



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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21-ORD-200

October 27, 2021

In re: Chad Durbin/Kentucky State Penitentiary

Summary: The Kentucky State Penitentiary (the “Penitentiary”) did not violate the Open Records Act (“the Act”) when it denied a request for JPay emails exchanged between private parties because such records are not public records.

Open Records Decision

Chad Durbin (“Appellant”) sent the Penitentiary a request for copies of his “JPay” records related to a specific reference number and JPay’s emailed response. In a timely response, the Penitentiary denied his request because the records are of a “purely personal nature unrelated to any governmental function” and because the JPay service is provided by an “outside vendor” who maintains custody of these records. Thus, the “Penitentiary does not have [c]ustody or [c]ontrol” of these records. And although the Penitentiary did not state that JPay emails are not public records, it nevertheless cited to this Office’s decisions in 20-ORD-109 and 20-ORD-132 as grounds for its denial. This appeal followed.

In 20-ORD-109, a courtesy copy of which is enclosed, this Office found that JPay emails exchanged between inmates and private parties generally are not “public records” within the meaning of KRS 61.870(2). The JPay emails Appellant has requested appear to be his communications with JPay regarding that entity’s services and its response thereto. There is no indication in this record that the requested emails were sent to, or received by, the Penitentiary or any other public agency. There is also no evidence in the record that suggests the Penitentiary has used these emails for any administrative purpose to bring them within the statutory definition of a “public record.” KRS 61.870(2).

Accordingly, the JPay emails Appellant has requested are not public records and the Penitentiary did not violate the Act by denying the request.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 proceedings.

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/s/Matthew Ray
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Distributed to:

Chad Durbin #144487
Amy V. Barker

¹ Because the Appellant did not request to inspect public records, this Office declines to consider the Penitentiary's alternative argument that the records are exempt under KRS 61.878(1)(r) as "[c]ommunications of a purely personal nature unrelated to any governmental function."