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20-ORD-050

April 2, 2020

In re: Dennis Carmack/Green River Correctional Complex

Summary: Although this appeal was brought to challenge redactions made in response to a request for records under the Open Records Act (the “Act”), Green River Correctional Complex (the “Complex”) provided a requester unredacted copies of requested incident reports, which rendered that portion of this appeal moot under 40 KAR 1:030 §6. The Complex violated KRS 61.880(1) by failing to identify two responsive records and by failing to state a statutory basis for withholding those records. That omission was corrected on appeal.

Open Records Decision

On January 10, 2020, the Complex received an open records request, on the appropriate form, filed by inmate Dennis Carmack (“Appellant”). The request sought copies of incident reports written by correctional officers regarding a February 15, 2019, inmate altercation. On January 14, 2020, the Complex provided redacted copies of two incident reports and merely stated, “[g]ranted two (2) pages for incident report [sic].”¹ The Complex did not identify or explain a statutory basis for withholding the redacted information or identify any records that it withheld.

On January 17, 2020, Appellant initiated this appeal. The Complex responded and acknowledged that it had erroneously omitted its explanations for

¹ Appellant also request copies of institutional grievances. The Complex denied that request, but Appellant has not appealed that issue.

redacting the responsive records. The Complex stated that it redacted the names of correctional officers and staff responding to the altercation due to security concerns, but it “determined that the names . . . do not need to be redacted and [that it] will provide new copies of the records without redactions[.]” Accordingly, this issue is rendered moot under 40 KAR 1:030 § 6.

On appeal, the Complex concedes that its initial response violated KRS 61.880(1), which requires that, “[a]n 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.” The Complex’s initial response to Appellant’s request failed to articulate that the Complex was withholding two responsive incident reports and the exceptions that authorized it to do so. However, the Complex explains on appeal that it withheld two additional responsive incident reports under KRS 197.025(2).

KRS 197.025(2) provides that the Department of Corrections “shall not be required to comply with a request for any record from an 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.” The Complex’s response on appeal confirmed that it withheld the two records because the reports did not contain a specific reference to Appellant. Thus, although the Complex violated the Act, on appeal the Complex has sufficiently justified withholding the two responsive incident reports.

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 must be notified of any action in circuit court, but should not be named as a party in that action or in any subsequent proceeding.

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/s/ John Marcus Jones

J. Marcus Jones
Assistant Attorney General

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Distributed to:

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