



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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23-ORD-279

October 20, 2023

In re: James Harrison/Eastern Kentucky Correctional Complex

Summary: The Eastern Kentucky Correctional Complex (“the Complex”) violated the Open Records Act (“the Act”) when it failed to cite an exception to the Act and explain how it applied to the records withheld. The Complex also failed to meet its burden to support withholding records for “security purposes” under KRS 61.878(1)(a).

Open Records Decision

On September 18, 2023, inmate James Harrison (“Appellant”) requested “a copy of the documented reason(s) why [an individual] has been denied visitation with” him. In a timely response, the Complex denied the request because “[d]ocuments pertaining to the denial or restrictions on visitors are not considered open records and cannot be given to the inmate.” However, the Complex did not cite any exception to the Act in support of its denial. This appeal followed.

Under KRS 61.880(1), “[a]n agency response denying, in whole or in part, inspection of any record 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.” Here, although the Complex noted the Act contains “exemptions and restrictions on access,” the Complex failed to cite any specific exception authorizing it to withhold the requested records. Thus, the Complex violated KRS 61.880(1). Further, the agency must “provide particular and detailed information” when explaining how an exception to the Act supports its denial, 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). Because the Complex denied the request without explanation, it violated the Act.

On appeal, the Complex admits it failed to cite an exception to the Act and explain how it applied to the withheld records. However, the burden of proof rests with the public agency to sustain its denial of a request to inspect public records. KRS 61.880(2)(c). Here, the Complex merely states its denial was “based on security purposes” and claims it should have cited “KRS 61.878(1)(a) as the specific exception.” KRS 61.878(1)(a) exempts from disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” This exception requires a “comparative weighing of the competitive interests” between personal privacy and the public interest in disclosure. *Ky. Bd. of Exam’rs of Psychologists v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324, 327 (Ky. 1992). However, when the public agency fails to articulate a privacy interest, “the balance is decisively in favor of disclosure.” 10-ORD-082; *see also* 20-ORD-033; 19-ORD-227. By merely citing KRS 61.878(1)(a) without articulating a significant personal privacy interest at stake, the Complex failed to meet its burden to sustain its denial.¹ Thus, the Office finds the Complex violated the Act when it denied the request.

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
James M. Herrick
Assistant Attorney General

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Distribution:

¹ Under KRS 197.025(1), which is incorporated into the Act by KRS 61.878(1)(l), “no person shall have access to any records if the disclosure is deemed to constitute a threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person.” Here, however, the Complex has neither cited KRS 197.025(1) nor attempted to explain how disclosure of the record would constitute a security threat to any person or the institution.

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