



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

21-ORD-124

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In re: Torrey Cross/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 from the JPay email service.

Open Records Decision

Inmate Torrey Cross (“Appellant”) submitted a request for copies of all photographs he has received or taken since 2017, which are allegedly stored in his JPay account. The Penitentiary timely denied the request, and this appeal followed.

In its initial response to the Appellant, the Penitentiary stated that the JPay service is provided by an outside vendor and therefore the Penitentiary does not have control and custody of such records pursuant to KRS 61.872(4). On appeal, however, the Penitentiary now asserts that the emails are not “public records” under KRS 61.870(2), that staff cannot access such records that are older than six months, and that the photographs do not contain a specific reference to the inmate pursuant to 61.878(1)(l) and 197.025.

This Office has previously held that emails on the JPay server are not “public records” as defined by the KRS 61.870(2), unless such emails are prepared by, or are being used by the public agency. *See* 20-ORD-109. Here, the Penitentiary neither sent nor received the requested photographs, nor is

there any allegation that the Penitentiary has used, or is using, the requested photographs for any governmental purpose. Therefore, the requested photographs are not “public records” as defined by the Act.¹ Because the requested photographs are not “public records,” the Penitentiary did not violate the Act in denying inspection of these photographs by Appellant.

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
Assistant Attorney General

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Distributed to:

Torrey Cross #173708
Amy V. Barker

¹ Because this Office finds that the requested photographs are not “public records” under KRS 61.870(2), this Office declines to address the Penitentiary’s alternative arguments in support of its denial.