



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-060

April 21, 2020

In re: Dwayne Winfield/Little Sandy Correctional Complex

Summary: Little Sandy Correctional Complex (“Complex”) properly withheld an inmate’s initial report under the Prison Rape Elimination Act (“PREA”) as confidential under federal law. However, the Complex violated the Open Records Act (“the Act”) by failing to cite to the applicable federal law in its response.

Open Records Decision

The Complex properly denied inmate Dwayne Winfield’s (“Appellant”) February 6, 2020, request for copies of the PREA report he filed on April 15, 2019, in which he alleged sexual abuse by a staff member. Under 28 CFR § 115.61(b), the record requested was confidential.¹ Nevertheless, the Complex’s response failed to cite the “specific exception” authorizing its denial and failed to give “a brief explanation of how the exception applies to the record withheld,” as required by KRS 61.880(1).

Specifically, the Complex’s initial response stated:

The requested PREA investigation documents will not be provided due to the confidential nature of the investigation and security and

¹ Under 28 CFR 115.73, a person who submitted a complaint is entitled to information regarding whether the complaint was substantiated or unsubstantiated. If substantiated, the victim is also entitled to know additional information about corrective action taken against the perpetrator. The Complex provided the information to which Appellant was entitled.

privacy concerns associated with releasing documentation given the subject matter of the investigation. KRS 61.878(1)(a), KRS 61.878(1)(l), KRS 197.025(1). The confidentiality standards contained in the Prison Rape Elimination Act, 34 U.S.C. 30301 et seq. and CPP 14.7, in tandem with KRS 197.025(1) and (2), limit access to PREA investigation records.

Appellant initiated this appeal, arguing that he should be able to obtain the report because it related to him.

KRS 61.878(1)(k) creates an exception to the Act for “all public records or information the disclosure of which is prohibited by federal law or regulation.” Although the Complex cited “34 U.S.C. 30301 et seq.,” there is no provision in the PREA that expressly makes confidential the records that Appellant requested. Rather, in 34 U.S.C. 30306(e)(2)(J), Congress delegated the means for establishing the confidentiality of prison rape complaints to a Commission that was required to create national standards for such confidentiality and report those standards to the United States Attorney General. Under 34 U.S.C. 30306(e)(2)(J), the Department of Justice promulgated 28 CFR 115.61(b), which provides:

Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions.

When an agency denies access to a requested record, it must “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) (emphasis added). When an agency relies upon KRS 61.878(1)(k) or (l), the agency must cite the specific federal or state law requiring confidentiality to satisfy this obligation. *See Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. App. 1996). Here, the actual authority for the exemption claimed by the Complex is 28 CFR 115.61(b). But the Complex’s response cited only its own policy,² not 28 CFR

² CPP 14.7 is incorporated by reference in 501 KAR 6:020 § 1. In 18-ORD-206, this Office found that this Department of Corrections (“DOC”) policy imposed no further restrictions on access to public records than required by 28 CFR 115.61(b). Also in that decision, this Office found that DOC violated the Act when it failed to cite 28 CFR 115.61(b).

115.61(b). KRS 61.878(1)(k) and (l) incorporate federal law and enactments of the General Assembly requiring confidentiality, not administrative regulations promulgated by state agencies. Therefore, although the Complex properly denied Appellant access to the requested PREA report because it is confidential under federal law, the Complex violated the Act in failing to cite the specific exception authorizing this action.

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.

Daniel Cameron
Attorney General

/s/ James M. Herrick

James M. Herrick
Assistant Attorney General

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Distributed to:

Dwayne Winfield, #212532

Amy V. Barker, Esq.

Ms. Beth Harper