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21-ORD-238

December 1, 2021

In re: James Harrison/Eastern Kentucky Correctional Complex

Summary: The Eastern Kentucky Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it withheld records that are deemed a security threat under KRS 197.025(1), or when it did not produce records that do not exist.

Open Records Decision

On October 25, 2021, inmate James Harrison (“Appellant”) requested to inspect Visiting Information Forms submitted by his family and friends during September 2021, and “any documentation showing any reasons(s) for rejection(s) thereof.” The Appellant also asked to inspect a Visiting Information Form submitted by a named individual “in late 2020 or early 2021.” The Complex denied the request under KRS 61.878(1)(a), explaining that they contained “personal information of the visitors,” including Social Security numbers, dates of birth, and addresses. This appeal followed.

On appeal, the Complex asserts that a Visiting Information Form for the named individual submitted in 2020 or 2021 does not exist. Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to present a *prima facie* case that the requested record does exist. *Bowling v. Lexington-Fayette Urban Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant has not established a *prima facie* case that the requested form exists. Thus, the Complex did not violate the Act when it failed to provide the requested record.

With regard to the Visiting Information Forms submitted during September 2021, the Complex asserts KRS 197.025(1) as an additional basis

for denial.¹ 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 judgment of correctional facilities in determining whether the release of certain records would constitute a security threat under KRS 197.025(1). In particular, this Office has upheld the denial of an inmate’s request for information from Visiting Information Forms under CPP 16.1. *See* 06-ORD-120. Accordingly, the Complex did not violate the Act when it denied the Appellant’s request.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 within 30 days from the date of this decision. 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. The Attorney General will accept notice of the complaint e-mailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

/s/ James M. Herrick

James M. Herrick
Assistant Attorney General

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Distributed to:
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Ms. Debbie Parker

¹ Specifically, the Complex states that disclosure of these forms to an inmate has been deemed a security threat according to Corrections Policy and Procedure (“CPP”) 16.1(II)(D)(3), which is incorporated by reference in 501 KAR 6:020. CPP 16.1(II)(D)(3) states that “[a]n inmate shall not receive a completed visitor information form from a visitor or submit it to a Classification and Treatment Officer.” However, it is KRS 197.025(1) that allows the Complex to withhold the records, not an administrative regulation.

² Because KRS 197.025(1) is dispositive of the issues on appeal, it is unnecessary to address the Complex’s argument under KRS 61.878(1)(a).