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25-ORD-024

January 28, 2025

In re: Karim Zein/Kentucky State Penitentiary

**Summary:** The Kentucky State Penitentiary (“the Penitentiary”) violated the Open Records Act (“the Act”) when it failed to cite the specific exception authorizing the nondisclosure of public records. However, the Penitentiary did not violate the Act when it denied a request for records posing a security threat under KRS 197.025(1) and a record not within its custody or control.

***Open Records Decision***

On or about December 11, 2024, inmate Karim Zein (“the Appellant”) submitted a request to the Penitentiary for “picture evidence” of an incident that occurred at the Lee Adjustment Center (“the Center”) on October 14, 2024, and was the subject of a pending disciplinary investigation by the Penitentiary.<sup>1</sup> The Appellant also requested a copy of the Center’s incident report relating to the same occurrence. In a timely response, the Penitentiary denied the request for “picture evidence” because it “is part of a Disciplinary Report that is still pending at this time.” The Penitentiary denied the request for the Center’s incident report because it “does not maintain” that record. However, the Penitentiary provided the mailing address for the Center so the Appellant could request it from that facility. 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 Penitentiary cited no exception authorizing the withholding of the requested “picture evidence.” Thus, the Penitentiary violated the Act.

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<sup>1</sup> Although the incident occurred at the Center, the Penitentiary has responsibility for the investigation, as the Appellant was transferred to the Penitentiary as a result of the incident.

On appeal, however, the Penitentiary cites KRS 61.878(1)(i) and (j), claiming the “picture evidence” is exempt from disclosure because it was generated in the course of a disciplinary investigation that is still pending final action. Additionally, the Penitentiary cites KRS 197.025(1) and KRS 61.878(1)(l), by which the former is incorporated into the Act. The Penitentiary explains the only “picture evidence” responsive to the Appellant’s request is a series of still frames taken from security video camera footage at the Center, the disclosure of which would constitute a threat to “the safety and security of” the Center.

Under KRS 197.025(1), “no person shall have access to any records if the disclosure is 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 main 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 still pictures in question are frames from the Center’s security cameras, they pose the same security risk as surveillance video footage. Accordingly, the Penitentiary did not violate the Act when it denied access to those images.<sup>2</sup>

With regard to the incident report from the Center, the Appellant argues the Penitentiary improperly denied his request because it can obtain the report through the Kentucky Offender Management System (“KOMS”). However, “an agency’s ‘access’ to digital records, without more, does not mean that the public agency is the custodian of such records.” 20-ORD-109. Rather, a public agency “is responsible only for those records within its own custody or control.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 856 (Ky. 2013) (citing *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136 (1980)); *see also* 15-ORD-190 (finding the Kentucky Department of Education did not possess or retain emails stored on local school districts’ servers even though it had electronic access to them). Because the Penitentiary does not have custody or control of the Center’s records, it is not required to obtain them to fulfill the Appellant’s request. *See* 15-ORD-190. Therefore, the

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<sup>2</sup> Because KRS 197.025(1) is dispositive of this issue, it is unnecessary to address the Penitentiary’s arguments under KRS 61.878(1)(i) or (j).

Penitentiary did not violate the Act when it denied the request and appropriately advised the Appellant how to request records from the Center.<sup>3</sup>

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  
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<sup>3</sup> Cf. KRS 61.872(4) (“If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency’s public records.”).