



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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21-ORD-188

October 12, 2021

In re: Chris Hawkins/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 requests for records that do not exist. Also, the Penitentiary properly relied on KRS 197.025(1) to deny a request for security footage, and on KRS 61.878(1)(i) to deny inspection of the Penitentiary’s grievance log.

Open Records Decision

On August 16, 2021, inmate Chris Hawkins (“Appellant”) requested that the Penitentiary provide him “copies of any rule [or] memo that is currently applicable as of 8/14/21 prohibiting PC inmates from wearing tank tops on [the] yard on weekends.” The Penitentiary denied the request on the grounds that it was a request for information.¹

On August 17, 2021, the Appellant made a second and separate request, seeking a copy of the Penitentiary’s security video footage from the recreation yard during certain hours on August 14, 2021, as well as “logs of all rejected grievances that [the Appellant] filed.” The Penitentiary denied the request for video footage under KRS 61.878(1)(l) and KRS 197.025(1), explaining that the release of the footage would be “a security threat because of the amount and nature of the information included in a security video that cannot be redacted.” The Penitentiary denied the request for grievance logs under KRS 61.878(1)(i) because the grievance log “is essentially notes being made for tracking

¹ The Penitentiary also denied the Appellant’s request for a “property rejection appeal” because the record did not exist. The Appellant has not objected to the denial of that request.

purposes.” The Appellant initiated this appeal and sought review of both denials.

On appeal, the Penitentiary asserts that the policy memorandum that the Appellant sought in his first request does not exist. Once a public agency states affirmatively that it does not possess a responsive record, the burden shifts to the requester to present a *prima facie* case that the requested record does exist. *Bowling v. Lexington-Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant has not made a *prima facie* case that any such memorandum does or should exist. Therefore, the Penitentiary did not violate the Act when it denied the Appellant’s first request.²

With regard to the Appellant’s request for security camera footage, KRS 197.025(1) provides that “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 judgment of the correctional facility in determining whether the release of certain records would constitute a security threat. In particular, this Office has consistently upheld the denial of security camera footage inside a correctional facility on grounds that the footage would reveal “methods or practices used to obtain the video, the areas of observation and blind spots for the cameras.” *See, e.g.*, 17-ORD-211; 15-ORD-121; 13-ORD-022. This appeal presents no reason to depart from this Office’s prior analysis.³ Therefore, the Penitentiary did not violate the Act by denying the request for video footage.

As to the Appellant’s request for grievance logs, this Office recently found in 21-ORD-159 that the Penitentiary’s grievance log is exempt from the Act under KRS 61.878(1)(i). This appeal presents no reason to depart from that analysis and a courtesy copy of 21-ORD-159 is attached to this decision. Accordingly, the Penitentiary did not violate the Act.

² The Penitentiary also denied the request under KRS 197.025(2) because the record, if it existed, would not make specific reference to the Appellant and because the request would require it to “perform research.” This Office declines to decide the other grounds offered by the Penitentiary since it claims no responsive record exists and the Appellant has not made a *prima facie* case to rebut the Penitentiary’s claim.

³ Furthermore, the Penitentiary advises on appeal that the footage no longer exists because “the video system purges older video to have room for new video” and no copy of the requested footage was saved.

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
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/s/ James M. Herrick

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Distributed to:

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