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25-ORD-266

September 19, 2025

In re: Marvin Pennington/Northpoint Training Center

Summary: Northpoint Training Center ("the Center") violated the Open Records Act ("the Act") when it denied, under KRS 61.872(3)(b), a request that precisely described the records sought and did not impose an unreasonable burden under KRS 61.872(6).

Open Records Decision

Inmate Marvin Pennington ("the Appellant") submitted a request to the Center for copies of "any Texts, E-Mails, Memorandums, Letters, Correspondence, 'To' and 'From' Any [Center] Staff, Any Other [Department of Corrections] Institution Staff, Any outside 'Agency, Attorneys' concerning [the Appellant], or with [his name] spe[ci]fically in it," from January 23 to June 25, 2025. In a timely response, the Center denied the request under KRS 61.872(3)(b) "because it does not 'precisely describe' the records" sought, as the Appellant "did not specify a particular employee or employees whose emails [he] would like for the Department [of Corrections] to search or the specific records," so "the Department would have to ask each individual employee of this agency to search all of his/her own emails, in every format, and then compile all of the potentially responsive records before reviewing those records to determine responsiveness." This appeal followed.

On appeal, the Center claims the Appellant's request fails to precisely describe the records requested, as required by KRS 61.872(3)(b), and "would be unreasonably burdensome under KRS 61.872(6)."[1] In support of its argument, the Center states the Department "operates 14 correctional facilities and has over 4,000 employees," and the request "would require searching all [Department] staff emails and cell phones" for records containing the Appellant's name.

[1] "If the application places an unreasonable burden in producing public records[,] the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence." KRS 61.872(6).

When a person requests copies of public records under the Act, "[t]he public agency shall mail copies of the public records to a person . . . after he or she precisely describes the public records which are readily available within the public agency." KRS 61.872(3)(b). A description is precise "if it describes the records in definite, specific, and unequivocal terms." 98-ORD-17 (internal quotation marks omitted). In 24-ORD-180 and 23-ORD-066, the Office found requests that would have required manual searches of the files of thousands of employees failed to precisely describe the records sought.

Here, however, the Appellant claims he "did not request that [the Center] undertake a search of [the Department's] records," but "only requested the records from the [Center], where the Appellant is housed." In response, the Center argues the Appellant is improperly trying to "modify" his request on appeal.[2] However, the Appellant is correct, inasmuch as the agency to which he addressed his request is the Center, not the Department. A public agency "is responsible only for those records within its own custody or control." *City of Fort Thomas v. Cincinnati Enquirer,* 406 S.W.3d 842, 856 (Ky. 2013) (citing *Kissinger v. Reporters Comm. for Freedom of the Press,* 445 U.S. 136 (1980)).

Although one correctional facility may be able to access the records of other facilities through the Kentucky Offender Management System ("KOMS"), "an agency's 'access' to digital records, without more, does not mean that the public agency is the custodian of such records." 25-ORD-024; 20-ORD-109. Because the Center had no duty to obtain records from other agencies or entities, the proper scope of the Appellant's request encompassed only the Center's own records, *i.e.*, "Texts, E-Mails, Memorandums, Letters, Correspondence" in the possession of the Center sent to or from anyone listed by the Appellant in the specified time frame, which mention the Appellant.[3] Furthermore, the Center admits that, if the scope of the Appellant's request is limited to records in the Center's possession, the request is neither imprecise nor unduly burdensome.[4] Because the Appellant's request was properly understood as limited to the Center's own records, the Center violated the Act when it denied the request under KRS 61.872(3)(b).

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[2] While a requester cannot make an argument on appeal that materially alters the terms of his request, he can make reasonable arguments as to its scope. *See, e.g.,* 23-ORD-006.

[3] If the Center believed the Appellant was requesting records of other agencies, an appropriate response would have been to advise the Appellant how to request records from those agencies. *See* 25-ORD-024; *cf.* KRS 61.872(4) ("If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records.").

[4] In response to an inquiry from this Office, the Center states it has conducted a search under these parameters and identified "approximately 36 records . . . consisting of approximately 40 pages."

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
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/s/ James M. Herrick
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