



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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21-ORD-254

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In re: Jonathan Griggs/McCracken County Regional Jail

Summary: The McCracken County Regional Jail (“the Jail”) violated the Open Records Act (“Act”) when it failed to separate exempt material from nonexempt material in a record and provide the nonexempt material for inspection.

Open Records Decision

Jonathan Griggs (“Appellant”) submitted a request to the Jail to “inspect any and all of [the Jail’s] most current Policy and Procedure Manual.” In its response, the Jail denied the Appellant’s request for two reasons. First, the Jail stated that “portions of correctional policy and procedure manuals may be exempt from disclosure if [the Jail] finds that disclosure of the same may imperil the efficacy of administrative order or pose a risk to personal, public and/or facility security concerns.” The Jail cited KRS 61.878(1)(l), KRS 197.025(1), (2), and (6), as well as prior decisions of this Office, as authority for its denial. Second, the Jail claimed it was unable to provide the nonexempt portions of the responsive records because the Appellant’s request lacks “a more particularized description of the specific subject matter” he seeks. This appeal followed.

Under KRS 61.880(1), “[a]n agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the

exception applies to the record withheld.” The agency carries the burden of proof in sustaining an action on appeal. KRS 61.880(2)(c).¹

Under KRS 197.025(6), “[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.” Moreover, “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.” KRS 197.025(1). This Office has found that policies and procedures that fall within the scope of KRS 197.025(6) and KRS 197.025(1) are exempt from inspection under the Act through KRS 61.878(1)(l), which exempts from inspection certain “[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly” *See, e.g.*, 21-ORD-182; 19-ORD-207; 09-ORD-057; 05-ORD-055.

However, in its response to the initial request, the Jail stated that “*portions* of correctional policy and procedure manuals may be exempt from disclosure if [the Jail] finds that disclosure of the same may imperil the efficacy of administrative order or pose a risk to personal, public and/or facility security concerns” (emphasis added). This Office has historically deferred to the judgement of correctional facilities in making the determination of whether or not the release of a public record for inspection would constitute a security threat. *See, e.g.*, 21-ORD-225 (surveillance footage); 17-ORD-060 (internal memoranda). However, this deference is not absolute. *See, e.g.*, 21-ORD-167 (a correctional facility subverted the Act when it issued a blanket denial under KRS 197.025(1) and the facts indicated the correctional facility never actually reviewed the records before issuing a denial).

“If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the

¹ This Office sent notice of the appeal to the Jail and its agent, but the Jail did not respond to the appeal. Although an agency may respond to complaints raised in an appeal to this Office, it is not required to do so. Under KRS 61.880(2), it is this Office’s duty to look at the Appellant’s original request and the agency’s response denying the request, and issue a decision whether the agency’s response violated the Act.

nonexcepted material available for examination.” KRS 61.878(4). Here, the Jail has admitted that only “portions” of the policy are exempt. Thus, there are “portions” that are not exempt, because those portions do not pose a security risk. It is the agency’s duty to determine which portions of a record are exempt and which portions are not, separate them, and provide the nonexempt portions to the requester. KRS 61.878(4); *see, e.g.*, 21-ORD-182 (a correctional facility violated the Act when it entirely withheld a record instead of separating exempt information and providing the nonexempt information). Yet the Jail imposed that duty on the Appellant, by inviting him to narrow his request for just those portions of the policy that would not constitute a security threat. The Jail cannot admit that portions of the policy do not constitute a security threat, and then invite the Appellant to guess which portions the Jail does not consider to constitute a security threat. Therefore, the Jail violated the Act when it failed to separate exempt portions of the policy from nonexempt portions, and provide the latter to the Appellant.

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 emailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

/s/Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

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