



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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23-ORD-299

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In re: Jerald Overton/Bell County Forestry Camp

Summary: The Bell County Forestry Camp (“the Camp”) did not violate the Open Records Act (“the Act”) when it denied a request for JPay emails exchanged between private parties because such records are not “public records” under KRS 61.870(2).

Open Records Decision

On September 28, 2023, inmate Jerald Overton (“Appellant”) requested copies of certain photographs that had been sent to the Appellant by private individuals through the JPay email service. The Camp denied the Appellant’s request on the grounds that the photographs were “not public records under [the] Act,” were “[c]ommunications of a purely personal nature unrelated to any governmental function” under KRS 61.878(1)(r), and were “[r]ecords confidentially maintained by a law enforcement agency in accordance with a wellness program” under KRS 15.409.¹ This appeal followed.

On appeal, the Camp claims the requested photographs are not public records. In 20-ORD-109, this Office found JPay emails exchanged between inmates and private parties generally are not “public records” under KRS 61.870(2). Here, as in 20-ORD-109, there is no indication in the record that the requested records are “prepared, owned, used, in the possession of or retained by a public agency” within the meaning of KRS 61.870(2). Accordingly, the requested photographs are not public records and the Camp did not violate the Act when it denied the request.

¹ It is not clear why the Camp initially invoked KRS 15.409, and it has not explained its reliance on this exception on appeal. Regardless, it is unnecessary to examine the application of this exception because the Office finds that the requested records are not “public records” subject to inspection under the Act. Similarly, it is unnecessary to consider the Camp’s alternative argument that the records are exempt under KRS 61.878(1)(r).

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.

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s/ James M. Herrick
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