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25-ORD-344

October 31, 2025

In re: Robin Weiss/Western Kentucky Correctional Complex

Summary: The Western Kentucky Correctional Complex ("the Complex") did not violate the Open Records Act ("the Act") when it did not provide records it does not possess. The Complex also did not violate the Act when it denied a portion of the request under KRS 197.025(2).

Open Records Decision

On July 14, 2025, Robin Weiss ("Appellant") submitted a request seeking records showing (1) the budget of the Complex's legal aid program, including funding allocations and expenditures, and (2) the budget of the "Institutional Religious Center" fund and "other religious programming." In response, the Complex stated that it does not possess records responsive to the first part of the Appellant's request. The Complex denied the second part of the request because responsive records do not contain a specific reference to the Appellant's son, an inmate within the Department of Corrections, who had previously requested the same records. This appeal followed.

On appeal, the Complex maintains that it does not possess records responsive to the first part of the Appellant's request. Once a public agency states affirmatively that no additional records exist, the burden shifts to the requester to make a *prima facie* case that additional records do exist. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). A requester must provide some evidence to make a *prima facie* case that requested records exist, such as the existence of a statute or regulation requiring the creation of the requested record, or other factual support for the existence of the records. *See, e.g.*, 21-ORD-177; 11-ORD-074. A requester's bare assertion that certain records should exist is insufficient to make a *prima facie* case that the records do, in fact, exist. *See, e.g.*, 22-ORD-040. If the requester makes a prima facie case that the records do or should exist, then the public agency "may also be called upon to prove that its search was adequate." *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 848 n.3 (Ky. 2013) (citing *Bowling*, 172 S.W.3d at 341).

In an effort to make a *prima facie* case that the Complex possesses a record legal aid program budget, the Appellant refers to Corrections Policy and Procedure 14.4 ("CPP 14.4").[1] However, CPP 14.4 does no more than confirm that the Complex has a legal aid program. It does not establish that the Complex possesses the program's budget. The Appellant also cites a 1984 federal district court case that described the budget allocation of a particular legal aid office. *See Kendrick v. Bland*, 586 F. Supp. 1536, 1542 (W.D. Ky. 1984). But a citation to a 40-year-old federal case does not establish which records the Complex possesses today. Accordingly, the Appellant has not made a *prima facie* case that the Complex possesses responsive records. Thus, the Complex did not violate the Act when it did not produce records it does not possess.[2]

Regarding its denial of the second part of the request, the Complex maintains that it correctly denied the request under KRS 197.025(2) because the requested records do not contain a specific reference to the Appellant's son, who is a DOC inmate. 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." In support of its denial, the Complex does not argue that the request at issue came "from any inmate confined in a jail or any facility." Instead, it argues that there is "an identity of purpose" between the Appellant and her son such that the Complex may treat her as if she were an "inmate confined in a jail or any facility."

To support its denial, the Complex relies on a line of decisions in which the Office has applied KRS 197.025, which controls inmates' access to records under the Act, to requesters who are not inmates. In those instances, the Office has found that there exists "sufficient objective indicia to show that there is [an] identity of purpose between" the requester and an inmate. *See, e.g.*, 09-ORD-225; 09-ORD-158; 05-ORD-252; 04-ORD-214; 02-ORD-82; 00-ORD-182.

In 00-ORD-182, a joint request was submitted by an inmate and his wife. The agency denied the request because the requested records did not specifically reference the inmate requester. *See* KRS 197.025(2). In its decision affirming the agency's denial, the Office stated, "The fact that [the inmate requester] included his wife's name and signature on the request does not alter our conclusion. Where, as here, sufficient objective indicia exist to establish an identity of purpose between an inmate and a non-inmate, this office will not require disclosure of records to the latter, thereby undermining the purpose for which KRS 197.025(2) was enacted." 00-ORD-

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[1] *See* https://corrections.ky.gov/About/cpp/Documents/14/14.4%20-%20LEGAL%20SERVICES%20PROGRAM%206-1.pdf (last accessed Oct. 29, 2025).

[2] In its initial response and on appeal, the Complex identifies the Department of Public Advocacy as the agency likely to possess responsive records and provided the Appellant with its records custodian's contact information. KRS 61.872(4).

182. Notably, in that decision, the Office concluded based on the record before it that it was the inmate requester who had affixed the non-inmate requester's name to the request. Similarly, in 05-ORD-252, the Office determined that it was likely the inmate requester who had "prepared the request and affixed his wife's name to it." 05-ORD-252 (noting that the request the inmate's spouse "purportedly submitted . . . was almost certainly prepared on the same typewriter, using the same format, and containing the same grammatical and punctuation errors" as the inmate's request). Thus, in both 00-ORD-182 and 05-ORD-252, the Office's holding was based, in part, on its conclusion that the inmate was the true requester, and it affirmed the agencies' denials because the records did not contain a specific reference to the actual requester, the inmate.

