



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

22-ORD-090

May 11, 2022

In re: Deon'tae Williams/Kentucky State Penitentiary

Summary: The Kentucky State Penitentiary (“the Penitentiary”) did not violate the Open Records Act (“the Act”) when it denied inspection of incident reports because inspection of such records could threaten the security of the Penitentiary.

Open Records Decision

Inmate Deon'tae Williams (“the Appellant”) submitted a request to the Penitentiary to inspect two specific incident reports—one involving an employee’s use of force against the Appellant and one involving the Appellant’s evacuation due to a fire. The Penitentiary denied the request under KRS 61.878(1)(i) and (j) because the investigation was still “in a preliminary phase.” Shortly after receiving the Penitentiary’s response, the Appellant submitted another request, in which he informed the Penitentiary that the investigations into the Appellant for the incidents had concluded. However, the Penitentiary denied the Appellant’s request again under KRS 61.878(1)(i) and (j) because the incidents involved multiple inmates and the investigations into those other inmates had not yet concluded. The Appellant then initiated this appeal, but challenged only the Penitentiary’s denial of the Appellant’s request to inspect the incident report involving the use of force against him.

On appeal, the Penitentiary no longer relies on KRS 61.878(1)(i) or (j) to support its denial.¹ Instead, the Penitentiary claims that inspection of the

¹ The Penitentiary does not explain whether the investigations into other inmates have concluded since the Appellant initiated this appeal. If the investigations have concluded, and the incident report was adopted as part of any final action taken by the Penitentiary, then such records would no longer be exempt under KRS 61.878(1)(j). *See Univ. of Ky. v. Courier-*

incident report would threaten the security of inmates and employees. 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.” This exception is incorporated into the Act under KRS 61.878(1)(l), which exempts from inspection “[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.”

The Penitentiary explains that the incident report involved multiple inmates and “response details concerning the emergency at the” Penitentiary. According to the Penitentiary, the report refers to various types of tactics used to respond to the incident. Inspection of such tactics could put employees at risk if they attempt to use those tactics in the future. This Office has historically recognized that incident reports that contain such information are exempt from inspection under KRS 197.025(1). *See, e.g.*, 19-ORD-149; 17-ORD-097; 16-ORD-071; 07-ORD-039. Thus, the Penitentiary did not violate the Act when it denied the Appellant’s request.

A party aggrieved by this decision may appeal it by initiating 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 e-mailed to OAGAppeals@ky.gov.

Daniel Cameron
Attorney General

/s/Marc Manley
Marc Manley
Assistant Attorney General

#125

Journal & Louisville Times Co., 830 S.W.2d 373, 378 (Ky. 1992). Because there is no evidence in this record to conclude that all investigations had concluded at the time of the Appellant’s request, there is no basis to find that the Penitentiary violated the Act when it initially denied the Appellant’s request under KRS 61.878(1)(i) and (j).

22-ORD-090

Page 3

Distributed to:

Deon'tae Williams #292041

Amy Barker