



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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23-ORD-176

July 19, 2023

In re: James Hightower/Western Kentucky Correctional Complex

Summary: The Western Kentucky Correctional Complex (the “Complex”) did not violate the Open Records Act (“the Act”), or subvert the intent of the Act within the meaning of KRS 61.880(4), when it required an inmate to pay ten cents per page for a certified account statement.

Open Records Decision

On May 24, 2023, inmate James Hightower (“Appellant”) requested a certified six-month statement of his inmate account from the Complex and provided the fee of 20 cents for two pages. In a timely response, the Complex provided the requested record. This appeal followed on June 16, 2023.¹

Under KRS 61.874(1), “[w]hen copies are requested, the custodian may require . . . advance payment of the prescribed fee.” 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); *see also* 23-ORD-029; 95-ORD-105. Furthermore, ten cents per page is a reasonable charge for copies. *Id.*

The Appellant, however, claims he should not have been required to pay for the specific record he requested. Under KRS 61.880(4), a person may appeal to this

¹ The Appellant attached copies of three previous requests and responses to his appeal. However, the responses to those requests were issued on April 12, May 2, and May 11, 2023. Under KRS 197.025(3), a person “confined in a penal facility shall challenge any denial of an open record with the Attorney General by mailing or otherwise sending the appropriate documents to the Attorney General within twenty (20) days of the denial[.]” Because the Appellant did not initiate this appeal within 20 days of any of the Complex’s previous responses, this Office is without jurisdiction to review the dispositions of those previous requests.

Office if he “feels the intent of [the Act] is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees.” Here, the Appellant argues he is entitled to free copies of the certified statement under Corrections Policy and Procedure (“CPP”) 14.4(II)(F), which provides that “[a]n inmate who can demonstrate by court order, statute, or court rules a definite deadline for a lawsuit concerning [the legality or circumstances of his confinement] shall be allowed to have copies and postage upon signing a cash pay order (CPO) even if the inmate’s cash account is inadequate to pay the expense.”² In this case, however, the application of CPP 14.4(II)(F) is irrelevant because the Appellant’s account contained an amount sufficient to pay the fee of 20 cents.³ Moreover, even if the Complex had failed to comply with internal Department of Corrections procedures, such noncompliance would not have constituted a violation of the Act or rendered the fee excessive under KRS 61.880(4). Therefore, the Complex did not violate or subvert the intent of the Act.

A party aggrieved by this decision may appeal it by initiating an 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
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s/ James M. Herrick
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Distributed to:

James Hightower, #172650

² See <https://corrections.ky.gov/About/cpp/Documents/14/ CPP%2014.4.pdf> (last accessed July 19, 2023).

³ Furthermore, as the Complex explains, the certified account statement is “a new record that is created for litigation” *in forma pauperis* under KRS 454.410, as opposed to an existing record. Thus, the Appellant’s request for a certified statement was not a request for inspection or copies of existing records under KRS 61.872.

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