



COMMONWEALTH OF KENTUCKY
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22-ORD-195

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In re: Jose Menjivar/Western Kentucky Correctional Complex

Summary: The Western Kentucky Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it denied a request for records posing a security threat under KRS 197.025(1).

Open Records Decision

On August 16, 2022, inmate Jose Menjivar (“Appellant”) requested copies of the audio recordings from 13 adjustment hearings held on June 2 and July 27, 2022, concerning the possible security threat he and 12 other inmates allegedly posed when they violated a policy related to gathering in large groups. In a timely response, the Complex provided the Appellant a copy of the recording from his own adjustment hearing, but denied his request for the other 12 recordings under KRS 61.878(1)(l) and KRS 197.025(2) on the grounds that the records did not contain a specific reference to the Appellant. This appeal followed.

The Appellant asserts that KRS 197.025 does not apply because his name is used in all of the disputed recordings. He further asserts that he is entitled to the recordings under KRS 61.884, which provides that “[a]ny person shall have access to any public record relating to him or in which he is mentioned by name, upon presentation of appropriate identification, subject to the provisions of KRS 61.878.”

On appeal, the Complex no longer relies on KRS 197.025(2), but asserts that the recordings are exempt from disclosure under KRS 197.025(1), which provides that “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.”¹ Here, the Complex states that releasing the testimony of other inmates at their adjustment hearings “puts the safety of the inmates and the institutional staff at risk by potentially causing disagreements, retaliation, or physical altercations among inmates that must be d[e]fused by staff.”

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 consistently upheld the denial of information concerning whether an inmate poses a security threat based on his status in a group. *See, e.g.*, 21-ORD-229; 19-ORD-140; 18-ORD-186; 18-ORD-004; 17-ORD-169; 17-ORD-032; 16-ORD-070; 16-ORD-023. Under the facts of this appeal, this Office defers to the judgment of the Complex to determine that release of the records would pose a security threat under KRS 197.025(1).

The Appellant also argues that he is entitled to the records under KRS 61.884 because he is mentioned in them by name. However, a person’s access to records under KRS 61.884 is expressly made “subject to the provisions of KRS 61.878.” Thus, KRS 61.884 does not apply because the records are exempt under KRS 197.025(1), which is incorporated into the Act under KRS 61.878(1)(l). Accordingly, the Complex did not violate the Act when it denied the Appellant’s request for the recordings of the other inmates’ adjustment hearings.

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:

¹ The exemption under KRS 197.025(1) is incorporated into the Act under KRS 61.878(1)(l), which exempts from inspection records made confidential by any enactment of the General Assembly.

Jose Menjivar, #318421

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Ms. Johanna Chandler