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23-ORD-146

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In re: William Cope/Luther Luckett Correctional Complex

Summary: The Luther Luckett Correctional Complex (the "Complex") violated the Open Records Act ("the Act") when it denied a request for records without adequately explaining the basis for its denial.

Open Records Decision

Inmate William Cope ("Appellant") submitted a request to the Complex for a copy of any receipts related to the purchases he made "through the Keefe group's digital Media Vendor's Sales Managements [*sic*]" for 320 songs on his "MP3 player." In a timely response, the Complex denied the request because the Appellant's account lacked sufficient funds. This appeal followed.[1]

On appeal, the Complex continues to deny the request under KRS 61.874(1) because it "requires advance payment for copies" of records. Under KRS 61.874(1), a public agency "may require . . . advance payment of the prescribed fee" for copies of public records. 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.

[1] The Appellant, on appeal, raises various legal questions and issues unrelated to any alleged violations of the Act, such as his ongoing postconviction litigation efforts. This Office has consistently found that an open records appeal is not an appropriate forum to answer questions of law unrelated to the Act. *See, e.g.,* 23-ORD-094; 22-ORD-206; 21-ORD-001; 19-ORD-040.

Nevertheless, 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 public agency denies a request under KRS 61.874(1) due to an inmate's inability to prepay "the prescribed fee," it must actually "prescribe" the total fee for the records requested and inform him of it, not merely state it is denied because of insufficient funds. *See, e.g.*, 23-ORD-094; 23-ORD-029. If the public agency's response does not notify the requester of the total prescribed fee, he is unable to challenge the reasonableness of the fee, or add money to his account to facilitate payment.

Here, the Complex's response to the Appellant's request stated only, "Denied, insufficient funds." Therefore, its response was "limited and perfunctory" because it did not notify the Appellant of the amount of the fee it claimed he was unable to pay. On appeal, the Complex continues to deny the Appellant's request for that reason, in addition to its new claim that it does not possess responsive records.[2] Thus, it is questionable if the Complex even conducted a search for responsive records in the first instance, because had it done so, it would have realized it did not possess records for which a copying fee could have been assessed. As a result, the Complex's response violated the Act.

A party aggrieved by this decision may appeal it by initiating an 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.

[2] The Complex now states it does not possess any records responsive to his request because the requested records are "from a digital media vendor," a private entity. Once a public agency states affirmatively that it does not possess any responsive records, the burden shifts to the requester to present a *prima facie* case that the requested records do exist in the agency's custody or control. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov't,* 172 S.W.3d 333, 341 (Ky. 2005). Here, the Appellant did not attempt to make such a *prima facie* case.

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