



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-090

April 3, 2025

In re: Donald Lynch/Roederer Correctional Complex

Summary: The Roederer Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it redacted certain material from an inmate risk assessment under KRS 439.510 and copyrighted portions of the assessment under 17 U.S.C. § 106.

Open Records Decision

On February 20, 2025, inmate Donald Lynch (“the Appellant”) requested a copy of his “risk assessment,” which had been conducted “about mid-February 2025.” The Complex initially misunderstood this to be a request for a copy of a Parole Board Risk Assessment and therefore denied the request under KRS 61.878(1)(j). However, the Complex also denied the request under KRS 439.510, as the risk assessment “is prepared from the PSI [presentence investigation] and contains information gathered by probation and parole officers.” This appeal followed.

On appeal, the Complex no longer relies on KRS 61.878(1)(j). Rather, it now agrees to provide the Appellant with the requested document in a redacted form showing only its nonexempt portions. These portions consist of the “Appellant’s name and DOC number; the assessment date [and time]; the name of the individual who conducted the assessment; the type of assessment conducted; the status of the assessment; and the final scores on the assessment.” As to those portions of the record, this appeal is now moot. *See* 40 KAR 1:030 § 6.

The Complex asserts the remaining information is prepared through the Kentucky Risk Assessment System (“KyRAS”) or Reentry Scoring Tool (“RST”), and is therefore exempt under KRS 439.510, which is incorporated into the Act by KRS 61.878(1)(l). According to the Complex, the redacted portions of the assessment contain the assessment tools, questions, responses, and scoring, as well as information derived from the Appellant’s presentence investigation or otherwise obtained by probation and parole officers in the course of their duties. The Complex asserts the redacted portions of the record are exempt for two reasons.

First, the Complex relies on KRS 439.510 to redact the information obtained from the Appellant that was used to complete the Appellant's risk assessment. 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.

The Office has previously found that an inmate's responses to questions asked in the context of a risk assessment are not subject to inspection under KRS 439.510. *See, e.g.,* 20-ORD-198; 19-ORD-144; 17-ORD-022; 05-ORD-265; 01-ORD-120. This request is no different. Therefore, the Complex did not violate the Act when it redacted portions of the Appellant's risk assessment that contain information obtained by probation and parole officers during the presentence investigation and the subsequent risk assessment.

Second, the Complex relies on KRS 61.878(1)(k) to redact from the records the assessment tools, questions, responses, and scoring used in the Kentucky Risk Assessment System. The Complex claims this material is exempt from disclosure under the copyright protection provisions of 17 U.S.C. § 106, which is incorporated into the Act by KRS 61.878(1)(k). The Office has previously found that such material may be redacted under 17 U.S.C. § 106 and KRS 61.878(1)(k). *See, e.g.,* 22-ORD-095; 20-ORD-198; 19-ORD-144. The Office reached that conclusion based, in part, on the terms of an agreement between the Department of Corrections and the University of Cincinnati Correctional Institute. *See* 20-ORD-198. That agreement provides that the Department of Corrections "shall not disclose or transfer in any form either the delivered [assessment tool] or any modifications of or derivative works based on the [assessment tool] to third parties." *See id.* There is no reason for the Office to depart from these prior decisions. Therefore, the Complex did not violate the Act when it redacted the exempt portions of the Appellant's risk assessment.

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.

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