



COMMONWEALTH OF KENTUCKY
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22-ORD-192

September 26, 2022

In re: Steven Logan/Little Sandy Correctional Complex

Summary: The Little Sandy Correctional Complex (the “Complex”) did not violate the Open Records Act (“the Act”) when it denied a request for JPay messages because the request did not describe public records to be inspected.

Open Records Decision

Inmate Steven Logan (“Appellant”) submitted a request to the Complex for copies of eight JPay messages he exchanged with a specific attorney on specific dates. In a timely response, the Complex denied his request because the JPay messages were “communications of a purely personal nature unrelated to any governmental function and a copy does not have to be provided.”¹ This appeal followed.

Under the Act, “[a]ny resident of the Commonwealth shall have the right to inspect public records. The official custodian may require a written application, signed by the applicant and with his or her name printed legibly on the application, describing the records to be inspected.” *See* KRS 61.872(2)(a). And “public records” means any records “which are prepared, owned, used, in the possession of or retained by a public agency.” KRS 61.870(2). However, this Office explained that JPay communications exchanged between inmates and other private individuals are not

¹ Although the Complex cited KRS 61.878(1)(p), the “purely personal communications” exemption is now codified at KRS 61.878(1)(r) following legislative amendment in 2021. *See* 2021 Ky. Acts Ch. 78 § 1. KRS 61.878(1)(p) now exempts from inspection “[c]lient and case files maintained by the Department of Public Advocacy[.]”

“public records” under KRS 61.870(2). *See, e.g.,* 22-ORD-111; 20-ORD-109. Moreover, only emails sent to or from employees of the correctional facility using the JPay system are “public records,” because such records would have been “prepared by” or “in the possession of” the correctional facility. *See* KRS 61.870(2).

Here, neither the Appellant nor his private attorney are employees of the Complex. Accordingly, the requested JPay emails are not “public records” because they were not “prepared, owned, used, in the possession of or retained by a public agency.” KRS 61.870(2). Thus, the Complex did not violate the Act when it denied the Appellants request for JPay messages because that request did not describe “public records” to be inspected.²

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court under KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Under 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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² The Appellant argues that this Office’s decision in 19-ORD-100 means he is allowed to inspect JPay emails that make a specific reference to him. However, in 21-ORD-198, this Office criticized the decision in 19-ORD-100 for ignoring the actual text of KRS 197.025(2) and countless prior decisions of the Office. Until the Office’s decision in 19-ORD-100, the Office had always held that KRS 197.025(2) operates as an exemption to deny inmates’ requests to inspect records unless the record makes a specific reference to that inmate. However, in 19-ORD-100, the Office turned the exemption in KRS 197.025(2) into an entitlement for inmates to inspect every record that makes specific reference to him, regardless of whether other exemptions apply. As in 21-ORD-198, this Office again rejects the analysis in 19-ORD-100 and finds that it does not apply to this appeal.

Distributed to:

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