



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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24-ORD-139

June 18, 2024

In re: Brock Hanley/Green River Correctional Complex

Summary: The Green River Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it redacted certain material from an inmate risk assessment under KRS 439.510 and copyrighted portions of the assessment under 17 U.S.C. § 106.

Open Records Decision

On April 22, 2024, inmate Brock Hanley (“Appellant”) submitted a request to the Complex for a “copy of [his] risk assessment” dated March 27, 2024. In response, the Complex stated it would provide the Appellant with a copy of the record, with exempt portions redacted under KRS 61.878(1)(k) and 17 U.S.C. § 106. The Complex then instructed the Appellant to submit another request if he still wished to obtain a copy of the redacted records.¹ On April 30, 2024, the Appellant submitted a request for the same record, “including the ‘redacted pages’ as [the Complex] referenced in” its original response.” In response, the Complex provided the redacted record to the Appellant. This appeal followed.

First, the Complex relies on KRS 61.878(1)(k) to redact from the records the assessment tools, questions, responses, and scoring used in the Kentucky Risk Assessment system. The Complex claims that this material is exempt from disclosure under the copyright protection provisions of 17 U.S.C. § 106, which is incorporated into the Act by KRS 61.878(1)(k). The Office has previously found that such material may be redacted under 17 U.S.C. § 106 and KRS 61.878(1)(k). *See, e.g.,* 22-ORD-095; 20-ORD-198; 19-ORD-144. The Office reached that conclusion based, in part, on the terms of an agreement between the Department of Corrections and the University of

¹ The Complex explained it asked the Appellant to submit a new request “because inmates are charged 10 cents per page when provided with copies and some inmates do not wish to incur that expense for the limited information available.” *See Friend v. Rees*, 696 S.W.2d 325, 326 (Ky. App. 1985). On appeal, the Appellant has not challenged this portion of the Agency’s response.

Cincinnati Correctional Institute. *Id.* That agreement provides that the Department of Corrections “shall not disclose or transfer in any form either the delivered [assessment tool] or any modifications of or derivative works based on the [assessment tool] to third parties.” *See* 20-ORD-198. Therefore, the Complex did not violate the Act by redacting material that is exempt from inspection. KRS 61.878(1)(k).

Further, on appeal, the Complex relies on KRS 439.510, which is incorporated into the act under KRS 61.878(1)(l), to redact the information obtained from the Appellant that was used to complex his risk assessment. KRS 439.510 provides:

All information obtained in the discharge of official duty by any probation or parole officer shall be privileged and shall not be received as evidence in any court. Such information shall not be disclosed directly or indirectly to any person other than the court, board, cabinet, or others entitled under KRS 439.250 to 439.560 to receive such information, unless otherwise ordered by such court, board or cabinet.

This Office has previously found that an inmate’s responses that were recorded in the context of a risk assessment are not subject to inspection under KRS 439.510. *See, e.g.,* 22-ORD-095; 20-ORD-198; 19-ORD-144; 17-ORD-022; 05-ORD-265; 01-ORD-120. This request is no different. The Complex has redacted portions of Appellant’s risk assessment that contain information obtained by probation and parole officers during the presentence investigation and the subsequent risk assessment. Therefore, the Complex did not violate the Act by redacting those portions of the Appellant’s risk assessment.

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
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