence investigation (“PSI”) report on the basis of KRS 439.510, KRS 61.878(1)(l), and governing case law.

Open Records Decision

The Division did not violate the Act in denying Uriah M. Pasha’s (“Appellant”) undated request for a copy of his PSI report in “Fayette Case #84-CR-481, Lyon Case #96-CR-0058 and all [his] Franklin County Circuit Court cases.” On January 27, 2020, the Division acknowledged Appellant’s request, and stated the Division could not provide him with any of his PSI reports “because PSIs are considered privileged documents and are exempt from open records requests.” The Division cited no legal authority for its position. By letter dated February 14, 2020, Appellant initiated this appeal.

On appeal, DOC elaborated upon the Division’s position, citing KRS 439.510, KRS 61.878(1)(l), and *Commonwealth v. Bush*, 740 S.W.2d 943 (Ky. 1987). DOC stated that it “will provide an inmate the opportunity to be *advised of the factual contents* and conclusions contained in a PSI, if the inmate waived the PSI prior to sentencing pursuant to KRS 532.050(5).” DOC argued that KRS 61.878(1)(l) and KRS 439.510 preclude Appellant from accessing the requested PSI reports.

“An agency 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.” KRS 61.880(1). The “language of [KRS 61.880(1)] directing agency action is exact. It requires the custodian of records to provide *particular and detailed information* in response to a request for documents . . . [A] limited and perfunctory response [does not] even remotely compl[y] with the requirements of the Act—much less [amount] to substantial compliance.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. App. 1996). “The burden of proof in sustaining the action shall rest with the agency.” KRS 61.880(2)(c). The “limited and perfunctory response” initially provided by the Division did not satisfy its burden. *See id.* However, existing legal authority supports the Division’s ultimate disposition of Appellant’s request.

Among those records exempted from disclosure under the Act are “[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.” KRS 61.878(1)(l). Under KRS 439.510, “[a]ll information obtained in the discharge of official duty by any probation and parole officer shall be privileged and shall not be received as evidence in any court. Such information shall not be disclosed directly or indirectly to any person other than the court, board, cabinet” In *Commonwealth v. Bush*, the Kentucky Supreme Court explained that, “[t]he PSI would be a public record subject to the Open Records law, KRS 61.870, except for the fact that it is excluded from public inspection by virtue of KRS 61.878(1)(j)¹ which exempts any records made confidential by the General Assembly.” 740 S.W.2d 943, 944 (Ky. 1987). The *Bush* court cited both KRS 532.050 and KRS 439.510 as statutes prohibiting the disclosure of PSI reports. *Id.* Accordingly, this Office affirms the Division’s ultimate disposition of Appellant’s request on the bases of KRS 61.878(1)(l), KRS 439.510, and KRS 532.050.

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 proceedings.

¹ Since the decision in *Bush*, the General Assembly has amended KRS 61.878(1) to include additional exceptions. The provision exempting records deemed confidential by an enactment of the General Assembly is now found at KRS 61.878(1)(l).

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Daniel Cameron
Attorney General

/s/ Michelle D. Harrison

Michelle D. Harrison
Assistant Attorney General

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Distributed to:

Uriah M. Pasha, #092028
Angela E. Cordery
Joshua A. King