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23-ORD-094

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In re: Leonel Martinez/Lee Adjustment Center

Summary: The Lee Adjustment Center (the "Center") violated the Open Records Act ("the Act") when it did not review responsive records to determine if its stated exceptions applied or explain how the exception applies. The Center further violated the Act when it denied a request that precisely described the records sought and when it did not prescribe an actual copying fee that formed the basis for its denial. The Center also violated the Act when it did not cite the specific exception that authorized its withholding of records.

Open Records Decision

On February 2, 2023, inmate Leonel Martinez ("Appellant") submitted three requests for records to the Center. First, the Appellant requested the Center "provide all request[s] filed by ADA to have the VRI fixed at North dorm."[1] Second, the Appellant requested "records from [his] phone calls, on Feb 2, 2023." Third, the Appellant asked the Center to provide a copy of all the grievances he has filed at the Center.

On February 3, 2023, the Appellant submitted a fourth request to the Center, in which he asked to obtain copies of all job applications he submitted for jobs in the

[1] The Appellant claims the Center violated the Americans with Disabilities Act ("ADA") when it moved him to a new dorm before it had made that dorm ADA compliant. Specifically, he claims the new dorm does not have a Video Relay Interpretive ("VRI") phone. However, the Office has historically found that an open records appeal is not the appropriate forum to decide questions of law unrelated to the Act. *See, e.g.,* 22-ORD-206; 21-ORD-001; 19-ORD-040.

canteen and "laundry house," and any decisions, denials, or comments made about those applications. On February 10, 2023, the Center responded, claimed it received all the Appellant's requests on February 6, 2023, and denied all four of them for different reasons. This appeal followed.

Under KRS 61.880(1), upon receiving a request to inspect public records, a public agency "shall determine within five (5) [business] days . . . after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the five (5) day period, of its decision." Here, the Center claims it received the Appellant's four requests on February 6, 2023 and issued its response on February 10, 2023. Thus, the Center did not violate the Act when it responded to the Appellant's four requests within five business days of receiving them.

The Center denied all four requests for various reasons. First, the Center denied the Appellant's first request for "all request[s] filed by ADA to have the VRI fixed at North dorm." The Center denied this request under KRS 197.025(2) because the records "would not contain a specific reference to" the Appellant. 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 the "specific reference" requirement in KRS 197.025(2) to require a record mention an inmate by name before he may inspect it. *See, e.g.,* 22-ORD-119; 22-ORD-087; 17-ORD-119; 09-ORD-057; 03-ORD-150. A record that merely relates to, or personally affects, an inmate without making a "specific reference" to him by name may be withheld under KRS 197.025(2). *Id*.

On appeal, the Center explains that records involving the repair of certain equipment "would not have referenced" the Appellant. However, the Appellant claims to have submitted four requests to the Center to have the VRI fixed at the North Dorm. It appears from the record on appeal that the Center has not actually reviewed the records responsive to this request to determine whether they do or do not mention the Appellant by name. Rather, it appears from the record that the Center merely concluded the records "would not" contain a reference to him. When a public agency denies a request to inspect records, it "shall include a statement of the specific exception authorizing the withholding of *the record* and a brief explanation of how

the exception applies to *the record withheld*." KRS 61.880(1) (emphasis added). Thus, when an agency received a request to inspect records, it must actually search for potentially responsive records, review them, and then determine whether an exception applies to the record the agency intends to withhold. Moreover, the agency carries the burden of proof in sustaining its action. KRS 61.880(2)(c). Because the Center has not carried its burden of proving that it actually reviewed responsive records it withheld, it violated the Act.

The Center denied the Appellant's second request for "records from [his] phone calls, on Feb 2, 2023" because "it is too vague and cannot be fulfilled at this time." The Center suggested that the Appellant re-submit his request and "specify if [he] is requesting a list of all attempted phone calls, or all completed phone calls from [his] account." The Center stated there "are a total of 221 total calls between both attempted and completed from [his] account." On appeal, the Center continues to deny this request as "too vague" because there are "221 attempted and completed calls." However, it is not clear from this record whether the 221 calls occurred on February 2, 2023, as the appellant specifically requested, or if the Center misinterpreted the Appellant's request as one seeking every call he has ever made or attempted.

