



COMMONWEALTH OF KENTUCKY  
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**22-ORD-266**

December 13, 2022

In re: Nashawn Tyus/Kentucky State Penitentiary

**Summary:** The Kentucky State Penitentiary (the “Penitentiary”) did not violate the Open Records Act (“the Act”) when it denied requests for records that are prohibited from disclosure under federal law.

***Open Records Decision***

Inmate Nashawn Tyus (“Appellant”) submitted two requests to the Penitentiary for records related to a Prison Rape Elimination Act (“PREA”) investigation. First, he requested “[a] copy of the PREA investigation file that [he] filed on Aug 2, 2022.” Second, he requested copies of three incident reports related to the same person. In a timely response, the Penitentiary denied both requests because the records relate to a PREA complaint and are therefore confidential and exempt from inspection under KRS 61.878(1)(k), 28 C.F.R. § 115.61(b), 501 KAR 6:020, and Corrections Policies and Procedures 14.7(11)(J). This appeal followed.

Under applicable federal regulations, “[a]part from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions.” 28 C.F.R. § 115.61(b). This regulation is incorporated into the Act under KRS 61.878(1)(k) which exempts from inspection “[a]ll public records or information the disclosure of which is prohibited by federal law or regulation or state law.” The Office has routinely held that records related to PREA investigations are exempt from inspection under federal law. *See, e.g.*, 21-ORD-255; 19-ORD-111; 18-ORD-206.

Here, the Appellant claims he needs access to the requested records because the records “will clearly show that [his] claim of the PREA” is true and help him identify witnesses related to his PREA claim.<sup>1</sup> Therefore, it is undisputed that the requested records relate to a PREA investigation. Accordingly, the Penitentiary did not violate the Act when it denied requests for records that relate to a PREA complaint and investigation because such records are exempt from inspection under federal law. 28 C.F.R. § 115.61(b)

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.

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

s/ Matthew Ray  
Matthew Ray  
Assistant Attorney General

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Distributed to:

Nashawn Tyus, 182811  
Edward A. Baylous

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<sup>1</sup> This Office has previously found that an inmate reporting victim in a PREA investigation has no right to obtain copies of records made confidential by federal law. *See, e.g.*, 21-ORD-255; 18-ORD-206 (finding that records relating to PREA complaints and investigations are confidential except for the purposes specified in 28 C.F.R. § 115.61(b)).