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**22-ORD-095**

May 16, 2022

In re: Lewis Davenport/Kentucky State Reformatory

**Summary:** The Kentucky State Reformatory (“the Reformatory”) did not violate the Open Records Act (“the Act”) when it redacted certain material from an inmate risk assessment under KRS 439.510 and copyrighted portions of the assessment under 17 U.S.C. § 106.

***Open Records Decision***

On April 1, 2022, inmate Lewis Davenport (“Appellant”) requested a copy of “the current Risk and Needs Assessment in [his] file.” The Reformatory misunderstood this to be a request for a risk assessment related to a Prison Rape Elimination Act [PREA] investigation and denied the request as a security risk under KRS 197.025(1) and KRS 61.878(1)(l). This appeal followed.

On appeal, the Appellant clarified that he was seeking a risk and needs assessment prepared through the Kentucky Risk Assessment System (“KyRAS”). The Reformatory has agreed to provide the Appellant with this document in a redacted form including only what the Reformatory considers to be the nonexempt portions of this document. These portions consist of “a small box at the top . . . that contains the inmate’s name, date of the assessment, who conducted the assessment, and the specific type of KyRAS assessment conducted and a small summary area at the end . . . that contain[s] the final scores.” As to those portions of the record, this appeal is moot. 40 KAR 1:030 §6.

The redacted portions of the assessment contain certain assessment tools, questions, responses, and scoring, as well as information derived from the Appellant’s presentence investigation, and information otherwise obtained

by probation and parole officers in the course of their duties. The Reformatory asserts that the redacted portions of the records are exempt for two reasons.

First, the Reformatory relies upon KRS 61.878(1)(k) to redact from the records the assessment tools, questions, responses, and scoring used in the Kentucky Risk Assessment system. The Reformatory claims that this material is exempt from disclosure under the copyright protection provisions of 17 U.S.C. § 106, which is incorporated into the Act by KRS 61.878(1)(k). This Office has previously found that such material may be redacted under 17 U.S.C. § 106 and KRS 61.878(1)(k). *See, e.g.*, 20-ORD-198; 19-ORD-144. This Office reached that conclusion based, in part, on the terms of an agreement between the Department of Corrections and the University of Cincinnati Correctional Institute. *Id.* That agreement provides that the Department of Corrections “shall not disclose or transfer in any form either the delivered [assessment tool] or any modifications of or derivative works based on the [assessment tool] to third parties.” *See* 20-ORD-198. Therefore, the Reformatory did not violate the Act by redacting material that is exempt from inspection. KRS 61.878(1)(k).

Second, the Reformatory relies upon KRS 439.510 to redact the information obtained from the Appellant that was used to complete the Appellant’s risk assessment. KRS 439.510 provides:

All information obtained in the discharge of official duty by any probation or parole officer shall be privileged and shall not be received as evidence in any court. Such information shall not be disclosed directly or indirectly to any person other than the court, board, cabinet, or others entitled under KRS 439.250 to 439.560 to receive such information, unless otherwise ordered by such court, board or cabinet.

This Office has previously found that an inmate’s responses that were recorded in the context of a risk assessment are not subject to inspection under KRS 439.510. *See, e.g.*, 20-ORD-198; 19-ORD-144; 17-ORD-022; 05-ORD-265; 01-ORD-120. This request is no different. The Reformatory has redacted portions of Appellant’s risk assessment that contain information obtained by probation and parole officers during the presentence investigation and the subsequent risk assessment. Therefore, the Reformatory did not violate the Act by redacting those portions of the Appellant’s risk assessment.

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**  
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s/James M. Herrick  
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