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22-ORD-276

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In re: Joshua Porter/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 JPay emails exchanged between private parties because they are not public records.

Open Records Decision

Inmate Joshua Porter (“Appellant”) submitted a request to the Complex for “JPay sent messages [and] pictures sent” to private individuals on specific dates and times. In a timely response, the Complex denied the request because JPay messages and their attachments are not “public records” under KRS 61.870(2). The Complex further explained that JPay is a service provided by an “outside vendor,” and that private company maintains the requested records. The Complex also provided the mailing address for the company. This appeal followed.

On appeal, the Complex reiterates that the requested emails and their contents 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 those records would have been “prepared by” or “in the possession of” the correctional facility. *See* KRS 61.870(2). Additionally, JPay emails that have been seized and are being “used” by a correctional facility for some official purpose are “public records.” *Id.*; *see also* 22-ORD-021; 21-ORD-124.

Here, the Complex claims that the requested JPay emails and the pictures contained therein are not “public records,” and the Appellant does not present evidence to the contrary. Furthermore, no evidence suggests that the emails were sent to or from Complex employees or are being used for some official purpose. Therefore, there is nothing in the record to indicate 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). Accordingly, the Complex did not violate the Act when it denied the Appellant’s request because he did not request any public records.¹

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:

Joshua Porter, #271353
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¹ 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 therefore exempt from inspection under KRS 61.878(1)(r).