



COMMONWEALTH OF KENTUCKY
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23-ORD-029

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In re: James Harrison/Eastern Kentucky Correctional Complex

Summary: The Eastern Kentucky Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it denied an inmate’s request for copies due to insufficient available funds in his inmate account. However, the Complex violated the Act when its response failed to state the total prescribed fee for the requested copies.

Open Records Decision

On December 17, 2022,¹ inmate James Harrison (“Appellant”) requested copies of certain property forms, chain of custody documents, and disciplinary records. In a timely response, the Complex denied the request because the Appellant had only 17 cents in his inmate account, which was insufficient to pay for the copying fee of 10 cents per page. The Complex added that the Appellant could either request inspection of the records or resubmit his request for copies when his account contained sufficient funds. However, the Complex did not state how many responsive records it had located or what the total cost for copying those records would be. This appeal followed.

The Appellant claims \$10.00 was placed in his account “as a Christmas bonus at the time this request was made.” On appeal, the Complex explains those funds were not yet available for use at the time of the Appellant’s request because “[i]nmate accounts are protected for thirty days by internal systems that prevent [correctional] institutions from processing transactions that would take an inmate’s account below \$10.00,” and “[t]he records responsive to his request totaled [65] pages.”

¹ The Complex’s records department received the Appellant’s request on December 20, 2022. The Appellant claims this is evidence of excessive delay in the institutional mail system, but that issue is beyond the scope of this Office’s review under the Act. *See* KRS 61.880(2)(a) (“The Attorney General shall review the request and denial and issue . . . a written decision stating whether the agency violated provisions of KRS 61.870 to 61.884”).

Under the Act, a public agency “may require . . . advance payment of the prescribed fee” for copies. KRS 61.874(1). Thus, an inmate is entitled to receive a copy of a record only after “complying with the reasonable charge of reproduction.” *Friend v. Rees*, 696 S.W.2d 325, 326 (Ky. App. 1985). Accordingly, it is “entirely proper for [a correctional] facility to require prepayment, and to enforce its standard policy relative to assessment of charges to inmate accounts.” 95-ORD-105. Therefore, the Complex did not violate the Act when it denied the Appellant’s request due to insufficient available funds in his inmate account.

However, the Complex admits it did not learn the total page count of responsive records, or inform the Appellant of the total fee for copies of those records, until after he initiated this appeal. Under KRS 61.880(1), an agency response denying a request for records must explain the denial by “provid[ing] particular and detailed information,” not merely a “limited and perfunctory response.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). “The agency’s explanation must be detailed enough to permit [a reviewing] court to assess its claim and the opposing party to challenge it.” *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013). Thus, if a correctional facility denies a request under KRS 61.874(1) due to an inmate’s inability to pay in advance “the prescribed fee,” it must actually “prescribe” the total fee for the records requested and inform him of it, not merely quote the standard per-page copying rate. Otherwise, the explanation lacks sufficient information for the inmate to either challenge the denial or otherwise deposit the correct amount in his account to process payment. Accordingly, the Complex violated the Act when it failed to state the “prescribed fee” for which it required advanced payment, and which formed the basis for its denial of the Appellant’s request.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882 within 30 days from the date of this decision. Pursuant to 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 e-mailed to OAGAppeals@ky.gov.

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s/ James M. Herrick
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Distributed to:

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