



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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25-ORD-174

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In re: Brian Batey/Kentucky State Penitentiary

Summary: The Kentucky State Penitentiary (the “Penitentiary”) did not violate the Open Records Act (“the Act”), when it denied a request for records, relating to an inmate’s security threat group status, which, if released, could pose a security threat to the safety of a correctional facility or when it denied a request for records that do not contain a specific reference to the requesting inmate.

Open Records Decision

Inmate Brian Batey (“Appellant”) submitted a request to the Penitentiary to inspect three types of records related to his “security threat group file.” Specifically, he requested to inspect his “security threat group file,” “C.P.P. 9.3,” and the “ACA 5 standards.” The Penitentiary denied all three parts of the request, citing KRS 197.025(1) and (2).¹ 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.” 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.

Here, the Penitentiary explains that it “does not disclose STG status pursuant to KRS 197.025(1) & KRS 61.878(1)(l).” The Penitentiary further explains that “[i]f a confirmed STG status for an inmate is known on the yard, an inmate may become a

¹ KRS 197.025(1) and (2) are incorporated into the Act by KRS 61.878(1)(l).

target of other gangs or be coerced to participate in threat group activities.”² The Office has previously upheld the denial of records relating to security threat group status and gang affiliation under KRS 197.025(1). *See* 18-ORD-004; 18-ORD-186; 17-ORD-169; 16-ORD-070. The present appeal presents no reason to depart from this position. Thus, the Penitentiary did not violate the Act when it withheld the requested records because it adequately explained how KRS 197.025(1) applied to the records withheld.

Next, under KRS 197.025(2), the Department of Corrections “shall not be required to comply with a request for any record from any inmate confined in a jail or any facility . . . unless the request is for a record which contains a specific reference to that individual.” The Office has held that the phrase “specific reference to that individual” requires the record to refer to the requesting inmate by name. *See, e.g.*, 23-ORD-347; 17-ORD-073. Specifically, the Office has found a record does not contain a “specific reference” to a requesting inmate under KRS 197.025(2) simply because it is relevant to, pertains to, or personally affects him. *See, e.g.*, 22-ORD-087; 17-ORD-119; 17-ORD-073.

Here, initially and on appeal, the Penitentiary affirms that the requested records do not contain a “specific reference” to the Appellant. Thus, under KRS 197.025(2), the Department was not required to grant the Appellant’s request to inspect policy “C.P.P. 9.3” and the “ACA 5 standards,” and it did not violate the Act when it denied his request.

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.

² On appeal, the Appellant raises several allegations related to his “circuit case” that are outside the scope of this appeal under KRS 61.880(2).

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