



COMMONWEALTH OF KENTUCKY
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20-ORD-198

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In re: Donald Phillips/Northpoint Training Center

Summary: Northpoint Training Center (“Center”) violated the Open Records Act (“the Act”) when it failed to provide a brief explanation of how the exceptions it relied upon to deny a request applied to the responsive records. However, the Center did not violate the Act when it redacted certain material from the records it subsequently produced.

Open Records Decision

On November 5, 2020, inmate Donald Phillips (“Appellant”) requested a copy of his risk assessment, which had been completed the previous day. Although the Center denied the request under KRS 61.878(1)(i) and (j), it did not explain how those exceptions applied to the risk assessment.¹ This appeal followed.

KRS 61.880(1) requires a public agency, when denying a request to inspect public records, to give “a brief explanation of how the exception applies to the record withheld.” Although the Center quoted language from KRS 61.878(1)(i) and (j) in its response, it did not explain how those exceptions applied to the requested record. Therefore, the Center violated the Act.

¹ Because the Center has agreed to provide portions of the requested record, and because the remaining portions are exempt under other provisions of the Act, this Office need not determine whether the record is exempt under KRS 61.878(1)(i) or (j).

On appeal, however, the Center has agreed to provide Appellant some records responsive to his request in a redacted form. The redacted portions of those records contain certain assessment tools, questions, responses, and scoring, as well as information derived from Appellant's presentence investigation. Those redacted portions also contain information otherwise obtained by probation and parole officers in the course of completing the assessment. The Center asserts that the redacted portions of the records are exempt for two reasons. For the reasons that follow, this Office agrees.

First, the Center relied upon KRS 61.878(1)(k) to redact from the records the assessment tools, questions, responses, and scoring used in the Kentucky Risk Assessment system. The Center rightly claims that this material is exempt from disclosure under the copyright provisions of 17 U.S.C. § 106, which is incorporated into the Act by KRS 61.878(1)(k). This Office has previously found that such material may be redacted under this provision. *See, e.g.*, 19-ORD-144. This Office reached that conclusion based, in part, on the terms of an agreement between the Department of Corrections and the University of Cincinnati Correctional Institute. *Id.* The Center has provided this Office a copy of that agreement, which provides that the Department of Corrections "shall not disclose or transfer in any form either the delivered [assessment tool] or any modifications of or derivative works based on the [assessment tool] to third parties." Therefore, the Center did not violate the Act by redacting material that is exempt from inspection. KRS 61.878(1)(k).

Second, the Center relied upon KRS 439.510 to redact from the records the information Appellant provided in completing the risk assessment. Those redactions are supported by law. KRS 439.510 provides:

All information obtained in the discharge of official duty by any probation or 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, or others entitled under KRS 439.250 to 439.560 to receive such information, unless otherwise ordered by such court, board or cabinet.

Under this authority, this Office has previously found that an inmate's recorded responses in the context of a risk assessment are not subject to inspection. *See* 19-ORD-144. In fact, this Office has consistently found that requests for such records may be denied under KRS 439.510. *See, e.g.,* 17-ORD-022; 05-ORD-265; 01-ORD-120. This request is no different. The Center has redacted portions of Appellant's risk assessment that contain information obtained by probation and parole officers during the presentence investigation and the subsequent risk assessment. Therefore, the Center did not violate the Act by redacting those portions of Appellant's risk assessment.

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/ James M. Herrick

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Distributed to:

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