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24-ORD-275

December 23, 2024

In re: Yvon Utsey/Northpoint Training Center

Summary: The Northpoint Training Center (the “Center”) violated the Open Records Act (“the Act”) when it failed to issue a response to a request that complied with KRS 61.880(1) within five business days of receiving that request. However, the Center did not violate the Act when it denied a request for recorded telephone calls that, if released, would pose a security threat under KRS 197.025(1).

Open Records Decision

Inmate Yvon Utsey (“Appellant”) submitted a request to the Center for “one copy of a telephone call (outgoing) mad[e] to” a specific number at a specified time. The Center received the request on October 30, 2024, and on November 7, 2024, issued a response stating it “will require additional time to retrieve [his] records” and that the Appellant should receive the records “on or before November 13, 2024.” The next day, on November 8, the Center denied his request under KRS 197.025(1) because “the release of this record would pose a threat to security.” This appeal followed.

Under KRS 61.880(1), a public agency must decide within five business days whether to grant a request or deny it.¹ This time may be extended under KRS 61.872(5) when records are “in active use, in storage or not otherwise available,” if the agency gives “a detailed explanation of the cause . . . for further delay and the place, time, and earliest date on which the public record will be available for

¹ November 5 was presidential election day, which is a “state holiday” and a day “on which all state offices . . . shall be closed.” KRS 2.190. Under KRS 61.880(1), Saturdays, Sundays, and legal holidays are excluded from the computation of time a public agency must issue its response. Thus, November 7 was the fifth business day following the Center’s receipt of the Appellant’s request on October 30.

inspection.” The burden of proof rests with the public agency to sustain its actions. KRS 61.880(2)(c).

KRS 61.872(5) requires the public agency to notify the requester that the records are “in active use, storage, or not otherwise available.” The statute also places the burden on the agency to give a “detailed explanation of the cause” for further delay. *Id.* Here, however, the Center did not specifically indicate that the records at issue were in “in active use, storage, or not otherwise available” or give a “detailed explanation of the cause” for further delay. The Center merely cited KRS 197.025(7) and asserted that “time may be extended [beyond five business days], however, if the records are in use, storage or not otherwise available.” Thus, because it failed to provide the “detailed explanation” required under KRS 61.872(5), the Center’s initial response violated the Act.

Regarding the Center’s November 8 supplemental response, it denied the Appellant’s request under KRS 197.025(1) because “the release of this record would pose a threat to security.” Under KRS 197.025(1), “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 the General Assembly.

On appeal, the Center explains the “disclosure of the requested audio recording would provide a means by which [the] Appellant and other inmates could learn how the institution monitors telephone calls, which telephone calls the institution monitors, and use that information to develop strategies to evade monitoring of telephone calls that pose a security risk to the institution.” The Office has historically deferred to the judgment of a correctional facility in determining whether the release of certain records would constitute a security threat. Specifically, the Office has previously upheld the denial of telephone recordings under KRS 197.025(1). *See, e.g.*, 24-ORD-240 (upheld a denial for telephone recordings that posed a security threat under KRS 197.025(1)); 23-ORD-338 (same); 17-ORD-111 (upholding denial of telephone recordings because of the risk inmates could learn which calls are monitored). Therefore, the Center did not violate the Act when it withheld a copy of a recorded telephone call 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.

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/s/ Matthew Ray
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Distributed to:

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