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26-ORD-175

April 22, 2026

In re: Kyle Thompson/Green River Correctional Complex

Summary: The Green River Correctional Complex (“the Complex”) did not violate the Open Records Act (“the Act”) when it denied a request for call logs because such records are not “public records” under KRS 61.870(2).

Open Records Decision

Inmate Kyle Thompson (“Appellant”) submitted a request to the Complex for a copy of his “call log” from July 1 to November 20, 2024. The Complex denied the request because the requested record is not “prepared, owned, used, in the possession of[,] or retained by” it. Instead, the Complex explained, Securus Technologies, Inc. (“Securus”) possesses the call logs. This appeal followed.

The Act defines “public record” as “all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency.” KRS 61.870(2). On appeal, the Complex argues that the call log requested by the Appellant is not a public record within the meaning of KRS 61.870(2) because it is not “prepared, owned, used, in the possession of or retained by” it. Opposing the Complex’s argument, the Appellant claims the recordings are “public records” because the Complex has access to the logs to facilitate investigations.

On appeal, the Complex provides the language of its services agreement with Securus, which states:

For the purpose of aiding in investigations, Securus must retain ITS, VVS and Tablet account information pertaining to an inmate and end-user's pre-paid account, debit account, trust account, direct bill, and similar accounts for a period of two (2) years after the expiration/termination of the Contract. The [Kentucky Department of Corrections] shall have access to such account information upon request, to the extent permissible by law.

According to the Complex, it only "has access to call logs, in the event they are needed for investigative purposes." Therefore, the Complex argues, the requested call log is not a "public record" under KRS 61.870(2) because the Complex has never obtained it from Securus for investigative purposes, as authorized by the contract.

Once a public agency states affirmatively that it does not possess certain records, the burden shifts to the requester to make a *prima facie* case that it does possess them. See *Bowling v. Lexington-Fayette Urb. Cnty. Gov't*, 172 S.W.3d 333, 341 (Ky. 2005). A requester's bare assertion that an agency possesses requested records is insufficient to make a *prima facie* case that the agency, in fact, possesses them. See, e.g., 22-ORD-040. Rather, to make a *prima facie* case that the agency possesses or should possess the requested records, the requester must provide some statute, regulation, or factual support for his contention. See, e.g., 21-ORD-177; 11-ORD-074.

To rebut the Complex's assertion that it is not the custodian of the call logs, the Appellant provides a copy of a different request he submitted to the Complex seeking Securus call logs. In response to that request, the Complex provided the requested call log. However, the Complex's prior disclosure does not establish that the call logs are "prepared, owned, used, in the possession of or retained by" it. Rather, it only establishes that the Complex does have access to the call logs. This is not sufficient to establish the call logs are "public records" in the Complex's possession. Rather, an agency's hypothetical "right to demand" certain records from a contractor is not equivalent to possessing them. 26-ORD-162. An "agency's mere 'access' to electronic records, without more, does not make them 'public records' for purposes of the Act." 23-ORD-344. Rather, under KRS 61.870(2), the agency must in fact prepare, own, use, possess, or retain the requested records. See generally 20-ORD-109 (noting "a correctional facility may 'use' specific [inmate communications] for some administrative purpose," thereby making them public records under the Act). Here, the Appellant has not shown that to be the case. Accordingly, the Complex did not violate the Act when it denied the Appellant's request.

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

Attorney General

/s/ Zachary M. Zimmerer

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