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24-ORD-190

September 9, 2024

In re: James O'Toole/Knox County Detention Center

Summary: The Knox County Detention Center (“the Jail”) violated the Open Records Act (“the Act”) when it failed to cite the specific exception authorizing the nondisclosure of public records. However, the Jail did not violate the Act when it denied a request for records posing a security threat under KRS 197.025(1).

Open Records Decision

On July 16, 2024, attorney James O'Toole (“the Appellant”) requested “to inspect or obtain copies of” records relating to his client’s incarceration at the Jail between July 8 and 10, 2024, including “any video footage of any physical interactions between” his client and correctional staff.¹ In response, the Jail stated that video footage existed but “object[ed] to its ‘wholesale’ release due to security concerns” because “[t]he videotape may reveal blind spots or areas in which the cameras are unable to focus.” Therefore, the Jail denied access to the video footage because “the videotapes are exempt under KRS 61.878(1).” However, the Jail offered to release the footage if the Appellant “would enter into a confidentiality agreement.” This appeal followed.

Under KRS 61.880(1), “[a]n agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” Here, the Jail only cited KRS 61.878(1), the provision listing all the exceptions to the Act. Thus, the Jail violated the Act when it failed to cite “the specific exception authorizing the withholding of the record.”

On appeal, however, the Jail cites KRS 197.025(1) and KRS 61.878(1)(l), by which the former is incorporated into the Act. Under KRS 197.025(1), “no person shall have access to any records if the disclosure is

¹ None of the requested records other than video footage are at issue in this appeal.

deemed by the commissioner of the department or his designee to constitute a threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person.” The Office has historically deferred to the judgment of correctional facilities in determining whether the release of certain records would constitute a security threat under KRS 197.025(1). In particular, the Office has consistently upheld the denial of security camera footage inside a detention center. *See, e.g.*, 24-ORD-154; 21-ORD-197; 18-ORD-074; 13-ORD-022; 10-ORD-055. The security risk in connection with surveillance footage is that the footage would reveal “methods or practices used to obtain the video, the areas of observation and blind spots for the cameras.” *See, e.g.*, 22-ORD-038; 17-ORD-211; 15-ORD-121; 13-ORD-022. Because the Jail offers the same rationale here, the Jail did not violate the Act when it denied access to the security footage.²

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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Mary Stewart Hammons, Jailer
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² Although the security footage is exempt from disclosure to the general public, the Jail has recognized the Appellant’s unique interest in viewing the footage and therefore has offered to disclose it “if counsel and his client would enter into a confidentiality agreement to prevent further dissemination of the footage.” Because the Appellant “stands in the same shoes as any other requester,” 10-ORD-055, this offer goes beyond the Jail’s obligations under the Act.