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OFFICE OF THE ATTORNEY GENERAL

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**22-ORD-099**

May 19, 2022

In re: John Nation/Northpoint Training Center

**Summary:** The Northpoint Training Center (the “Center”) did not violate the Open Records Act (“the Act”) when it denied a request for security camera footage that would pose a security threat to the Center if released. KRS 197.025(1). The Office lacks jurisdiction to consider the Center’s other denials because the inmate failed to appeal those denials within 20 days, as required under KRS 197.025(3).

***Open Records Decision***

Inmate John Nation (“the Appellant”) has submitted multiple requests to inspect records to the Center. He submitted his first request that is the subject of this appeal on March 22, 2022, and sought copies of “[a]ny previous complaints or grievances filed against [a specific employee]” and that employee’s training record. On March 25, 2022, the Center denied the request for the employees training record under KRS 61.878(1)(l) and KRS 197.025(2) because that record does not contain a specific reference to the Appellant. The Center also provided one record responsive to the Appellant’s request for grievances, which was a grievance the Appellant himself had filed against the employee.<sup>1</sup>

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<sup>1</sup> Citing KRS 197.023 and KRS 61.878(1)(l), the Center further stated that it could not release any other responsive grievances “without a signed waiver of confidentiality by the inmate who filed the grievance.”

On March 25, 2022, the Appellant submitted another request, in which he sought copies of “camera footage” of a specific incident between the Appellant and the same employee, and the Extraordinary Occurrence Report (“EOR”) drafted in response to the incident.<sup>2</sup> On March 30, 2022, the Center denied the request under KRS 61.878(1)(l) and KRS 197.025(1), claiming that the release of both the video footage and EOR would constitute a security threat. On April 19, 2022, the Appellant attempted to initiate this appeal and seek this Office’s review of both of the Center’s denials.<sup>3</sup>

Although the Act does not require ordinary residents of the Commonwealth to appeal an agency’s denial of a request to inspect records within a specified timeframe, the General Assembly has established a deadline by which an inmate must seek review of a request that has been denied. 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[.]” Because the General Assembly has specifically limited the time in which an inmate may appeal the denial of a request to inspect records, this Office has found that a second request by the inmate for the same record does not extend or renew the 20-day period to seek this Office’s review under KRS 197.025(3). *See, e.g.*, 20-ORD-046.

Here, the Center argues that this Office is unable to review the Center’s denial of the Appellant’s March 22 request because the Center denied the request on March 25. The Appellant did not perfect his appeal of this denial until April 19, 2022, or 24 days after the denial. As for the Appellant’s second request, dated March 25 and which the Center denied on March 30, the Center argues that a portion of this request is also partially be time barred under KRS 197.025(3) (requiring an inmate seeking review of a denial to inspect records to “mail[] or otherwise send[] the appropriate documents to the Attorney General within twenty (20) days of the denial”). The Center provides proof that the Appellant requested the same “EOR” previously, and the Center denied that previous request on February 21, 2022. Accordingly, the Appellant failed

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<sup>2</sup> “EOR” as used in this context is an acronym for Extraordinary Occurrence Report.

<sup>3</sup> The Appellant originally submitted an appeal to this Office on April 4, 2022, but the Office dismissed his appeal because the Appellant had failed to provide a copy of his original request and the Center’s response. KRS 61.880(2)(a); 40 KAR 1:030 §1.

to timely appeal the Center's March 25 denial, and he may not renew the 20-day period to appeal the Center's denial of the EOR by submitting a duplicative request. KRS 197.025(3); *see also* 20-ORD-046; 17-ORD-134; 14-ORD-054. These two aspects of the Appellant's appeal are therefore dismissed.

Of the Center's denials to the Appellant's requests to inspect records, the Appellant has only timely appealed the Center's denial of his request to inspect the "camera footage" of an incident between the Appellant and an employee. That is because the Center denied this portion of the request on March 30, and claimed that release of the footage would constitute a security threat under KRS 197.025(1). The Center does not claim that the Appellant previously requested such footage. The Appellant timely appealed this portion of the request by mailing the appropriate documents to this Office on April 19, the last day on which he could submit the 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 of Corrections] or his designee to constitute a threat to the security of the . . . correctional staff [or] the institution." KRS 197.025(1) is incorporated into the Act under KRS 61.878(1)(l), which exempts from inspection public records the disclosure of which is prohibited by enactment of the General Assembly. This Office historically has deferred judgment to correctional facilities in determining whether the release of security camera footage constitutes a security threat. Specifically, this Office has upheld the denial of such footage on grounds that the footage would reveal "methods and practices used to obtain the video, the areas of observation and blind spots for the cameras." *See, e.g.*, 21-ORD-188; 17-ORD-211; 15-ORD-121; 13-ORD-022. Accordingly, the Center did not violate the Act when it denied a request for camera footage that if released would pose a security risk under KRS 197.025(1).

A party aggrieved by this decision may appeal it by initiating 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](mailto:OAGAppeals@ky.gov).

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