



COMMONWEALTH OF KENTUCKY
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23-ORD-214

August 14, 2023

In re: Leslie Haun/Luther Lockett Correctional Complex

Summary: The Luther Lockett Correctional Complex (the “Complex”) did not violate the Open Records Act (“the Act”) when it denied a request for records that are exempt from inspection under KRS 61.878(1)(i) and (j).

Open Records Decision

Inmate Leslie Haun (“Appellant”) submitted a request to the Complex for “[a]ny and all requests and/or orders for [his] transfer from [the Complex] during the time span of January 1, 2023 up to the date of” the request. In response, the Complex denied the Appellant’s request under KRS 61.878(1)(i) and (j) because “[a]ny and all correspondence regarding the transfer of” the Appellant from the Complex was preliminary because “there has not been any finalized agency actions regarding [the Appellant] being transferred from” the Complex.¹ The Complex suggested the Appellant resubmit his request once the transfer is completed. This appeal followed.

KRS 61.878(1)(j) exempts from disclosure “[p]reliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended.” However, if a public agency takes final action and adopts such opinions or recommendations, the record loses its exempt status. *See Univ. of Ky. v. Courier-Journal & Louisville Times Co.*, 830 S.W.2d 373, 378 (Ky. 1992).

¹ On appeal, the Complex states it received the Appellant’s request on June 30, 2023, and issued its response the same day. However, the Complex’s response attached to the Appellant’s appeal is dated July 10, 2023. The Complex does not address the discrepancy with these two dates, but the Appellant does not contest the timeliness of the Complex’s response. Accordingly, the Office will not address whether the Complex’s response was timely issued.

Here, the Complex’s response explained “there has not been any finalized agency actions regarding [the Appellant] being transferred from” the Complex. On appeal, the Complex further explains that “[t]he only responsive documents located were a few emails since a Transfer Authorization form was not created to actually request a transfer for the period indicated in the request.”² The Complex describes the responsive records as emails discussing “whether [the Appellant] could be transferred” and “discussions containing opinion[s] about actions that were not taken.”

The Complex describes the responsive records as preliminary recommendations regarding whether an inmate should be transferred. Such records are exempt under KRS 61.878(1)(j) because they contain preliminary recommendations yet to be adopted in connection with any final action as of the date of the request. Because the recommendations had not been adopted at the time of the request, the Complex did not violate the Act when it denied the Appellant’s request under KRS 61.878(1)(j).

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.

Daniel Cameron
Attorney General

s/ Matthew Ray
Matthew Ray
Assistant Attorney General

² On appeal, the Complex offers two alternative bases for denial: (1) “some of the emails do not contain a reference to [the Appellant] and would not be provided pursuant to KRS 61.878(1)(l) and 197.025(2)”; and (2) “some of the emails include information about other inmates that would be a security risk in the hands of another inmate pursuant to KRS 61.878(1)(l) and 197.025(1).” Because the Office finds the Complex properly denied the records under KRS 61.878(1)(j), it is unnecessary to determine if the records could also be withheld under KRS 61.878(1)(l) or KRS 197.025.

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Distributed to:

Leslie Haun #205731

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