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23-ORD-040

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In re: James Hightower/Northpoint Training Center

Summary: The Northpoint Training Center (“the Center”) did not violate the Open Records Act (“the Act”) when it denied a request for protective custody hearing decisions that would pose a security threat to the Center if released. KRS 197.025(1).

Open Records Decision

On December 19, 2022, inmate James Hightower (“the Appellant”) submitted two requests to the Center to inspect a variety of records.¹ The Center stamped the request as received on January 5, 2023 and responded the next day. It denied the first request because the requested records did not exist. It denied the second request by citing KRS 61.878(1)(l) and KRS 197.025(1), explaining the release of the requested records would constitute a security threat. The Appellant then initiated this appeal, claiming his requests should have been received earlier than January 5, and thus, the Center’s response was untimely. He also claims the Center improperly denied his second request.

Although the requests were stamped as received on January 5, 2023, the Appellant claims his requests should have been received no later than December 26, 2022. However, this Office has consistently found that it is unable to resolve factual disputes between a requester and a public agency regarding whether or when an agency received a request. *See, e.g.*, 22-ORD-148; 22-ORD-125; 22-ORD-100; 22-ORD-051; 21-ORD-163. Consequently, this Office is unable to find that the Center violated the Act when it claims it received the requests on January 5 and responded the following business day.

¹ The first request sought “authorization of transfer forms” from several dates. The second request sought “protective custody hearing decisions” from several dates.

The Appellant does not challenge the Center's denial of his first request, in which it claimed no responsive records existed. However, he does challenge the Center's denial of his request for "protective custody hearing decisions" under KRS 197.025(1). That provision states that "no person shall have access to any records if the disclosure is deemed by the commissioner of the [Department of Corrections] or his designee to constitute a threat to the security of the . . . correctional staff [or] the institution." KRS 197.025(1) is incorporated into the Act under KRS 61.878(1)(l), which exempts from inspection public records the disclosure of which is prohibited by enactment of the General Assembly. Specifically, the Center states that release of the redacted portions of the "protective custody hearing decisions" would subject several inmates to "retaliation," "reveal[] camera angles," and reveal "information about security threat group (i.e. gang) members."²

This Office historically has deferred to the judgment of a correctional facility in determining whether the release of certain records would constitute a security threat. In particular, this Office has upheld the denial of records based on the same threats to security identified by the Center. *See e.g.*, 22-ORD-249 (allowing exemption when releasing records would risk retaliation by inmates against other inmates or employees); 22-ORD-189 (allowing exemption when records would reveal the areas of observation and blind spots of security cameras); 21-ORD-229 (allowing exemption when records would reveal information relating to membership in a gang or "security threat group"). Accordingly, the Center did not violate the Act when it redacted portions of "protective custody hearing decisions" that, if released, would pose a security risk under KRS 197.025(1).

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 emailed to OAGAppeals@ky.gov.

² On appeal, the Center now admits its initial blanket denial of the Appellant's request was improper. Rather than withhold the entire record, the Center redacted portions that posed a security threat and allowed the Appellant to inspect the unredacted portions of the requested records. Thus, any dispute regarding the unredacted portions of the records is now moot. *See* 40 KAR 1:030 § 6.

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