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23-ORD-338

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In re: Sasha Torchinsky/Kentucky Department of Corrections

Summary: The Department of Corrections (“Department”) did not violate the Open Records Act (“the Act”) when it denied a request for recorded telephone calls that would pose a security threat to the Department if released. KRS 197.025(1).

Open Records Decision

Sasha Torchinsky (“Appellant”) submitted a request to inspect “all records in relation to” a former inmate and specified that “[a]ny inmate phone recording records are also requested.” Relevant here, the Department denied the Appellant’s inspection of audio recordings of telephone calls under KRS 197.025(1).¹ The Appellant then initiated this appeal, objecting to the Department’s decision to withhold the “audio recordings of telephone calls.”

The Appellant argues she is entitled to production of the audio recordings of telephone calls because a “majority of these recordings are of [her] and” a former inmate. The Department explains that disclosure of the records would constitute a security threat and that denial of those records was proper under KRS 197.025(1). That statute provides that “no person shall have access to any records if the disclosure is deemed by the commissioner of the [Department of Corrections] or his designee to constitute a threat to the security of the . . . correctional staff [or] the institution.” KRS 197.025(1) is incorporated into the Act under KRS 61.878(1)(l), which exempts from inspection public records the disclosure of which is prohibited by enactment of

¹ The Department also provided responsive records with redactions made pursuant to KRS 61.878(1)(a) and KRS 197.025(1). However, the Appellant objects only to the Department’s withholding of the telephone calls. As such, the redactions it made to the records is not at issue in this appeal.

the General Assembly. Specifically, the Department states that release of recorded telephone calls would “provide a means by which inmates could learn how phone calls are monitored and be used to develop strategies to evade monitoring.”

This Office historically has deferred to the judgment of a correctional facility in determining whether the release of certain records would constitute a security threat. In particular, this Office has upheld the denial of recorded telephone calls based on the same threats to security identified by the Department. *See, e.g.*, 17-ORD-111 (allowing exemption when releasing records would risk “providing a means by which inmates could learn which telephone calls are monitored”). Accordingly, the Department did not violate the Act when it withheld “audio recordings of telephone calls” that, if released, would pose a security risk under KRS 197.025(1).

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
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s/ Zachary M. Zimmerer
Zachary M. Zimmerer
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Distributed to:

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