



COMMONWEALTH OF KENTUCKY
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22-ORD-223

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In re: Rodney Smith/Kentucky State Penitentiary

Summary: The Kentucky State Penitentiary (the “Penitentiary”) did not violate the Open Records Act (“the Act”) when it redacted information that, if released, would pose a security threat under KRS 197.025(1).

Open Records Decision

On September 2, 2022, inmate Rodney Smith (“Appellant”) submitted a request to the Penitentiary for “[a]ll EOR’s and information reports pertaining to the attack on [him] from July 13, 2022; in segregation unit, 3 cell house.”¹ In a timely response the Penitentiary denied the Appellant’s request under KRS 61.878(1)(i) and (j) because the records were preliminary. The investigation was still ongoing and the requested EOR was not complete at the time of the request. This appeal followed.

On appeal, the Penitentiary abandons its denial based on KRS 61.878(1)(i) and (j) because the investigation has been completed. The Penitentiary has made the EOR available to the Appellant with certain information redacted under KRS 61.878(1)(l) and 197.025(1) for security reasons. Specifically, the Penitentiary redacted “information about other inmates and response details concerning the emergency events at the penitentiary.”

Under KRS 197.025(1), “no person shall have access to any records if the disclosure is deemed by the commissioner of the [Department of Corrections] or his designee to constitute a threat to the security of the . . . correctional staff [or] the

¹ “EOR” means Extraordinary Occurrence Report.

institution.” KRS 197.025(1) is incorporated into the Act under KRS 61.878(1)(l), which exempts from inspection public records the disclosure of which is prohibited by enactment of the General Assembly. Under KRS 61.878(4), “[i]f any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.”

Here, the Penitentiary claims that the redacted information cannot be released “without potential risk to staff in future responses. Releasing this kind of information to an inmate would create a security risk by revealing too much detail about staff response to such incidents.” Moreover, the Penitentiary claims that “[i]nformation solely about the other inmates was also redacted because it is a security risk to allow an inmate to have information about another inmate in his possession causing the potential for fights and attacks.”

Historically, the Office has deferred to the judgment of correctional facilities to determine whether the release of information could pose a security risk. *See, e.g.*, 17-ORD-060 (upholding the redaction of information that posed a security risk to another inmate); 08-ORD-148 (upholding a denial of records that would have posed a security risk to the penal institution and its employees if released). There is no evidence in this record to question the Penitentiary’s judgment that release of the information would pose a security risk. Thus, the Penitentiary did not violate the Act when it redacted information that if released would constitute a security risk under KRS 197.025(1).

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.

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