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22-ORD-241

November 7, 2022

In re: Marcus Little/Christian County Jail

Summary: The Christian County Jail (“the Jail”) violated the Open Records Act (“the Act”) when it denied, under KRS 61.872(3)(b), a request that precisely described the records sought. The Jail also violated the Act when it denied entirely a request for its policies and procedures under KRS 197.025(1) instead of separating exempt information from nonexempt information and providing the latter as required under KRS 61.878(4).

Open Records Decision

On September 23, 2022, attorney Marcus Little (“Appellant”) requested copies of the “Jail’s Policies and Procedures as of July 1, 2022.” The Jail denied the request on the grounds that it did not “precisely describe” the requested records under KRS 61.872(3)(b). The Jail also cited KRS 197.025 and KRS 61.878(1)(k), claiming disclosure of the records “could . . . compromise the safety and security of the jail, its staff, and inmates, by, for example, revealing tactics which a future inmate could use to thwart necessary use of force by staff.”¹ This appeal followed.

Under KRS 61.872(3)(b), a person may receive copies of public records by mail “after he or she precisely describes the public records which are readily available within the public agency.” This Office has found that a description is precise under KRS 61.872(3)(b) “if it describes the records in definite, specific, and unequivocal terms.” *See* 98-ORD-17. There is nothing imprecise about the Appellant’s description of the records he requested. The Appellant asked for all the Jail’s policies and procedures in effect on July 1, 2022. *Cf.* 22-ORD-213 (finding that a request for all

¹ The Jail subsequently provided the Appellant a redacted version of one policy, identified as VI-300. The specific redactions are not at issue in this appeal. However, the Appellant requested all the Jail’s policies, not just one. Therefore, this appeal is not moot under 40 KAR 1:030 § 6.

records of a particular type “does not make the request unclear,” but instead, might make a request unreasonably burdensome if the agency provides clear and convincing evidence). Thus, the Jail improperly denied the Appellant’s request under KRS 61.872(3)(b).

Under KRS 197.025(1), “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 threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person.” The exemption under KRS 197.025(1) is incorporated into the Act under KRS 61.878(1)(l), which incorporates any enactment of the General Assembly that exempts public records from inspection. This Office has historically deferred to the judgment of correctional facilities in determining whether the release of certain records would constitute a security threat under KRS 197.025(1).

Under the Act, however, “[i]f any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.” KRS 61.878(4). Thus, the Jail is required to redact the specific material in its policy and procedure manual, the disclosure of which would constitute a security threat under KRS 197.025(1), and provide the remainder to the Appellant. *See, e.g.,* 21-ORD-182. The burden of identifying the material subject to redaction rests with the Jail. *See, e.g.,* 18-ORD-043. Because the Jail withheld the policy and procedure manual in its entirety, instead of separating exempt information from nonexempt information and providing the latter, it violated the Act.

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
Attorney General

s/ James M. Herrick
James M. Herrick
Assistant Attorney General

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