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22-ORD-277

December 21, 2022

In re: Curtis Lee Flora/Roederer Correctional Complex

Summary: The Roederer Correctional Complex (the "Complex") did not violate the Open Records Act ("the Act") when denied a request for JPay messages exchanged between private parties because they are not public records.

Open Records Decision

Inmate Curtis Lee Flora ("Appellant") submitted a request to the Complex for a "copy of message[s] on [his] tablet from" a specific person on three specific dates and times. In a timely response, the Complex denied the Appellant's request because the records requested were not "public records" under KRS 61.870(2). The Complex explained that the messages requested were maintained by an "outside vendor" and suggested the Appellant contact that vendor. This appeal followed.

On appeal, the Complex reiterates that the requested messages 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). 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 messages are not "public records," and the Appellant does not provide any evidence to the contrary other than his allegation that "Secures J-Pay are still currently operating alongside with DOC." The Appellant presents no evidence that the specific person who sent him the requested messages is a Complex employee or that the requested emails are being used by the Complex for some official purpose. Consequently, 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," and therefore they are not "public records" 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
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s/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

Curtis Lee Flora, #219728
Edward A. Baylous, II

[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).