Under KRS 61.872(3)(b), a public agency is required to mail copies of records only "after [the requester] precisely describes the public records which are readily available within the public agency." A description is precise "if it describes the records in definite, specific, and unequivocal terms." 98-ORD-17 (internal quotation marks omitted). This standard is generally not met by requests that are unlimited in temporal scope or do not "describe records by type, origin, county, or any identifier other than relation to a subject." 13-ORD-077.

Here, the Appellant's second request was limited in both temporal scope and by the type of records sought. The Appellant sought records related to his phone calls made on February 2, 2023. In fact, the request described records with enough precision to allow the Center to locate what it believed to be 221 responsive records, and therefore, it was not "vague." The Center did not claim the records related to the 221 calls were not "readily available," such that inspection of them must be delayed under KRS 61.872(5). Accordingly, the Center violated the Act when it denied the

Appellant's second request, which "precisely describe[d] the public records sought."[2] KRS 61.872(3)(b).

Next, the Center denied the Appellant's third request for all the grievances he has filed "due to insufficient funds." On appeal, the Center continues to deny the request because it claims the Appellant lacks sufficient funds to pay the associated copying fee. Under KRS 61.874(1), a public agency "may require . . . advance payment of the prescribed fee" for copies. 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). 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.

Here, however, the Center has not specified the total fee required to provide the Appellant with a copy of responsive records. Instead, the Center stated the Appellant's "request [was] being denied due to insufficient funds" because his "account balance [was] $0.13" at the time of the request. The Center also informed the Appellant that it charges a fee of $0.10 per page for copies of records. On appeal, the Center does not identify how many pages of responsive records it located. Instead, the Center states the Appellant has "filed many grievances" and that at the time of the request "he only had 13 cents" in his inmate account. The Center then invited the Appellant to re-submit his request if he wants an "accurate calculation of the cost of a copy of all of his grievances."

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. *See, e.g.*, 23-ORD-029. If the correctional facility's response does not notify the inmate of the total prescribed fee, he is unable to deposit the required amount in his account to facilitate payment or to challenge the correctional facility's claim that the prescribed fee is

[2] The Center states it did not know if the Appellant's request sought "a list of all attempted calls" or "all completed phone calls from [his] inmate account." However, the Appellant did not request either of these. Rather, the Appellant's request was for records from his calls made on February 2, 2023.

reasonable.[3] Thus, while it may be true the Appellant lacked sufficient funds to receive copies of responsive records, the Center nevertheless violated the Act when its response failed to specify the prescribed fee for which it demanded prepayment.

Finally, the Center denied the Appellant's request for job applications he submitted and the disposition of them because his "applications or denials for controlled jobs are not documented in [his] KOMS file." As stated previously, if an agency denies in whole or in part the inspection of any record, then its response must include "a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld." KRS 61.880(1). If the agency does not possess records responsive to the request, it must affirmatively say so. *See, e.g.*, 21-ORD-113.

Here, the Center did not claim that no responsive records exist. Rather, it claimed that no responsive records were documented in the Appellant's inmate file. In response to this Office's request for additional documentation, KRS 61.880(2)(c), the Center clarifies that "there are some records of job applications filed in [the Appellant's] KOMS record relating to prior periods of his incarceration in other Kentucky prisons, but not while at the" Center. The Center also states that many inmates tend to apply for any particular job opening within the Center, and the applications of those inmates who are not selected for the position are typically not retained. But the Appellant did not request job applications for jobs at the Center for which he applied. He sought his job applications for jobs in the canteen and "laundry house." After searching again for responsive records, the Center provided the Appellant with copies of two job applications he submitted while incarcerated at another facility. Accordingly, the Center violated the Act when it failed to provide records responsive to this part of the Appellant's request.

In sum, the Center violated the Act in four ways. First, the Center failed to carry its burden of proving that it reviewed the records it withheld under KRS 197.025(2) to determine whether that exception actually applies to the records withheld. Second, the Center violated the Act when it denied a request that precisely described the records sought. Third, the Center violated the Act when it denied a request for insufficient funds without prescribing the total copying fee that formed the basis for its denial. Fourth, the Center violated the Act when it failed to provide records responsive to a request, without citing a specific exception authorizing the withholding of those records.

[3] The Appellant claims that his family deposited the required amount into his account, but the Center disputes this claim.

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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s/ Matthew Ray
Matthew Ray
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