



COMMONWEALTH OF KENTUCKY
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23-ORD-312

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In re: Thomas Elza/Eastern Kentucky Correctional Complex

Summary: The Eastern Kentucky Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it denied an inmate’s request for a copy of his presentence investigation (“PSI”) report under KRS 439.510.

Open Records Decision

On October 16, 2023, inmate Thomas Elza (“Appellant”) requested to inspect his PSI report. The Complex denied that request because PSI reports are exempt from disclosure under KRS 439.510, which is incorporated into the Act by KRS 61.878(1)(l). This appeal followed.

KRS 439.510 provides:

All information obtained in the discharge of official duty by any probation or parole officer shall be privileged and shall not be received as evidence in any court. Such information shall not be disclosed directly or indirectly to any person other than the court, board, cabinet, or others entitled under KRS 439.250 to 439.560 to receive such information, unless otherwise ordered by such court, board or cabinet.

PSI reports are records prepared by probation and parole officers in the discharge of their official duties, and therefore, are within the scope of KRS 439.510. Thus, the Supreme Court of Kentucky has held that “[t]he PSI would be a public record subject to the Open Records law, KRS 61.870, except for the fact that it is excluded from

public inspection by virtue of KRS 61.878(1)(j)¹ which exempts any records made confidential by the General Assembly.” *Commonwealth v. Bush*, 740 S.W.2d 943, 944 (Ky. 1987); *see also* 20-ORD-165; 10-ORD-041; 00-ORD-221. Accordingly, the Complex did not violate the Act when it denied the Appellant’s request to inspect his PSI report.

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. 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
Attorney General

s/ James M. Herrick
James M. Herrick
Assistant Attorney General

#489

Distributed to:

Thomas Elza, #187923
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Ms. Ann Smith

¹ The exception to the Act for records made confidential by an enactment of the General Assembly was previously codified as KRS 61.878(1)(j). KRS 61.878 has since been amended and the exception is now codified as KRS 61.878(1)(l). *See* 1994 Ky. Acts ch. 262 § 5.