



COMMONWEALTH OF KENTUCKY
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23-ORD-083

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In re: Travis Cannon/Eastern Kentucky Correctional Complex

Summary: The Eastern Kentucky Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it denied inspection of records that do not contain a specific reference to the requesting inmate or a record the disclosure of which would pose a security threat under KRS 197.025(1).

Open Records Decision

On January 23, 2023, inmate Travis Cannon (“Appellant”) requested copies of “the evidence of the incident” involved in his disciplinary case at the Complex.¹ In a timely response, the Complex denied the request because disclosure of the records “would constitute a threat to the security of inmates, the institution, institutional staff, or others . . . pursuant to KRS 197.025(1) and KRS 61.878(1)(l).” The Complex also denied the request under KRS 61.878(1)(h) because disclosure would “constitute the premature release of information to be used in a prospective criminal action.” This appeal followed.

On appeal, the Complex explains the evidence it withheld consists of recorded phone calls and photos of contraband. Under KRS 197.025(2), the Department of Corrections “shall not be required to comply with a request for any record from any inmate[,] unless the request is for a record which contains a specific reference to that individual.” Here, the Complex states that none of the photos, and only one of the phone recordings, contains a specific reference to the Appellant. Accordingly, the Complex did not violate the Act when it withheld the photos and the remainder of the phone recordings.

¹ The Appellant also requested other records, which the Complex has subsequently made available to him. Any dispute regarding those portions of the request is now moot. 40 KAR 1:030 § 6.

As for the one recording containing a specific reference to the Appellant, the Complex claims the Appellant “is not allowed to have the disk on which it would have to be saved because having writable media is a security risk at the prison.” Under KRS 197.025(1), which is incorporated into the Act under KRS 61.878(1)(l), “no person shall have access to any records if the disclosure is deemed by the commissioner of the department or his designee to constitute a threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person.” Here, the Complex cites Corrections Policy and Procedure (“CPP”) 9.6(II)A.6, explaining that an inmate’s possession of digital storage devices has been deemed a security risk “because they can store information concerning escape, smuggling, ‘hits,’ pornography, debts, gambling and other information that puts the institution at risk,” and such devices “allow inmates to pass information and coordinate actions by sharing the storage device.” Furthermore, in this case the Complex asserts “the contents of the call involve an ongoing criminal investigation [and] indictment for a significant amount of drugs and multiple inmates that are still at” the facility, and the Appellant’s possession of the recording would present “a danger to inmates and staff . . . given the discord and physical danger that it is likely to cause.”

This Office has historically deferred to the judgment of correctional facilities in determining whether the release of certain records would constitute a security threat under KRS 197.025(1). Under the facts of this appeal, this Office defers to the judgment of the Complex and the Department of Corrections to determine that the release of a copy of the recording to the Appellant would pose a security threat under KRS 197.025(1).² Accordingly, the Complex did not violate the Act when it denied the relevant portions of the Appellant’s request.³

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 The Appellant claims other inmates have been allowed to listen to digital recordings in the Complex’s legal library. Here, however, the Appellant’s request was not to inspect records, but to obtain copies. Moreover, the Complex now states the Appellant “may reach out to staff . . . through his CTO to determine if there is a way to store the disk in the library or other location so that he may hear the call he made.”

³ Because KRS 197.025(1) and (2) are dispositive of the issues on appeal, it is not necessary to address the Complex’s denial under KRS 61.878(1)(h).

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