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**21-ORD-174**

September 21, 2021

In re: Terrance Miles/Southeast State Correctional Complex

**Summary:** The Southeast State Correctional Complex (“Complex”) did not violate the Open Records Act (“the Act”) when it denied requests for a record that does not exist and for records that do not contain a specific reference to the requesting inmate.

***Open Records Decision***

On July 26, 2021, inmate Terrance Miles (“Appellant”) requested that the Complex provide a copy of a specific employee’s “original disciplinary report on [the Appellant] before it was sent back for a rewrite.” The Complex denied the request on the grounds that the disciplinary action had been dismissed and was no longer in the Appellant’s record. The Complex cited Corrections Policy and Procedure (“CPP”) 15.6, which states: “If the Adjustment Committee or Adjustment Officer finds the inmate did not commit the violation or if an appeal results in the reversal, the disciplinary report shall be removed from the inmate’s file.”

On August 5, 2021, the Appellant requested inspection of all documentation pertaining to the specified employee’s training, including any documentation she signed that demonstrates she is qualified to conduct a PREA investigation. The Complex denied the request under KRS 61.878(1)(l) and KRS 197.025(2) because none of the requested records contained a specific reference to the Appellant. The Appellant appealed both denials to this Office.

Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to present a *prima facie* case that the requested records do exist in the agency’s possession. *Bowling v. Lexington-Fayette Urban Cty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the

Appellant asserts that “[t]he fact that [the records] were removed from [his] file does not mean they no longer exist on [the employee’s] computer or stored elsewhere in the custody of the Kentucky Department of Corrections or [the Complex].” On appeal, the Complex asserts that it has again searched its filing system and determined that the disciplinary report “is no longer in existence since it was sent back for a rewrite and was overwritten.” Furthermore, under KRS 196.180(3), “[t]he warden of each Department of Corrections institution shall expunge inmate prison disciplinary reports that have been dismissed or otherwise ordered void, and shall further remove any reference to dismissed or voided disciplinary reports from inmate records.” Thus, there is no reason the report should exist. The Appellant’s assertion alone is insufficient to establish a *prima facie* case that the requested record still exists. But, even had the Appellant established a *prima facie* case, the Complex has rebutted any such presumption. Therefore, the Complex did not violate the Act when it denied the request.

This leaves only the Appellant’s second request. Under KRS 197.025(2), the Complex need not produce records for an inmate’s inspection “unless the request is for a record which contains a specific reference to that individual.” The Complex explained to the Appellant that the training for employees who conduct sexual abuse investigations, pursuant to CPP 14.7(C)(3), includes “techniques for interviewing sexual abuse victims, proper use of *Miranda* and *Garrity* warnings, sexual abuse evidence collection in confinement settings and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.” The Complex further stated that none of these records contain a specific reference to Appellant. Accordingly, the Complex did not violate the Act by denying this 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/ James M. Herrick

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Assistant Attorney General

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