



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

24-ORD-174

July 30, 2024

In re: Scott McDonnell/Department of Corrections

Summary: The Department of Corrections (“the Department”) did not violate the Open Records Act (“the Act”) when it denied a request for photos of a specific inmate that would pose a security threat to the Penitentiary if released. KRS 197.025(1).

Open Records Decision

Scott McDonnell (“Appellant”) submitted a request to the Department for photographs of a specific inmate. In response, the Department denied the request under KRS 197.025(1) and KRS 61.878(1)(l) because the photos constitute a security risk. This appeal followed.

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 institution.” KRS 197.025(1) is incorporated into the Act by KRS 61.878(1)(l), which exempts from inspection public records the disclosure of which is prohibited by enactment of the General Assembly. Specifically, the Department states that photographs of an inmate pose a security risk because they can be used to create false identification and facilitate escape, theft, or the impersonation of others.

This Office historically has deferred to the judgment of a correctional facility in determining whether the release of certain records would constitute a security threat. In particular, this Office has previously upheld the denial of photographs of inmates under KRS 197.025(1). *See, e.g.*, 21-ORD-005; 19-ORD-172; 16-ORD-267. Accordingly, the Department did not violate the Act when it withheld photographs of a specific inmate that, if released, would pose a security risk under KRS 197.025(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

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Distributed to:

Scott McDonnell
Michelle Harrison
Renee Day
Ann Smith