



COMMONWEALTH OF KENTUCKY
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22-ORD-111

May 23, 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 denied an inmate’s request for personal communications exchanged with third parties using the JPay email system.

Open Records Decision

Inmate Lewis Davenport (the “Appellant”) submitted a request to the Reformatory for copies of “photo attachments” to JPay emails that the Appellant had either sent or received on certain dates. The Reformatory denied the request, stating that such records were exempt as “purely personal” communications that were unrelated to any government functions. *See* KRS 61.878(1)(r).¹ This appeal followed.

In 20-ORD-109, a courtesy copy of which is included, this Office explained that JPay emails exchanged between inmates and other private citizens are not “public records” under KRS 61.870(2). Only emails sent to or from employees of the correctional facility using the JPay system are “public records,” because such records would have been “prepared by” or “in the possession of” the correctional facility. *See* KRS 61.870(2). Additionally, JPay

¹ The Reformatory mistakenly cited to KRS 61.878(1)(p) as the basis for this exemption. However, during the 2021 Regular Session of the General Assembly, the legislature amended KRS 61.878(1) to create new exemptions to the Act. *See* 2021 Ky. Acts Ch. 78 § 1. Following such changes, KRS 61.878(1)(p) now exempts from inspection client files in the possession of the Department of Public Advocacy. The “purely personal communications” exemption is now codified at KRS 61.878(1)(r), although it was previously codified at KRS 61.878(1)(p).

emails that have been seized and are being “used” by a correctional facility for some official purpose are public records. *Id.*; *see also* 22-ORD-021; 21-ORD-124.

Here, there is no indication that any of the requested photograph attachments were sent to or from an employee of the Reformatory, or that the Reformatory is using any of the requested photographs for an official purpose. Accordingly, the Reformatory did not violate the Act when it denied the Appellant’s request because the Appellant has not described “public records” to be inspected.

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.

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s/Marc Manley
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