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22-ORD-210

October 7, 2022

In re: Department of Public Advocacy/McCracken County Regional Jail

Summary: The McCracken County Regional Jail (“the Jail”) did not violate the Open Records Act (“the Act”) when it relied on KRS 197.025(1) to deny a request for the personnel records of a former Jail employee.

Open Records Decision

On October 26, 2020, the Department of Public Advocacy (“Appellant”) requested a copy of the personnel file of a former Jail employee, including “all training and disciplinary actions.” On the same date, the Appellant requested copies of an investigation and video footage of a 2018 incident between the former employee and an inmate. In a timely response, the Jail stated that no investigation records exist because no investigation of the incident was conducted. The Jail denied the remainder of the requests as a security risk under KRS 197.025(1), which is an “enactment of the General Assembly” incorporated into the Act under KRS 61.878(1)(l). This appeal followed.¹

The Appellant does not challenge the Jail’s denial of the video footage² or its assertion that no investigation records exist. However, the Appellant argues that the disclosure of a former employee’s personnel file does not pose a security risk. 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 or his designee to constitute a

¹ Although the Appellant submitted its request on October 26, 2020 and received the Jail’s response on October 28, 2020, the Appellant did not initiate this appeal until September 14, 2022.

² 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.*, 17-ORD-211; 15-ORD-121; 13-ORD-022.

threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person.” This provision applies to records of local jails and detention centers as well as to records in the possession of the Department of Corrections. *See, e.g.*, 21-ORD-247. This Office has historically deferred to the judgment of the correctional facility in determining whether the release of certain records would constitute a security threat. In particular, this Office has upheld the denial of correctional employees’ personnel records, including disciplinary actions, on the grounds that disclosure of such records “could compromise the officer’s effectiveness and place him at risk.” *See* 96-ORD-179; *see also* 96-ORD-204.³

Here, however, the Appellant argues that the security concerns do not apply when the employee no longer works at the facility. But the Jail asserts that the release of “sensitive” information could place staff members and their families “at risk for things such as harassment, stalking, identity theft, and physical harm.” In response, the Appellant states that any “personal identifying information can be redacted” because the Appellant is only interested in “the employment performance” of the former employee. Under KRS 61.878(4), “[i]f any public record contains material which is not excepted under [KRS 61.878], the public agency shall separate the excepted and make the nonexcepted material available for examination.” Accordingly, while personal identifying information may be redacted from a personnel file under KRS 197.025(1),⁴ the presence of personal identifying information is not, by itself, sufficient to sustain the denial of the former employee’s personnel file as a whole.⁵ Nevertheless, the Jail has asserted other reasons for withholding the entire personnel file.

With regard to training records, the Jail states that release of those records “could jeopardize the safety of the facility, as it would allow the general public to know exactly what staff was or was not trained in, and would possibly allow the criminal element to have the upper edge [*sic*] to use this information against [Jail] staff in an ambush situation during a transport, or an escape attempt, should it fall into the wrong hands.” This Office has recognized that the release of training records related to the use of force may create a security risk by describing the tactics used by

³ *But see* 96-ORD-182 (finding that the Department of Corrections had not shown any security risk related to records showing the salary of a physician).

⁴ Furthermore, personal identifying information may be redacted from public records in general, for privacy reasons, under KRS 61.878(1)(a). *See Kentucky New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76 (Ky. 2013).

⁵ In addition to personal identifying information, certain categories of records may routinely be redacted from a public employee’s personnel file under KRS 61.878(1)(a), which exempts from disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Such materials include education records and performance evaluations; *see, e.g.*, 21-ORD-076; and information relating to payroll deductions; *see, e.g.*, 07-ORD-056.

correctional staff in response to incidents. *See, e.g.*, 21-ORD-225. Furthermore, the security concerns pertaining to such records are the same regardless of a particular employee's current status at the Jail. Accordingly, the Jail may properly withhold the training records of the former employee.

The record on appeal contains no information as to whether the former employee was subjected to any disciplinary actions. However, to the extent that any disciplinary actions occurred, the individual's separation from employment does not necessarily negate all security concerns related to the records. In 96-ORD-179, this Office recognized that disclosure of a correctional employee's personnel file, including disciplinary actions, could compromise the employee's effectiveness and place him at risk. Although the employee in question is not currently working at the Jail, it is possible that he could be employed there again in the future. Moreover, any disciplinary action involving a failure to follow training could place other Jail personnel at risk and compromise their effectiveness by disclosing the contents of such training. In sum, the fact that the personnel file pertains to a former Jail employee, as opposed to a current employee, does not require this Office to overrule the Jail's wide exercise of discretion under KRS 197.025(1). Therefore, the Jail did not violate the Act when it denied the Appellant's request for the former employee's personnel file.⁶

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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Distributed to:

⁶ The Appellant claims to need the records for purposes of pending criminal litigation. However, the Act is not the only recourse for litigants to obtain documents. The Appellant may be able to obtain the requested records through discovery under the Kentucky Rules of Criminal Procedure.

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