



COMMONWEALTH OF KENTUCKY
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23-ORD-045

February 27, 2023

In re: Leonel Martinez/Lee Adjustment Center

Summary: The Lee Adjustment Center (“the Center”) did not violate the Open Records Act (“the Act”) when it denied a request for records that do not reference the Appellant. KRS 197.025(2). The Center also did not violate the Act when it denied a request because of the requester’s inability to pay for copies.

Open Records Decision

On January 18 and 19, 2023, inmate Leonel Martinez (“the Appellant”) submitted two requests to the Center to inspect a variety of records. On January 26, 2023, having receive no response from the Center, the Appellant initiated this appeal.

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request, or deny the request and explain why. KRS 61.880(1). However, this Office has consistently found that it is unable to resolve factual disputes between a requester and a public agency, such as whether a requester received an agency’s response to a request. *See* 21-ORD-233 (agency claimed it issued a response but the requester claimed he did not receive it); *see also* 22-ORD-125 (agency claimed it did not receive the request); 22-ORD-100 (same); 22-ORD-051 (same); 21-ORD-163 (same).

Here, the Center claims it received both requests on January 23 and responded to both requests on January 27, which was the fourth business day after it received the requests. Accordingly, this Office cannot resolve the factual dispute between the parties about when the Center received the request, and therefore, cannot find that the Center’s response was untimely.

In his first request, the Appellant sought all requests from the Americans with Disabilities (“ADA”) Act Coordinator to have the Center’s Video Remote Interpreting (“VRI”) equipment fixed. The second request was for “records from [the Appellant’s] phone calls” in January 2023. On appeal, the Center states it denied the first request under KRS 197.025(2) because the requested documents did not specifically refer to the Appellant. The Center states it denied the second request because the Appellant failed to provide the “appropriate money authorization” required by Corrections Policy and Procedure (“CPP”) 6.1.¹

First, under KRS 197.025(2), a correctional facility such as the Center “shall not be required to comply with a request for any record from any inmate confined in . . . any facility . . . unless the request is for a record which contains a specific reference to that individual.” KRS 197.025(2) is incorporated into the Act through KRS 61.878(1)(l), which exempts from inspection public records “the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.” This Office has historically interpreted “specific reference” to require a record mention an inmate by name. *See, e.g.*, 22-ORD-087; 17-ORD-119; 09-ORD-057; 03-ORD-150. Here, the Center states “the request is not for a record which contains a specific reference to” the Appellant. Thus, the Center was not required under KRS 197.025(2) to provide the Appellant a copy of the record and it did not violate the Act when it denied his request.

Second, the Center states the Appellant’s request “lacked the required staff signature on the authorization allowing the cost of copies to be deducted from his inmate account.” Under CPP 6.1(II)(B)(6), “[i]f a copy of a public record is requested, the inmate shall provide with his request a money authorization allowing the cost to be deducted from his inmate account on the form required by his institution to allow for payment of the cost of the copy.” Because he did not provide a completed authorization form along with his requests, the Appellant could not complete the transaction necessary to pay copying fees associated with his requests. Under KRS 61.874(3), a “public agency may prescribe a reasonable fee for making copies of nonexempt public records . . . which shall not exceed the actual cost of reproduction.” *See also* KRS 61.872(3)(b) (if a requester seeks copies of records by mail, “the official custodian shall mail the copies upon receipt of all fees”). This Office has consistently found that a public agency is not required to provide free copies of records to an inmate requester. *See, e.g.*, 19-ORD-129; 18-ORD-119; 18-ORD-111; 15-ORD-006; 09-ORD-071. Accordingly, the Center did not violate the Act when it denied a request that did not include a completed money authorization.

¹ *See* CPP 6.1(II)(B)(6)

<https://corrections.ky.gov/About/cpp/Documents/06/ CPP%206.1%20Open%20Records%20-%20Effective%207-20-2021.pdf> (last accessed February 27, 2023).

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/ Zachary M. Zimmerer
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Distributed to:

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