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22-ORD-189

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In re: Shawntele Jackson/Eastern Kentucky Correctional Complex

Summary: Eastern Kentucky Correctional Complex ("the Complex") did not violate the Act when it did not provide records that do not exist, or when it denied a request for security camera footage that would pose a security threat to the Complex if released. KRS 197.025(1).

Open Records Decision

Inmate Shawntele Jackson ("Appellant") submitted a request to the Complex to obtain a copy of the strip search log from July 16, 2022, with his name on it. In a timely response, the Complex denied the request because the record did not exist. A few days later, the Appellant submitted a new request to obtain a copy of the surveillance camera footage from July 16, 2022, that he alleges would show him being strip searched. In a timely response denying the request under KRS 61.878(1)(l) and KRS 197.025(1), the Complex stated that release of the footage would be "a security threat because of the amount and nature of the information included in a security video that cannot be redacted." The Appellant initiated this appeal seeking review of both denials.

On appeal, the Complex reiterates that there are no log entries from July 16, 2022, documenting the Appellant being searched. The Complex explains that it searched its records twice, once at the time of the request and again upon receipt of this appeal, yet it could not locate a responsive record. Once a public agency states affirmatively that a record does not exist, the burden shifts to the requester to present a *prima facie* case that the requested record does exist. *See Bowling v. Lexington-Fayette Urb. Cnty. Gov't,* 172 S.W.3d 333, 341 (Ky. 2005). If the requester is able to make a *prima facie* case that the records do or should exist, then the public agency "may also be called upon to prove that its search was adequate." *City of Fort Thomas*

v. Cincinnati Enquirer, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341).

Here, the Appellant cites Corrections Policy and Procedure ("CPP") 9.8(II)(A)(1)(g),[1] which requires strip searches to be documented in a logbook, except for searches conducted when an inmate enters or exits the institution, the visiting area, or an area to which inmate access is limited. However, it is not clear from this record whether the Appellant was in fact searched and, if so, whether the search fell within one of the exceptions to the documentation policy. Thus, the Appellant has not established a *prima facie* case that the requested log entry exists. But even if he had established a *prima facie* case that the search occurred and should have been documented, the Complex has searched the log and the Appellant's name does not appear on it. Thus, the Complex has explained the adequacy of its search.

Regarding the Appellant's request for security camera footage, KRS 197.025(1) provides that "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 has historically deferred to the judgment of a correctional facility in determining whether the release of certain records would constitute a security threat. Specifically, this Office has consistently upheld the denial of security camera footage inside a correctional facility on grounds that the footage would reveal "methods or practices used to obtain the video, the areas of observation and blind spots for the cameras." *See, e.g.*, 22-ORD-099; 21-ORD-188; 17-ORD-211; 15-ORD-121; 13-ORD-022. Accordingly, the Complex 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 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.

[1] *See* https://corrections.ky.gov/About/cpp/Documents/09/CPP%209.8.pdf (last accessed September 8, 2022).

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