



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON  
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118  
700 CAPITAL AVENUE  
FRANKFORT, KENTUCKY 40601  
(502) 696-5300  
FAX: (502) 564-2894

**22-ORD-265**

December 13, 2022

In re: Christopher Morningstar/Luther Luckett Correctional Complex

**Summary:** The Luther Luckett Correctional Complex (the “Complex”) did not violate the Open Records Act (“the Act”) when it withheld records that are exempt from inspection under KRS 439.510 and KRS 61.878(1)(l).

***Open Records Decision***

Inmate Christopher Morningstar (“Appellant”) submitted a request for “[a]ll documentation in KOMS from 2020 [at] Fayette County Detention Center related to parole revocation and/or conditional release as [an] alternative to incarceration.” In a timely response, the Complex provided a copy of the results of his final conditional discharge revocation hearing. The Complex denied the Appellant’s access to all other responsive records because those records were “prepared or gathered by probation and parole officers in the discharge of their official duties” and “are exempt from disclosure . . . under KRS 439.510 and KRS 61.878(1)(l).” This appeal followed.

On appeal, the Complex states it will now provide, upon the Appellant’s payment of the applicable copying costs, “the notice” he requested and the “decision pages” it found after an additional search. The Complex now claims the part of the appeal relating to the records it has made available to the Appellant is moot. Under 40 KAR 1:030 § 6, “[i]f the requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter.” Thus, the part of the appeal dealing with records that have been made available to the Appellant is now moot.

Turning now to the remaining records that the Complex withheld, KRS 439.510 provides:

All information obtained in the discharge of official duty by any probation or parole officer shall be privileged and shall not be received as evidence in any court. Such information shall not be disclosed directly or indirectly to any person other than the court, board, cabinet, or others entitled under KRS 439.250 to 439.560 to receive such information, unless otherwise ordered by such court, board or cabinet.

In *Commonwealth v. Bush*, the Supreme Court of Kentucky explained that “[t]he PSI would be a public record subject to the [Act], KRS 61.870, except for the fact that it is excluded from public inspection by virtue of KRS 61.878(1)(j)<sup>1</sup> which exempts any records made confidential by the General Assembly.” 740 S.W.2d 943, 944 (Ky. 1987). The *Bush* court cited both KRS 532.050 and KRS 439.510 as statutes prohibiting the disclosure of presentence investigation, or “PSI,” reports. *Id.*

KRS 439.510 is incorporated into the Act through KRS 61.878(1)(l) which exempts from inspection “[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.” This Office has previously found that records created by probation and parole officers in the discharge of their official duties, like PSI reports, are exempt from inspection under KRS 439.510. *See, e.g.*, 20-ORD-165; 17-ORD-155; 11-ORD-169. Here, the Complex withheld records that were “prepared or gathered by probation and parole officers in the discharge of their official duties,” which are exempt under KRS 439.510. Consequently, the Complex did not violate the Act when it withheld records exempt from disclosure under KRS 439.510.

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).

---

<sup>1</sup> Since the decision in *Bush*, the General Assembly has amended KRS 61.878(1) to include additional exceptions to the Act. The provision exempting records deemed confidential by an enactment of the General Assembly is now found at KRS 61.878(1)(l).

**Daniel Cameron**  
**Attorney General**

s/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

#428

Distributed to:

Christopher Morningstar #245022  
Amy V. Barker