



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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25-ORD-048

February 18, 2025

In re: Jackie Jerome/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 are exempt under KRS 61.878(1)(j).

Open Records Decision

Inmate Jackie Jerome (“Appellant”) submitted a request to the Penitentiary for “all copies of incident [and] occurrence reports on” December 4, 2024, related to a specific incident involving the Appellant. The Penitentiary denied the request under KRS 61.878(1)(i) and (j) because the records are “part of the supplemental material for 3 pending [disciplinary reports] related to [the] incident.” The Penitentiary suggested the Appellant try again in two weeks because the active cases may be closed by then. This appeal followed.

On appeal, the Penitentiary reiterates that the Appellant sought records that are exempt because they are preliminary and relate to pending disciplinary reviews. KRS 61.878(1)(i) exempts from disclosure “[p]reliminary drafts, notes, [and] correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency.” KRS 61.878(1)(j) further exempts “[p]reliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended.” The Penitentiary explains that the requested records are part of the files related to disciplinary reviews that “are still pending review by the Warden and, therefore, remain subject to revision.”

The Office has previously found that the disciplinary reports generated by correctional facilities in the course of investigating infractions committed by inmates may be withheld during the early stages of an investigation under KRS 61.878(1)(j)

because they contain preliminary opinions and recommendations. *See, e.g.*, 23-ORD-297; 23-ORD-100; 23-ORD-022; 21-ORD-202; 16-ORD-266; 16-ORD-096. If, however, any of the preliminary opinions are adopted in a final correctional facility action after the investigation concludes, then those preliminary opinions will lose their preliminary status and be subject to inspection, unless another exemption applies to allow the record to be withheld. Accordingly, the Penitentiary did not violate the Act when it withheld these records related to incidents for which the investigation is ongoing.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/ Matthew Ray
Matthew Ray
Assistant Attorney General

#041

Distributed to:

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¹ Because the Office finds that KRS 61.878(1)(j) is dispositive of this appeal, it is unnecessary to examine the application of KRS 61.878(1)(i).