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21-ORD-122

July 7, 2021

In re: Christopher Morningstar/Northpoint Training Center

Summary: The Northpoint Training Center (the “Center”) did not violate the Open Records Act (“the Act”) when it did not provide records that are exempt from inspection under the Prison Rape Elimination Act.

Open Records Decision

Christopher Morningstar (“Appellant”) sent a request to the Center for a copy of any and all records or documentation pertaining to a Prison Rape Elimination Act (“PREA”) report he filed in 2019. In a timely response, the Center denied his request and explained that access to the requested investigation records was limited under KRS 61.878(1)(a), 61.878(1)(l), KRS 197.025(1), 197.025(2), 42 U.S.C. 15601, and CPP 14.7. The Appellant then initiated this appeal.

The Center did not violate the Act when it denied the Appellant’s request. Under KRS 61.878(1)(k), “[a]ll public records or information the disclosure of which is prohibited by federal law or regulation” are excluded from inspection. Under PREA, “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.” 28 CFR § 115.61(b). This Office has previously explained that PREA investigation records are confidential and exempt from inspection under KRS 61.878(1)(k) and 28 CFR § 115.61(b). *See, e.g.*, 18-ORD-237; 18-ORD-206.

The Appellant claims that *Sublett v. Beavers*, Case No. 5:17-cv-P195, 2018 WL 736272, (W.D. Ky. Feb. 6, 2018), an unpublished decision, supports his position that PREA records are public records. But the question is not whether the PREA records are “public records,” as defined under KRS 61.870(2). The question is whether such records are exempt from public inspection. On that question, *Sublett* provides no support for the Appellant.

The inmate in *Sublett* sued prison officials for testifying about the contents of the inmate’s PREA records in a previous lawsuit brought by the same inmate. *Id.* at *4. Such records had been provided to the inmate in the previous lawsuit in response to a subpoena duces tecum that he had served on the prison officials, and the records became a part of the publicly available court record because they had been filed with the court. *Id.* The inmate then sued the prison officials again, and claimed that his right to privacy had been violated, but the Court dismissed the complaint for failing to state a claim upon which relief could be granted. *Id.* at *5.

The Appellant argues that he should have access to the requested PREA complaint because he is the person who filed it. But it is undisputed that the records at issue relate to a PREA investigation under 28 CFR 115.61(b). These records cannot be disclosed except as provided in that regulation, and there is no exception that permits the complainant to obtain copies of his or her complaint. As such, the Center did not violate the Act when it denied the Appellant’s request for records.

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.

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/s/Matthew Ray
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Distributed to:

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