COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601
(502) 696-5300

25-ORD-146

June 4, 2025

In re: William Sharp/Louisville Metro Department of Corrections

Summary: The Louisville Metro Department of Corrections ("the Department") did not violate the Open Records Act ("the Act") when it denied a request for records that, if released, could pose a security threat to the safety of a correctional facility.

Open Records Decision

William Sharp ("Appellant") submitted a request to the Department seeking the policies, procedures, and training materials related to the Department's "Inmate Observers" program. In response, the Department denied the Appellant's request for the policies and procedures under KRS 197.025(1), which is incorporated into the Act by KRS 61.878(1)(l), because they "can be used by others to assess the manpower, routine procedures and protocol used by [the Department] in the management of [its] facility" and because "it may be used to develop strategies used to overtake [the Department's] Staff, attempt takeover or escape." Further, the Department denied the request for training materials under the same exemption because those materials "can be utilized to learn the routine procedures and protocol used by inmate watchers, giv[e] notice of the signs watchers are to look for and report to indicate possible suicidal behavior," or used "to avoid detection of suicidal ideation." This appeal followed

Under KRS 197.025(1), "no person shall have access to any records if the disclosure is deemed by the commissioner of the department or his designee to constitute a threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person" (emphasis added). The Office has historically deferred to the judgment of the correctional facility in determining whether the release of certain records would constitute a security threat.

The Office has upheld the denial of requests for records containing information about correctional facility staffing and security operations. *See, e.g.*, 25-ORD-049; 22-ORD-088; 08-ORD-148; 06-ORD-160; 04-ORD-180. Here, on appeal, the Department again explains that the requested policies and procedures "can be used by others to assess the manpower, routine procedures and protocol" it uses in the management of its facility and to develop strategies for overtaking its staff, or attempting a takeover of its facility or an escape. The Department further explains that disclosure of the training materials related to the program presents security concerns. Specifically, those materials "can be utilized to learn the routine procedures and protocol used by inmate watchers," to provide notice of the signs watchers look for and report to indicate possible suicidal behavior, or to avoid detection of suicidal ideation. On appeal, the Department maintains that disclosure of the records present these security risks and could put "inmate watchers, other inmates, and [Department] staff in harm's way" and would document "the manner in which [the Department] is staffed" and "managed."

The Appellant makes three arguments for why the Office should decline to give the Department the deference it historically affords to correctional facilities regarding the threat that disclosing certain records would present a security threat. First, the Appellant argues that because the training materials are disclosed to "pretrial detainees and misdemeanants who are serving as inmate observers" during their training, the materials cannot simultaneously be withheld from the public. Second, the Appellant asserts that because the Department of Corrections ("the DOC") disclosed responsive records in response to a similar request submitted by the Appellant, the Department's description of the security threat posed by disclosure is "inadequate." And third, the Appellant asserts that the Department cannot withhold its entire policy related to the inmate observer program.

First, regarding the Department's apparent disclosure of training materials to inmate observers during those individuals' training, the Office declines to hold that such use of the records constitutes waiver of KRS 197.025(1). Specifically, the use of the training records for the intended purpose, *i.e.*, training inmate observers, does not require the production of those records to any member of the public who submits a request for those records.

Second, the Department argues that the "practices" of the DOC "have no bearing whatsoever on the manner in which another facility is operated." Thus, the Department argues that the DOC's disclosure of similar records does not bar its own invocation of KRS 197.025(1). The Department is correct. The Office has previously

found that the release of records by one agency does not estop another agency from withholding similar records. *See, e.g.*, 18-ORD-049 (finding the previous disclosure of certain records by a correctional facility did not bar a different correctional facility from withholding similar records). Thus, the DOC's response to a similar request does not bind the Department, a separate public agency that has its own policies and procedures separate from those of the DOC.

Finally, regarding the Appellant's assertion that the Department cannot withhold its entire policy related to the inmate observer program, KRS 61.878(4) does require agencies to separate the excepted and nonexcepted material before producing the non-excepted materials. However, here the Department describes the entire policy as a "secure policy" with information related to the facilities safety and security. Because the Department has stated that disclosure of any part of the policy constitutes a security threat, it was permitted to withhold the entire policy.

Thus, in sum, the Department did not violate the Act when it withheld the requested records because it has adequately explained how KRS 197.025(1) applied to the records withheld.

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.

Russell Coleman
Attorney General

/s/ Zachary M. Zimmerer
Zachary M. Zimmerer
Assistant Attorney General

#207

Distributed to:

William E. Sharp, Esq.
Alice Lyon, Assistant Jefferson County Attorney
Nicole Pang, Assistant Jefferson County Attorney
Anne Coorsen, Assistant Jefferson County Attorney
Annale Taylor, Assistant Jefferson County Attorney