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23-ORD-100

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In re: Rusty Weddle/Luther Luckett Correctional Complex

Summary: The Luther Luckett Correctional Complex ("the Complex") did not violate the Open Records Act ("the Act") when it withheld records pertaining to an investigation because the investigation had not been completed at the time of the request, or when it denied a request for records that do not contain a specific reference to the requesting inmate.

Open Records Decision

Inmate Rusty Weddle ("Appellant") submitted to the Complex a request for records containing multiple subparts. At issue here is only the first subpart, which requested "all emails and documentation" from or to Securus, internal affairs, or "anyone in" the Complex related to Securus, telephones, the investigation into the Appellant, and JPay or canteen restrictions.[1]

[1] The second subpart of the request sought all emails and documents from four identified Complex employees related to phone calls and communications between the Appellant and his attorneys, Complex employees contacting attorneys on the Appellant's behalf, or any documentation of Complex employees' unsuccessful attempts to contact attorneys on his behalf. The Complex neither granted nor denied this subpart. Instead, because it was "virtually the same request" as one previously submitted by the Appellant, and which was the subject of an appeal to this Office to which the Complex was preparing a response, the Complex stated that he would "receive another written response" and "the remaining requested documentation" the next day. The Appellant did ultimately receive records in response to this subpart of his request, but he alleges the Complex did not provide all responsive records. On appeal, the Complex asserts it has provided all responsive emails and documents to the Appellant. This Office cannot resolve factual disputes between a requester and a public agency about the content of the records produced. *See, e.g.*, 23-ORD-050; 22-ORD-010; 19-ORD-083; 03-ORD-061; OAG 89-81. Consequently, this Office is unable to find the Complex violated the Act when it provided what it considered to be all records responsive to the request. The Appellant also sought a copy of his user agreement with JPay, which the Complex denied because no responsive record existed and which the Appellant has not disputed on appeal. He also sought emails from an identified employee regarding his broken electronic tablet. Although the Complex originally denied this subpart because no

In a timely response, the Complex denied the request under KRS 61.878(1)(i) and (j), stating it could not provide the Appellant with any records concerning his "pending 4-11" because it was still preliminary. This appeal followed.

On appeal, the Complex reiterates that the Appellant's request sought records that are exempt because they are preliminary and relate to a pending disciplinary investigation. KRS 61.878(1)(i) exempts from disclosure "[p]reliminary drafts, notes, [and] correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency." KRS 61.878(1)(j) exempts from disclosure "[p]reliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended." The Complex asserts the disciplinary investigation remains pending because his disciplinary hearing has not yet occurred. The Complex claims no final action can take place until after the hearing occurs, and therefore, all records related to this investigation are still preliminary. This Office agrees that disciplinary records retain their preliminary status until they are adopted as part of any final action the Complex takes. *See, e.g.*, 21-ORD-202. Accordingly, the Complex did not violate the Act by withholding these records.

The Appellant also claims he should have received emails and documentation regarding Securus in response to his request. On appeal, the Complex states that no emails or documents related to Securus specifically reference the Appellant. Under KRS 197.025(2), a correctional facility, such as the Complex, "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-119; 22-ORD-087; 17-ORD-119; 09-ORD-057; 03-ORD-150. Specifically, this Office has found a record does not contain a "specific reference" to the requesting inmate under KRS 197.025(2) simply because it is relevant to, pertains to, or personally affects him. *See, e.g.*, 22-ORD-087; 17-ORD-119; 17-ORD-073.

Here, the Complex states that "there [are] no existing emails or documents [related to Securus] which specifically reference the inmate." Thus, under KRS 197.025(2), the Complex was not required to provide the Appellant a copy of the record and it did not violate the Act when it denied his request.

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responsive records existed, it has since located and provided to the Appellant responsive emails, rendering any dispute over these records moot. *See* 40 KAR 1:030 § 6.

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.

Daniel Cameron
Attorney General

s/ Zachary M. Zimmerer
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Assistant Attorney General

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Distributed to:

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