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21-ORD-159

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In re: Samuel Hunter/Kentucky State Penitentiary

Summary: The Kentucky State Penitentiary (“Penitentiary”) violated the Open Records Act (the “Act”) when it failed to provide a brief explanation for why it denied a request for the Penitentiary’s grievance log under KRS 61.878(1)(i) and (j). On appeal, the Penitentiary has explained why the grievance log is a preliminary document, and it did not violate the Act by denying the request.

Open Records Decision

Inmate Samuel Hunter (the “Appellant”) submitted a request to the Penitentiary and sought to inspect, among other things, copies of the written grievance log related to grievances he has submitted. The Penitentiary denied the request, claiming that the grievance log is a “preliminary document” and that the Penitentiary “may deny a request for notes, preliminary drafts, correspondences with private individuals, or preliminary documents containing opinions, observations, [and] recommendations that are not incorporated into or do not reflect final agency action.” This appeal followed.¹

¹ The Appellant also requested several other records related to grievances he had filed, including the grievances themselves and associated correspondence. The Penitentiary granted all of those portions of the Appellant’s request, and on appeal, he challenges only the denial of the grievance log.

When a public agency denies a request under the Act, it must give “a brief explanation of how the exception applies to the record withheld.” KRS 61.880(1). The agency’s explanation must “provide particular and detailed information,” not merely a “limited and perfunctory response.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). “The agency’s explanation must be detailed enough to permit [a reviewing] court to assess its claim and the opposing party to challenge it.” *Kentucky New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013). Here, the Penitentiary merely paraphrased the language of KRS 61.878(1)(i) and (j), without explaining how those exceptions applied to the grievance log it withheld. Thus, the Penitentiary violated the Act.

On appeal, the Penitentiary provides more information about the grievance log. It explains that the log is a fluid document, which is used to track pending grievances and contains notes related to each grievance. Specifically, it explains that the log is used “to track steps and dates within the grievance process.” Thus, the log is merely “a tool for the grievance coordinator” containing notes to aid in the administration of grievances, and the contents of the log are subject to change frequently. Unlike the grievances themselves, and the final disposition of those grievances, no final action is ever taken in connection with the log. The Penitentiary compares the nature of the log to that of calendars for public officials, which Kentucky courts have described “as nothing more than a draft of what may or may never take place; a notation for inter or intra office use, so the daily affairs of the [public official] can be conducted with some semblance of orderliness[.]” *Courier-Journal v. Jones*, 895 S.W.2d 6, 10 (Ky. App. 1985). Similarly, at any given moment the log is a draft containing notations about the grievances which may or may not take place, and it is used for purely intra office administration. Therefore, the log constitutes preliminary drafts and notes which are not subject to inspection under KRS 61.878(1)(i), and the Penitentiary did not violate the Act in denying this portion of the Appellant’s request.

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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