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**22-ORD-275**

December 21, 2022

In re: Steven Hughes/Roederer Correctional Complex

**Summary:** The Roederer Correctional Complex (the “Complex”) did not violate the Open Records Act (“the Act”) when it denied a request for pictures attached to JPay emails exchanged between private parties because they are not public records.

***Open Records Decision***

Inmate Steven Hughes (“Appellant”) submitted a request to the Complex for pictures that were attached to two specific emails he sent. In a timely response, the Complex denied his request because it did not have custody or control of the requested records. The Complex suggested he contact the JPay vendor and provided its address.<sup>1</sup> This appeal followed.

On appeal, the Complex again claims the requested records are not public records because JPay “is an email system that is part of Securus Technologies, a private company.” This Office has previously found that JPay emails and their attachments exchanged between private parties are not “public records” under KRS 61.870(2). *See, e.g.*, 22-ORD-111; 22-ORD-021; 20-ORD-109. Only emails sent to or from employees of the correctional facility using the JPay system are “public records,” because such records would have been “prepared by” or “in the possession of” the correctional facility. *See* KRS 61.870(2) (defining “public records”). Additionally, JPay emails that have been seized and are being “used” by a

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<sup>1</sup> Under KRS 61.872(4), “[i]f the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency’s public records.”

correctional facility for some official purpose are public records. *Id.*; see also 22-ORD-021; 21-ORD-124.

Here, the Complex claims the requested pictures are not public records, and there is no evidence suggesting the emails were sent to or from Complex employees or are being used by the Complex for some official purpose. Therefore, there is nothing in the administrative record indicating that the requested pictures are “prepared, owned, used, in the possession of or retained by a public agency” within the meaning of KRS 61.870(2). Thus, the Complex did not violate the Act when it denied the Appellant’s request.<sup>2</sup>

A party aggrieved by this decision may appeal it by initiating an 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:

Steven Hughes, #160574  
Jonathan Gifford

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<sup>2</sup> Because the Appellant did not request any public records, it is unnecessary to consider the Complex’s alternative argument that the requested pictures are “[c]ommunications of a purely personal nature unrelated to any governmental function” and exempt from inspection under KRS 61.878(1)(r).