



COMMONWEALTH OF KENTUCKY
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24-ORD-168

July 30, 2024

In re: Randal Kiper/Kentucky State Penitentiary

Summary: The Kentucky State Penitentiary (“the Penitentiary”) did not violate the Open Records Act (“the Act”) when it denied a request for records that do not contain a specific reference to the requesting inmate.

Open Records Decision

On or about June 6, 2024, inmate Randal Kiper (“Appellant”) requested to inspect “Canteen fund Records and account” from January to June 2024. In a timely response, the Penitentiary denied the request because the “whole Inmate Canteen funds account records do not contain” the Appellant’s name or ID number and therefore are “not specific to [him] pursuant to KRS 61.878(1)(l) & KRS 197.025(2).” This appeal followed.

Under KRS 197.025(2), which is incorporated into the Act by KRS 61.878(1)(l), the Penitentiary “shall not be required to comply with a request for any record from any inmate confined in a jail or any facility . . . unless the request is for a record which contains a specific reference to that individual.” The Appellant argues that the canteen fund records pertain to him because the profits of the canteen benefit the inmates, including him. However, the Office has held that the phrase “specific reference to that individual” means the record must refer to the requesting inmate by name. *See, e.g.*, 23-ORD-347; 17-ORD-073.

Alternatively, the Appellant claims he is entitled to view the Kentucky Centralized Inmate Commissary (“KCIC”) Independent Auditor’s Report for the relevant time period because it is to be posted in all institutions, pursuant to Corrections Policy and Procedure (“CPP”) 2.1(II)(C), “in an area accessible to the inmate population.” However, KRS 61.880(2)(a) does not authorize the Attorney General, in the context of an open records appeal, to determine whether a correctional institution has complied with a Department of Corrections policy. *See, e.g.*, 09-ORD-057 (“Issues unrelated to the Open Records Act are beyond the Attorney General’s review powers under KRS 61.880.”).

Nevertheless, the Penitentiary states the audit for the fiscal year ending June 30, 2024, has not yet been completed, and therefore the report exists only in preliminary draft form. The Penitentiary also notes that previous reports do not contain references to specific inmates. The Penitentiary states the report will be posted in an accessible location when it is completed. “Preliminary drafts” are exempt from disclosure under KRS 61.878(1)(i). However, even if the audit were completed, the Penitentiary would not be required under the Act to provide it to the Appellant if it does not contain a “specific reference” to him within the meaning of KRS 197.025(2). *See, e.g.*, 10-ORD-228 (finding an inmate was not entitled to a copy of a canteen disbursement overview because it was not the type of record that would contain a specific reference to him). Therefore, the Penitentiary did not violate the Act.¹

A party aggrieved by this decision may appeal it by initiating an 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 emailed to OAGAppeals@ky.gov.

Russell Coleman
Attorney General

/s/ James M. Herrick
James M. Herrick
Assistant Attorney General

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Distributed to:

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¹ The Appellant has provided a list of his personal individual transactions as evidence that the report will specifically reference him. The Office has long held it cannot resolve factual disputes about the content of requested records. *See, e.g.*, 23-ORD-027; 22-ORD-010; 19-ORD-083; 03-ORD-061; OAG 89-81. Accordingly, the Office cannot determine that the not-yet-completed audit report specifically references the Appellant.