



COMMONWEALTH OF KENTUCKY
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21-ORD-256

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In re: Chris Hawkins/Kentucky State Penitentiary

Summary: The Kentucky State Penitentiary (the “Penitentiary”) violated the Open Records Act (“the Act”) when it initially denied a request for records as an improper request for information. However, the Penitentiary substantiated its denial on appeal because the requested records make no specific reference to the inmate issuing that request.

Open Records Decision

Chris Hawkins (“Appellant”) submitted a request to the Penitentiary to inspect “any posted, published [Department of Corrections or Penitentiary] rule prohibiting inmates [in protective custody] from talking to [general population] kitchen workers and/or [general population] inmates in general.”¹ Citing KRS 61.872(1) and (3), the Penitentiary denied his request because “[r]equests for information are outside the scope of the open records law [and] an agency is not required to honor a request for information[.]” This appeal followed.

The Act does not require public agencies to answer questions or provide information. Rather, the Act requires a public agency to make public records available for inspection. KRS 61.872; *Dept. of Revenue v. Eifler*, 436 S.W.3d 530, 534 (Ky. App. 2013) (“The ORA does not dictate that public agencies must gather and supply information not regularly kept as part of its records.”); *see*

¹ The Appellant also raises issues other than violations of the provisions of KRS 61.870 to 61.884, such as the adequacy of the Penitentiary’s legal library. This Office declines to extend its consideration beyond the Act. KRS 61.880(2); *see also* 19-ORD-206.

also 21-ORD-166 (An agency does not violate the Act when it denies a request for information). Here, however, the Appellant requested to inspect specific rules that met the specific parameters he provided in his request. Although, the Appellant did not identify the rules by name or title in his request, he did describe with sufficient detail the conduct that the requested rules would prohibit—inmates in protective custody talking to inmates in general population. The Penitentiary admits, on appeal, that its rules are freely accessible to inmates.² Thus, the Appellant’s request is not a request for information, and the Penitentiary violated the Act when it initially denied his request on this basis.

On appeal, however, the Penitentiary abandons its claim that the request was for information. The Penitentiary now claims KRS 197.025(2) permits it to deny the request. Under KRS 197.025(2), “the department shall not be required to comply with a request for any record from any inmate . . . unless the request is for a record which contains a specific reference to that individual.” KRS 197.025(2) is incorporated into the Act through KRS 61.878(1)(l), which exempts from inspection public records or information where “the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly[.]”

Here, the Appellant’s request was for rules of general applicability, and the Penitentiary explains that “[n]one of these records are the type to contain a specific reference to an inmate.” Thus, the Penitentiary did not violate the Act when it denied inspection pursuant to KRS 197.025(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 emailed to OAGAppeals@ky.gov.

² The Penitentiary notes that “[r]ules at the penitentiary are posted for inmate review in dorms and the inmate handbook.” As well as that rules “are also contained in institutional policies and procedures (IPPs) and corrections policies and procedures (CPPs), which are maintained for inmates in the legal library.”

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