



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-086

June 5, 2020

In re: Jonathan Curtis/Eastern Kentucky Correctional Complex

Summary: Eastern Kentucky Correctional Complex (“Complex”) did not violate the Open Records Act (“Act”) in denying an inmate’s request for certain documents because the Complex explained how disclosure would constitute a security threat under KRS 197.025(1).

Open Records Decision

Jonathan Curtis (“Appellant”) submitted a request to the Complex to inspect and, if also requested, to receive “a copy of any and all prison[-]generated documentation which reflects and/or is being utilized by prison authorities to designate [him] as a ‘gang member[.]’” In a timely written response, the Complex denied the request because disclosure of the requested records would constitute a threat to the security of the other inmates and the institutional staff and the records were therefore exempt from disclosure under KRS 61.878(1)(l) and KRS 197.025(1). The Complex further explained that “[t]he Security Threat Group Assessment contains the criteria and factors that are considered when determining if inmates are associated with gangs or other groups.” Revealing this information, the Complex stated, “could reveal the areas that are focused on and provide inmates with key factors that could give them advantage [sic] to manipulate the assessment.”

KRS 61.878(1)(l) authorizes public agencies to deny access to “[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.” Under KRS

197.025(1), “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.”

KRS 197.025(1) grants the Commissioner of the Department of Corrections (“DOC”) broad discretion to determine which records constitute a security threat to inmates, correctional staff, and correctional institutions if publicly disclosed. Nevertheless, the Act requires any response by a public agency denying a request for inspection of public records to include “a brief explanation of how the exception applies to the record withheld.” KRS 61.880(1); *see Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. App. 1996) (explaining that a “limited and perfunctory response” does not comply with the Act’s requirement of a brief explanation). Thus, DOC and correctional institutions under its jurisdiction must explain how disclosure of the records in dispute would constitute a threat to the security of “the inmate, any other inmate, correctional staff, the institution, or any other person.” *See* 20-ORD-029. The Complex did so initially and reaffirmed its position upon receipt of this appeal. This Office declines to substitute its judgment for that of DOC regarding security matters. *See* 20-ORD-073.

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/ Michelle D. Harrison

Michelle D. Harrison
Assistant Attorney General

#127

Distributed to:

Jonathan Curtis, #157438

20-ORD-086

Page 3

Angela E. Cordery