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20-ORD-129

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In re: Christian Goins/Green River Correctional Complex

Summary: Green River Correctional Complex ("The Complex") properly denied an inmate request for a specified JPay e-mail message on the basis of KRS 197.025(1), incorporated into the Open Records Act ("Act") by KRS 61.878(1)(l), because disclosure would constitute a security threat to the inmate requester, other inmates, and Complex staff.

Open Records Decision

On July 2, 2020, inmate Christian Goins ("Appellant") requested from the Complex a copy of "the documents on JPay for legal purposes" from Michelle Goins dated June 17, 2020. The Complex received his request on July 7, 2020, and issued a timely response on July 13, 2020 under KRS 197.025(7), which requires correctional facilities to respond to an inmate's request for records within five business days of receipt of the request. The Complex denied his request under KRS 61.878(1)(p) because "JPay personal emails and photos are communications of a purely personal nature unrelated to any governmental function." However, on appeal, the Complex also invoked KRS 197.025(1), incorporated into the Act by KRS 61.878(1)(l), and successfully justified its denial on that basis.

As a threshold matter, this Office recently determined that JPay e-mails exchanged between inmates and private parties are generally not "public records" within the meaning of KRS 61.870(2). *See, e.g.,* 20-ORD-109 (copy enclosed). In that decision, this Office determined that JPay e-mails exchanged between private

parties and inmates may become public records if, for example, they are "used" by a correctional facility for an administrative purpose.

Here, the Complex has admitted that it "used" the requested e-mail for an administrative purpose. The Complex explained that the Warden has reviewed the specific message at issue and "determined that a copy of the message cannot be provided because it is a security risk to have the message on the yard at" the Complex. The Warden further confirmed that the Complex requested JPay staff to block access to Ms. Goins' message because it "contained information about what medication might show a false positive for drug tests." The Complex stated that permitting inmates to access such information "is expected to cause further issues with inmates using illegal substances and trying to obtain medication to disguise this use putting themselves, other inmates, and staff at risk." Accordingly, the Complex "used" the requested e-mail, by reviewing its content to determine whether Appellant was taking any of the medications identified, by taking administrative action to block the distribution of the message, and by taking appropriate security measures in response to the information the Complex learned from reviewing the e-mail. Therefore, the requested e-mail is a "public record" within the meaning of the Act because the Complex used it for an administrative purpose. KRS 61.870(2).

Although the requested e-mail is a public record, the Complex was authorized to deny Appellant's request to maintain the security of the Complex. 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, or his designee, broad discretion to determine which records constitute a security threat to inmates, correctional staff, and correctional institutions if publicly disclosed.

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). At all times the public agency

carries the burden of proof in justifying its denial. KRS 61.880(2)(c). Thus, the Complex was required to 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." KRS 197.025(1). The Complex satisfied its burden by explaining that the e-mail provided information an inmate could use to challenge the validity of a drug test. Therefore, the Complex did not violate the Act by denying Appellant's request under KRS 197.025(1).

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
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/s/ Michelle D. Harrison

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Distributed to:

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