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24-ORD-130

May 31, 2024

In re: Stephen Spieth/Kentucky Department of Corrections

Summary: The Kentucky Department of Corrections (“the Department”) did not violate the Open Records Act (“the Act”) when it withheld the Appellant’s Sex Offender Treatment Program Report that was exempt from disclosure under KRS 61.878(1)(j).

Open Records Decision

Inmate Stephen Spieth (“Appellant”) submitted a request for his Sex Offender Treatment Program (“SOTP”) report. The Department denied the request under KRS 61.878(1)(i) and KRS 61.878(1)(j) because it contains “opinions, observations, and recommendations” that were “not adopted by the Parole board in its parole decision.” The Department also denied the request under KRS 439.510, which is incorporated into the Act by KRS 61.878(1)(l), because the SOTP report “contains information from the [pre-sentence investigation] that is gathered by probation and parole officers.” This appeal followed.

KRS 61.878(1)(j) exempts from disclosure “[p]reliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended.” The Department states that the SOTP report contains “opinions, observations, and recommendations that are not incorporated into or reflect final agency action and [are] not adopted by the Parole Board in its parole decision.” The Appellant argues that final agency action took place when the Parole Board issued its parole decision. Once a record is adopted as part of a public agency’s final action, it loses its preliminary status and is subject to inspection, unless another exemption applies. *See Univ. of Ky. v. Courier-Journal & Louisville Times Co.*, 830 S.W.2d 373, 378 (Ky. 1992). Here, the Department states it has confirmed that “the SOTP Parole Report was not adopted, in whole or in part, as the basis for the decision of the Parole Board.” Further, the Office has previously held that “an SOTP report is a preliminary document that does not constitute a final agency action, and is therefore exempted

pursuant to KRS 61.878(1)(j).” 17-ORD-155; *see also* 14-ORD-129; 14-ORD-008. Accordingly, the Department did not violate the Act when it withheld this record.¹

A party aggrieved by this decision may appeal it by initiating an 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.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

#227

Distributed to:

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¹ Because KRS 61.878(1)(j) is dispositive of the issues on appeal, it is not necessary to address the Department’s arguments that the record is also exempt under KRS 61.878(1)(i) and KRS 439.510.