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OFFICE OF THE ATTORNEY GENERAL

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25-ORD-040

February 13, 2025

In re: Dan Yeast/Eastern Kentucky Correctional Complex

Summary: The Eastern Kentucky Correctional Complex ("the Complex") did not violate the Open Records Act ("the Act") when it denied a request for records that, if released, could pose a security threat to the safety of a correctional facility.

Open Records Decision

On August 9 and October 17, 2024, attorney Dan Yeast ("Appellant") submitted a request to the Complex seeking "security footage" of an incident involving a particular inmate on July 22, 2024. In responses dated September 13 and October 24, 2024, the Complex denied the Appellant's request for footage under KRS 197.025(1), which is incorporated into the Act by KRS 61.878(1)(l). This appeal followed.[1]

Before addressing the merits of the appeal, the Office must assure itself that it has jurisdiction. Under KRS 197.025(3), "all persons confined in a penal facility shall challenge any denial of an open record [request] with the Attorney General by mailing or otherwise sending the appropriate documents to the Attorney General within twenty (20) days of the denial pursuant to the procedures set out in KRS 61.880(2) before an appeal can be filed in a Circuit Court." Thus, KRS 197.025(3) requires those "confined in a penal facility" to exhaust their administrative remedies by initiating an appeal with the Office before proceeding with an action in circuit court, and they must avail themselves of that administrative remedy by "sending the appropriate documents to the Attorney General within twenty (20) days of the denial." *Id.*

[1] On appeal, the Appellant states that he only challenges "the decision to withhold this video footage." Thus, the timeliness of the Complex's responses is not at issue.

The Complex asserts that the Appellant is acting on behalf of a particular inmate. Therefore, it argues, the Appellant is subject to KRS 197.025(3) as if he were a person "confined in a penal facility." To support this argument, the Complex relies on a line of decisions in which the Office has applied KRS 197.025, which controls inmates' access to records under the Act, to requesters who are not inmates. In those instances, the Office has found that there exists "sufficient objective indicia to show that there is identity of purpose between" the requester and an inmate. *See, e.g.*, 09-ORD-225; 09-ORD-158; 04-ORD-214; 02-ORD-82; 00-ORD-182.

00-ORD-182 involved a joint request submitted by an inmate and his wife. The agency denied the request because the requested records did not specifically reference the inmate requester. *See* KRS 197.025(2) Thus, the Office found that "sufficient objective indicia exist[ed] to establish an identity of purpose between" the non-inmate and inmate requesters. The Office noted that any other outcome would "undermin[e] the purpose for which KRS 197.025(2) was enacted." Here, however, it is not readily apparent that the purpose for which KRS 197.025(3) was enacted, *i.e.*, limiting inmate litigation, is undermined when an attorney who allegedly represents an inmate did not appeal the denial of his request within the 20-day deadline found in KRS 197.025(3). Indeed, the sole instance in which the Office has applied this "sufficient objective indicia" analysis to construe KRS 197.025(3) was one in which the Office also determined that it was likely the inmate requester had "prepared the request and affixed his wife's name to it." 05-ORD-252.

This "sufficient objective indicia" of an "identity of purpose" test is arguably not moored to the text of KRS 197.025, and therefore, its fealty to the principle that exceptions to the Act's disclosure requirements must be narrowly construed, *see* KRS 61.871, might be questioned. However, that question need not be answered here because, using the "sufficient objective indicia" of an "identity of purpose" analysis, the Complex does not meet its requirements.

Here, the Complex has done no more than make the bald assertion that there are "sufficient objective indicia" of an identity of purpose between the Appellant and the identified inmate. The Complex asserts the Appellant represents the inmate as his attorney but provides no evidence to support that claim. *But see* KRS 61.880(2)(c) ("The burden of proof in sustaining the action shall rest with the agency."). Moreover, none of the materials submitted by the Appellant explicitly indicate that he represents the inmate, and even if he does, there is no objective evidence that the requester is seeking the records at the behest of his client, as opposed to requesting them for his own purposes. Absent any affirmative evidence of a relationship between

the inmate and the Appellant, or of an identity of purpose between the inmate and the Appellant, the Office declines to assume that relationship's existence. Accordingly, the Appellant, as someone who is not incarcerated, was not required to appeal the Complex's denial of his request within 20 days. The Office therefore has jurisdiction to consider this appeal.

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" (emphasis added). This Office has historically deferred to the judgment of the correctional facility in determining whether the release of certain records would constitute a security threat. The Office has upheld the denial of security footage multiple times under KRS 197.025(1). *See, e.g.*, 23-ORD-089; 18-ORD-074; 13-ORD-022; 10-ORD-055. The release of security footage poses a security risk because it may disclose the "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. Here, the Complex explained that the video footage can be used to "reveal the facility's methods and practices used in obtaining the video." Moreover, the Complex explained that "the subject video reveals those areas the security camera is capable of capturing and blind spots that are beyond the range of the security camera."

Finally, the Office notes that the purpose of KRS 197.025(1) is to protect the safety of inmates, employees, and others inside the correctional facility. A correctional facility cannot control the dissemination of records after their release. While no one suspects the Appellant would disseminate the records he receives in response to a request, the same may not be true of everyone else. Thus, the Appellant, although not an inmate, is equally barred from obtaining records "deemed a security threat." *See, e.g.*, 24-ORD-055 (finding that the Appellant, an attorney, was barred from obtaining records deemed a security threat under KRS 197.025(1)).

Accordingly, the Complex did not violate the Act when it withheld the requested video because it has adequately explained how KRS 197.025(1) applied to the record withheld.

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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Distributed to:

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