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**21-ORD-182**

September 28, 2021

In re: Michael Grigsby/Department of Corrections

***Summary:*** The Department of Corrections ("Department") violated the Open Records Act ("the Act") when it entirely withheld a record under KRS 197.025(6) instead of separating exempt information from nonexempt information and providing the latter as required under KRS 61.878(4).

## *Open Records Decision*

On July 30, 2021, Michael Grigsby ("Appellant") requested a copy of "the physical fitness standard that is required in the selection and maintaining of team assignments" for the Corrections Emergency Response Team (referred to by the Appellant as the "Critical Response Team"). The Department denied the request under KRS 197.025(6), which provides that "[t]he policies and procedures or administrative regulations of the department which address the security and control of inmates and penitentiaries shall not be accessible to the public or inmates." This appeal followed.

This Office has recognized that policies and procedures of the Department that fall within the scope of KRS 197.025(6) are exempt from the Act as records "made confidential by enactment of the General Assembly" under KRS 61.878(1)(l). *See, e.g.,* 05-ORD-055; 09-ORD-057; 19-ORD-207. On appeal, the Department states that the requested record is a "secured policy" that "contains information about the [Corrections Emergency Response Team's] structure, weaponry, tools, and training." Be that as it may, the Appellant specifically sought "the physical fitness standard" required of employees, not the Department's entire policy regarding Corrections Emergency Response Teams. Therefore, this Office requested the Department

to provide a copy of the withheld policy for this Office's internal and confidential review. *See* KRS 61.880(2)(c).

Although this Office may not directly reveal the contents of the policy, CPP 8.5, it agrees that some portions of the policy contain information that could be deemed a security risk to the Department if revealed, such as the types of equipment provided to employees, the number of employees in a response unit, and sources and methods related to the training received by the employees. However, this Office also finds those portions of the policy to be unresponsive to the Appellant's request for the "physical fitness standard" required of these employees. The only provisions of the policy that are responsive to the Appellant's request, and in this Office's opinion would not constitute a security threat to the Department, are Section II, Subsections C-6.a(1), (2), and (3), and Section II, Subsection D-4.c. Under KRS 61.878(4), the Department is required to separate these nonexempt sections from the remaining unresponsive and exempt sections of the policy. It may do so by redacting the entire policy other than Subsections C-6.a(1), (2), and (3), as well as Subsection D-4.c. Because the Department withheld the entire policy, instead of separating exempt information from nonexempt information and providing the latter, it violated the Act.[1]

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 proceeding.

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[1] On appeal, the Department additionally relies on KRS 197.025(1), which states that "KRS 61.870 to 61.884 to the contrary notwithstanding, 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." However, the same security justifications for claiming that the policy is exempt under KRS 197.025(6) apply to similar claims under KRS 197.025(1). By providing the Appellant with only the sections of the policy this Office has identified, there should be no security risk posed to the Department.

**Daniel Cameron**
**Attorney General**

/s/ James M. Herrick

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Distributed to:

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