



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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21-ORD-084

May 10, 2021

In re: William Blanton/Kentucky State Penitentiary

Summary: The Kentucky State Penitentiary (the “Penitentiary”) did not violate the Open Records Act (“the Act”) when it denied an inmate’s request for records that do not contain a specific reference to him.

Open Records Decision

On March 24, 2021, inmate William Blanton (“Appellant”) asked the Penitentiary to provide copies of two incident reports regarding an allegation that a Penitentiary employee discharged his taser and hit the Appellant. The Appellant alleged that two different employees had drafted incident reports in connection with this event. In a timely response, the Penitentiary denied the request for both incident reports under KRS 61.878(1)(h) because the incident was still under investigation.¹ However, on appeal the Penitentiary provided

¹ The Appellant allegedly submitted at least three prior requests for these same records, and each time the Penitentiary denied the request because the investigation remained ongoing. Under KRS 197.025(3), an inmate is required to appeal a denial of an open records request within twenty days of the denial. The Penitentiary claims that this appeal is time barred because the Appellant failed to appeal the Penitentiary’s previous denials, and this Office has previously found that an inmate may not enlarge the twenty-day period by resubmitting a duplicate request and appealing the duplicate denial. *See, e.g.*, 20-ORD-046. But here, the Penitentiary’s stated reason for denying the previous requests was that the investigation remained ongoing. The implication is that at some point the investigation would conclude, and the Penitentiary would no longer be able to deny inspection on this basis. That is in fact what occurred, and one of the reports has been provided to the Appellant on appeal.

the Appellant with one of the incident reports he requested, and therefore any dispute regarding that report is moot under 40 KAR 1:030 § 6. As for the other incident report, the Penitentiary now claims that it properly denied the Appellant's request because the requested record does not specifically refer to the Appellant by name.

KRS 197.025(2) provides that the Penitentiary is not "required to comply with a request for any record from any inmate . . . unless the request is for a record which contains a specific reference to that individual." KRS 197.025(2). To determine whether the Appellant is mentioned specifically in the report, the Office reviewed the incident report at issue. Although this Office may not disclose the contents of the report, KRS 61.880(2)(c), this Office's review of that record confirms that the incident report does not contain a specific reference to the Appellant. Rather, the report contains one sentence that documents that "an inmate was involved" in an altercation. Although this statement may reference the Appellant, it does not do so in a sufficiently specific manner under KRS 197.025(2). Therefore, the Penitentiary did not violate the Act when it denied the request under KRS 197.025(2).

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/Marc Manley
Marc Manley
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If a correctional facility denies an inmate's request because his request was too soon, it cannot then complain when the inmate tries his request again later.

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Distributed to:

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