



COMMONWEALTH OF KENTUCKY
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24-ORD-102

April 26, 2024

In re: Jerry Winstead/Kentucky State Reformatory

Summary: The Kentucky State Reformatory (“the Reformatory”) did not violate the Open Records Act (“the Act”) when it did not provide records that are exempt from disclosure under federal law.

Open Records Decision

Inmate Jerry Winstead (“Appellant”) requested copies of various records relating to a Prison Rape Elimination Act (“PREA”) “incident that is alleged to have happen[ed] on January 24, 2024.” The Reformatory denied the request under KRS 197.025(1) because the release of records relating to PREA complaints and investigations could threaten the security of inmates or correctional staff. The Reformatory also denied the request under KRS 61.878(1)(a) because “the files constitute an unwarranted invasion of personal privacy.” This appeal followed.

The Appellant claims the PREA “incident” to which the records relate was “fabricated,” and that he has never made a complaint under PREA. He further claims he has an absolute right to inspect the records because they relate to him. On appeal, the Reformatory notes the Office has previously upheld the denial of PREA records under KRS 197.025(1), which exempts from inspection any records the Commissioner of the Department of Corrections deems would “constitute a threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person” if disclosed. *See, e.g.*, 19-ORD-101; 16-ORD-089. Regardless, even if KRS 197.025(1) does not apply to the requested records, federal law requires the requested records to remain confidential.

Under 28 C.F.R. § 115.61(b), a federal regulation incorporated into the Act by KRS 61.878(1)(k), “[a]part from reporting to designated supervisors or officials, 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.” Under 28 C.F.R. § 115.73, the complaining inmate has the right to be informed “as to whether the

allegation has been determined to be substantiated, unsubstantiated, or unfounded.” But because the Appellant claims he is not the complainant, 28 C.F.R. § 115.61(b) prohibits the Reformatory from providing him *any* information about the investigation. Therefore, the Reformatory did not violate the Act when it denied the Appellant’s 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.

Russell Coleman
Attorney General

/s/ Marc Manley
Marc Manley
Assistant Attorney General

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Distributed to:

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