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23-ORD-310

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In re: Troy Buckler/Southeast State Correctional Complex

Summary: The Southeast State Correctional Complex (“the Complex”) violated the Open Records Act (“the Act”) when it denied a request to inspect records without citing an exception and explaining how it applied to the records withheld. However, the Complex did not violate the Act by withholding records that are exempt from inspection under the Prison Rape Elimination Act (“PREA”).

Open Records Decision

Inmate Troy Buckler (“Appellant”) submitted a request to the Complex to inspect “PREA records” created from June 18, 2021 to January 2022, or at any time thereafter. In a timely response, the Complex denied the request because “PREA records are not open records.” The Complex advised the Appellant to “reach out to [his] PREA compliance manager” at the Complex for any PREA-related concerns or issues. This appeal followed.

Upon receiving a request to inspect records, a public agency must decide within five business days whether to grant the request or deny it and explain why. KRS 61.880(1). “An 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.*” *Id.* (emphasis added). Here, the Complex’s initial response did not cite any exception to the Act or explain how it applied. Rather, it simply stated, “PREA records are not open records.” As such, the Complex violated the Act because its response failed to comply with KRS 61.880(1).

Although the Complex's response was deficient, it is correct that the requested records are exempt from inspection.¹ Under 28 C.F.R. § 115.61(b), prison "staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation and other security and management decisions." This exemption is incorporated into the Act by KRS 61.878(1)(k), which exempts from inspection "[a]ll public records or information the disclosure of which is prohibited by federal law or regulation."

The Appellant asserts that he should have access to the requested PREA records because they "are [his] own and should not be confidential."² However, 28 C.F.R. § 115.61(b) does not include the complainant amongst those entitled to view the complaint and investigative materials. Rather, under 28 C.F.R. § 115.73(a), "the agency shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded" following "an investigation into an inmate's allegation that he or she suffered sexual abuse in an agency facility." The Office has previously found that PREA investigation records are confidential and exempt from inspection, even by the complainant, under KRS 61.878(1)(k) and 28 C.F.R. § 115.61(b). *See, e.g.*, 22-ORD-122; 18-ORD-237; 18-ORD-206. As a result, the Complex did not violate the Act when it denied the Appellant's request for PREA records.

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.

¹ While the Complex maintains its position that PREA records are confidential and exempt from inspection, it also states on appeal that it does not possess any records responsive to the Appellant's request because the Appellant was housed at a different correctional facility on the dates listed in his request. The Office has previously found that an agency cannot grant a request to inspect records that it does not possess. *See, e.g.*, 23-ORD-294; 23-ORD-131.

² The Appellant explains the requested records relate to a "complaint" that "concerns misconduct and sexual harassment of correctional staff."

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Distributed to:

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