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23-ORD-031

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In re: James Harrison/Eastern Kentucky Correctional Complex

Summary: The Eastern Kentucky Correctional Complex (the “Complex”) violated the Open Records Act (“the Act”) when it denied a request to inspect records that precisely described the records sought.

Open Records Decision

Inmate James Harrison (“Appellant”) submitted a request for records to the Complex. He began his description of the records sought with a narrative of his attempt to submit a “legal material request form,” and “ten handwritten pages” of supporting documents, by providing a copy of the documents to a guard “on or about” December 7, 2022. The Appellant further alleged that his “ten handwritten pages” were not submitted along with the form. Following this narrative, the Appellant stated he “mailed the Warden a complaint concerning this, now [he] want[s] a copy of the disposition taken thereof, a copy of the letter emailed the warden, and a copy of” the December 7, 2022 form. The Appellant further stated that if he had “insufficient funds then [he] request[s] inspection.”

In a timely response, the Complex denied the Appellant’s request because he did not “precisely describe with specific dates” the documents he sought. The Complex stated the Appellant’s “dates of ‘on or about’” were not “properly phrased of an open records request” and it asked him to “clarify with specific dates and documents” the records he sought. This appeal followed.

On appeal, the Complex continues to claim the Appellant's request did not comply with KRS 61.872(3)(b) because he did not "precisely describe the public records" he sought. The Complex argues the Appellant's request is not a request for records, but "a narrative of how he tried to obtain copies of a handwritten document, how that document was lost, and how he sent a complaint about this matter to the warden."

There are two ways a resident of Kentucky can inspect records—"[d]uring the regular office hours of the public agency" or "[b]y receiving copies of the public records from the public agency through the mail . . . after he or she precisely describes the public records which are readily available within the public agency." KRS 61.872(3). A description is precise "if it describes the records in definite, specific, and unequivocal terms." 98-ORD-17 (internal quotation marks omitted). This standard may not be met when a request does not "describe records by type, origin, county, or any identifier other than relation to a subject." 20-ORD-017 (quoting 13-ORD-077).

If the agency denies all or any portion of a request under the Act, it must cite the specific exception authorizing nondisclosure of the requested records, and briefly explain how the exception applies to the record withheld. KRS 61.880(1). Here, the Complex's initial response denied the request under KRS 61.872(3)(b) because it did not "precisely describe with specific dates" the records sought.¹ However, the Appellant's request clearly sought a "legal material request" form dated December 7, 2022, along with the complaint he sent to the Warden about that form and the Warden's disposition thereafter. The Appellant submitted his request on December 21, 2022. Thus, the Appellant's request described the types of records he sought and limited the temporal scope of his request to two weeks. Accordingly, the Complex violated the Act when it denied the Appellant's request that adequately described the records he sought.²

¹ The Complex has never addressed the fact that the Appellant alternatively asked to inspect the records in person. When an inmate requests to inspect in-person records relating to him, his request need only be "adequate for a reasonable person to ascertain the nature and scope of [the] request." *Commonwealth v. Chestnut*, 250 S.W.3d 655, 661 (Ky. 2008). The Appellant's description more than met this standard.

² After the appeal was initiated, the Complex searched its records again and located four pages of responsive records. The Complex's ability to locate responsive records now, without the Appellant having described the records in more detail, indicates the Appellant's request was adequate for the Complex to ascertain the scope of his request. Moreover, although the Complex now claims the appeal should be moot because it provided responsive records, the Appellant initiated this appeal under KRS 61.880(4), alleging the Complex's interpretation of his request led to unreasonably delay. Accordingly, the appeal is not moot.

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.

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Attorney General

s/ Matthew Ray
Matthew Ray
Assistant Attorney General

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Distributed to:

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