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-167

September 8, 2021

In re: Matthew Goins/Southeast State Correctional Complex

Summary: The Southeast State Correctional Complex ("the Complex") subverted the Open Records Act (the "Act") when it issued a blanket denial in response to a request to inspect records, which caused unnecessary delay beyond the statutory period to respond.

Open Records Decision

Inmate Matthew Goins (the "Appellant") submitted a request to the Complex for a CD containing recordings of his phone calls to a specific phone number on a specific date. In a timely response, the Complex denied the Appellant's request because "[it] has determined that the disclosure of recordings of phone calls would constitute a threat to the security of inmates, the institution, institutional staff, or others and cannot be provided pursuant to KRS 197.025(1) and KRS 61.878(1)(l)." The Appellant then appealed to this Office.

On appeal, the Complex now claims it has "located two calls" that it will make available to the Appellant for his in-person inspection at the Complex. The Complex therefore argues that the Appellant's claim is moot because it has provided him access to the requested records. *See* 40 KAR 1:030 § 6. The matter is not moot, however, because the Complex's original response subverted the intent of the Act.

Under KRS 61.880(4), if "a person feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to . . . delay past the five (5) day period described in subsection (1) of this section . . . the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied." Here, there is evidence to suspect that the Complex subverted the Act by claiming an exemption applied to records that the Complex clearly had not even reviewed prior to denying the Appellant's request, which delayed his access to responsive records by more than the five business days permitted under the Act.

As background on the exemption the Complex originally claimed to apply to the requested records, KRS 61.878(1)(l) exempts from inspection records that have been made confidential by an enactment of the General Assembly. And under KRS 197.025(1), "no person shall have access to any records if the disclosure is deemed by the commissioner of the department or his designee to constitute a threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person." This Office has historically deferred to the judgement of the correctional facility in determining whether the release of certain records would constitute a security threat. *See e.g.,* 18-ORD-220 (video recordings); 17-ORD-060 (internal memoranda). This Office's deference has extended to inmate phone calls that the correctional facility determines could pose a security risk. *See, e.g.,* 15-ORD-101; 07-ORD-182.

The backbone of this Office's deference is its belief that correctional facilities will apply KRS 197.025(1) consistent with the intent of the Act. To apply the exemption properly, the correctional facility must *actually review* the record it claims would constitute a security risk before claiming that it does. Claiming an exception applies to a record without first having reviewed it is the very definition of a "blanket denial," which is generally unacceptable under the Act. *See Kentucky New Era, Inc., v. City of Hopkinsville*, 415 S.W.3d 76, 88–89 (Ky. 2013) (also recognizing that the only generally permissible blanket denials include common personal identifiers, such as personal addresses, phone numbers, and social security numbers).

Here, the record indicates that the Complex did not review the responsive records prior to issuing its denial. First, its initial response stated "the disclosure of recordings of phone calls would constitute a security threat[.]" The Complex made no mention of the *requested* phone calls, but indicated that it applies this exception to *all* phone calls. And then, "[u]pon further review after receipt of the appeal, the open records coordinator located two calls and approved" the Appellant's request, and is making arrangements for him to inspect the records in person. In other words, on appeal, the Complex now states that the content of these specific phone calls would cause no security concern.[1] Had the Complex reviewed the phone calls prior to issuing a blanket denial, it would have arranged for the Appellant's inspection of records in the first instance and without unnecessary delay. Because the Complex issued a blanket denial, which resulted in unnecessary delay beyond the five day period, it subverted the Act.

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

#256

Distributed to:
Matthew Goins #287641
Amy V. Barker

[1] Instead, the Complex now claims that the security risk is allowing the Appellant to possess the CD, because CDs are considered contraband. This Office has no reason to disagree with that assessment. But the Complex did not deny the Appellant's request because it deemed CDs to be dangerous instruments that pose a security risk. The Complex denied the request because it has determined "phone calls" to be a security risk.