In other decisions, the Office upheld KRS 197.025(2) denials of requests by non-inmates where the agency had clearly explained that (1) there was "an identity of purpose" between a current inmate and the non-inmate requester and (2) the inmate had previously requested that same records. *See, e.g.*, 02-ORD-082; 05-ORD-143 (explaining that the inmate had asked that if he could not receive the requested records, that the records be given to his wife); 09-ORD-158 (explaining the agency had previously denied the inmate's request for the same records subsequently requested by his girlfriend); 09-ORD-225 (explaining the agency had previously denied the inmate's request for the same records subsequently requested by that inmate's "fellow plaintiff in a pending civil action"). In another decision, the Office upheld a KRS 197.025(2) denial of a request by a non-inmate, where the agency had demonstrated that the non-inmate requester was acting at the behest of a particular inmate. *See, e.g.*, 04-ORD-214 (explaining the non-inmate requester had power of attorney regarding the inmate and the inmate was paying for copies of the requested records).

Importantly, in each of these decisions, the Office determined that granting the request submitted by the non-inmate requester would allow a current inmate to circumvent KRS 197.025(2)'s mandate that inmates only have access to records that specifically reference them.

More recently, a correctional agency argued that a non-inmate requester was acting on the behalf of a particular inmate and was therefore subject to KRS 197.025(2)'s 20-day appeal deadline. *See* 25-ORD-040. There, the agency argued that because the requester, an attorney, represented an inmate, there was an "an identity of purpose" between the two such that the correctional agency could treat the requesting attorney's request as the inmate's request. *Id.* Although the Office noted that the "'sufficient objective indicia' of an 'identity of purpose' test is arguably not moored to the text of KRS 197.025," the Office made no determination as to its future application because the agency had not met the requirements of that test.

The "sufficient objective indicia" of an "identity of purpose" test is not based on the text of KRS 197.025 and extends restrictions applicable to inmates to non-inmates. It therefore is somewhat in tension with the policy animating the Open Records Act, that "free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 *or otherwise provided by law* shall be strictly construed." KRS 61.871 (emphasis added). However, the test is grounded in specific instances in which inmates sought to circumvent KRS 197.025's limitations of their access to records under the Act. Indeed, it was first applied to inmates in 00-ORD-182, where an inmate requester had affixed a non-inmate requester's name to the same request. As such, the purpose of the test is to prevent the circumvention of KRS 197.025, and it may be appropriately applied in such circumstances.

Importantly, this test aligns with the Office's approach to another limitation applicable only to inmates. Under KRS 197.025(3), "all persons confined in a penal facility shall challenge any denial of an open record [request] with the Attorney General by mailing or otherwise sending the appropriate documents to the Attorney General within twenty (20) days of the denial." Because the General Assembly has specifically limited the time in which an inmate may appeal the denial of a request to inspect records, the Office has routinely held that an inmate cannot intentionally circumvent the 20-day period for seeking the Office's review under KRS 197.025(3) by submitting a second request for the same record to the same agency and precipitating the same denial. *See, e.g.*, 24-ORD-043; 20-ORD-046; 18-ORD-015; 15-ORD-027. This rule also is not explicitly stated in the text of KRS 197.025(3), but it is necessary to ensure the inmate cannot easily circumvent the statute.

Accordingly, while the Office finds no error in its prior decisions in which it upheld denials under KRS 197.025(2), going forward, the burden is on the penal institution to demonstrate sufficient evidence that an inmate subject to KRS 197.025(2) has the specific intent to circumvent that statute by using a non-inmate strawman requester to make his or her request. The mere existence of a familial relationship or an attorney-client relationship is insufficient to meet the institution's burden of proof, as an inmate's family member or attorney has the same statutory rights under the Act as any other requester.

Turning to the merits of this appeal, the Complex explains that the Appellant's son, an inmate, had previously submitted two requests for the same records that are at issue in this appeal, and the Complex denied both requests under KRS 197.025(2) because the records do not contain a specific reference to him. The Complex also provided evidence of the relationship between the Appellant and the inmate and directed the Office's attention to the Appellant's acknowledgement that the named inmate is her son. Thus, the Complex has established (1) the existence of a relationship between the Appellant and the inmate and (2) that the Complex had previously denied the inmate's two identical prior requests for the same records under

KRS 197.025(2). Based on this combination,[3] the Complex has established that an inmate subject to KRS 197.025(2) is attempting to circumvent the statute's restrictions. Accordingly, based on the evidence of record here, the Complex did not violate the Act when it denied the second part of the Appellant's request under KRS 197.025(2).

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
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Distributed to:

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[3] As stated above, an agency cannot justify a denial of a request under KRS 197.025(2) merely because of the existence of a familial relationship between the non-inmate requester and the current inmate. But evidence of that relationship may still be considered in conjunction with other evidence demonstrating the specific intent of the inmate to circumvent KRS 197.025(2).