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26-ORD-292

June 30, 2026

In re: Dennis Bell/Kentucky Department of Corrections, Division of Probation and Parole

Summary: The Kentucky Department of Corrections, Division of Probation and Parole (“the Department”) initially violated the Open Records Act (“the Act”) by failing to explain how asserted exemptions apply to particular categories of records and by failing to affirmatively indicate whether certain records exist in the agency’s possession, custody or control, as KRS 61.880 requires. However, the Department ultimately justified its denial as to probation and parole records under KRS 439.510 and requested audio/video recordings under KRS 197.025(1), both of which are incorporated into the Act by KRS 61.878(1)(l). The Department did not violate the Act by denying the request as to records it does not possess.

Open Records Decision

On May 15, 2026, Dennis Bell (“the Appellant”) submitted a request to the Department “for inspection and/or copies of the following records relating to Phillip A. Hamm . . . and McCracken Circuit Court Case No. 22-CR-00278,” for the period of April 1, 2026, through the present:

- 1) Any and all probation violation reports, violation summaries, notices of violation, warrants, detainers, recommendations for revocation, or related documents.
- 2) Any and all chronological supervision entries, case notes, officer notes, field notes, contact logs, computer entries, narratives, memoranda, or supervision records.
- 3) Any and all grievances, grievance forms, grievance responses, grievance routing documents, grievance logs, grievance appeal records, and supervisory review documents relating to Phillip A. Hamm.

- 4) Any and all records identifying the personnel who received, reviewed, routed, denied, responded to, or otherwise handled Mr. Hamm's grievance submitted on or about May 12, 2026.
- 5) Any and all communications concerning Phillip A. Hamm, including but not limited to:
 - a. emails;
 - b. text messages;
 - c. internal messaging communications
 - d. memoranda;
 - e. communications with supervisors;
 - f. communications with treatment providers;
 - g. communications with the Commonwealth[s] Attorney;
 - h. communications with jail personnel.
- 6) Any and all records relating to MRT classes, Intensive Outpatient Program (IOP), substance abuse treatment, inpatient rehabilitation, treatment referrals, treatment scheduling, attendance, enrollment, or recommendations.
- 7) Any and all records relating to scheduling conflicts, overlapping program requirements, reporting requirements, or modifications to supervision requirements.
- 8) Any and all surveillance video, security video, body camera recordings, audio recordings, hallway recordings, lobby recordings, intake recordings, booking recordings, transport recordings, or related media depicting or relating to:
 - a. Phillip A Hamm;
 - b. his appearance at probation/parole offices on or about May 13, 2026;
 - c. his detention or handcuffing;
 - d. conversations involving probation personnel;
 - e. transport to McCracken County Jail.
- 9) Any and all intake records, booking records, transport logs, restraint logs, custody transfer records, incarceration records, or jail coordination records relating to Phillip A. Hamm.
- 10) Any and all records reflecting any decision to:
 - a. increase reporting requirements;
 - b. intensify supervision;
 - c. seek detention;
 - d. recommend rehabilitation placement;
 - e. initiate revocation proceedings;
 - f. require inpatient rehabilitation.
- 11) Any and all records relating to any recommendation, discussion, referral, or decision that Phillip Hamm enter a ninety (90) day rehabilitation or inpatient treatment program.

- 12) Any and all policies, procedures, manuals, memoranda, directives, or training materials concerning:
 - a. offender grievance procedures
 - b. probation violation procedures;
 - c. retaliation prohibitions;
 - d. treatment referrals;
 - e. custodial rehabilitation placement;
 - f. due process protections in revocation proceedings.
- 13) Any and all records reflecting requests by Phillip A. Hamm for:
 - a. counsel;
 - b. grievance review;
 - c. supervisory review;
 - d. administrative relief;
 - e. hearing requests.
- 14) Any and all electronically stored information (ESI), metadata, audit logs, timestamps, deletion logs, access logs, or modification histories relating to records concerning Phillip A. Hamm.
- 15) Any and all records created after May 12, 2026, referencing:
 - a. the Emergency Motion filed in McCracken Circuit Court;
 - b. the grievance filed by Phillip A. Hamm;
 - c. alleged probation violations;
 - d. revocation proceedings;
 - e. treatment placement recommendations.

The Department sent a timely response by letter dated May 22, 2026, denying the request for “Probation and Parole files” under KRS 439.510, which is incorporated into the Act by KRS 61.878(k), and prior decisions by the Office.¹ This appeal followed.

On appeal, the Appellant “acknowledge[s] that certain probation supervision records and reports may properly fall within the protections of KRS 439.510,” but asserts the Department’s “blanket denial is overbroad and improperly fails to distinguish between exempt and nonexempt records.” The Appellant further notes that his request “sought a broad range of records, many of which are administrative, operational, policy-based, or electronically generated records that do not appear to constitute confidential probation officer information protected under KRS 439.510.”

¹ Pursuant to KRS 439.510:

All information obtained in the discharge of official duty by any probation or parole officer shall be privileged and shall not be received as evidence in any court. Such information shall not be disclosed directly or indirectly to any person other than the court, board, cabinet, or others entitled under KRS 439.250 to 439.560 to receive such information, unless otherwise ordered by such court, board or cabinet.

Under KRS 61.880(1), upon receipt of a request for public records, a public agency “shall determine within five (5) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request whether to comply with the request and shall notify the person making the request, within the five (5) day period of its decision.” When a public agency denies a request for public records, it must “include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” KRS 61.880(1); KRS 61.880(2)(c); 26-ORD-108. The agency must “provide particular and detailed information,” not merely a “limited and perfunctory response.” *Edmondson v. Alig*, 926 S.W.2d 856, 858 (Ky. 1996). In other words, “[t]he agency’s explanation must be detailed enough to permit [a reviewing] court to assess its claim and the opposing party to challenge it.” *Ky. New Era, Inc. v. City of Hopkinsville*, 415 S.W.3d 76, 81 (Ky. 2013).

A public agency is not “obliged in all cases to justify non-disclosure on a line-by-line or document-by-document basis.” *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 851 (Ky. 2013). Rather, “with respect to voluminous [open records] requests . . . it is enough if the agency identifies the particular kinds of records it holds and explains how [an exemption applies to] the release of each assertedly exempt category.” *Id.* Of course, “if the agency adopts this generic approach it must itself identify and review its responsive records, release any that are not exempt, and assign the remainder to meaningful categories. A category is meaningful if it allows the court to trace a rational link between the nature of the document and the alleged” exemption. *Id.* (quotation omitted); *see, e.g.*, 26-ORD-024; 25-ORD-378; 23-ORD-241; 19-ORD-120.

Upon receipt of the Appellant’s request, the Department merely quoted the language of KRS 439.510 and referenced case law and prior decisions by the Office to justify its blanket denial of the Appellant’s request seeking 15 categories of records; it did not explain how that privilege applies to specific records or portions thereof, nor did the Department assign the withheld records to “meaningful categories” that describe the nature of the records and how the claimed exemption applies to the records in each category, as KRS 61.880 also requires. 26-ORD-024; 23-ORD-241. Therefore, its “limited and perfunctory response” violated the Act. *See also* KRS 61.880(2)(c); 26-ORD-204; 25-ORD-393; 24-ORD-054.

On appeal,² however, the Department clarifies that all records it possesses responsive to parts 1; 2; 5 a.—d., g., and h.; 7; 9; 10 a.—c., and e.; 13; and 14, are comprised of information that Probation and Parole Officers compiled in discharging their official duties and, therefore, are exempt from disclosure under KRS 439.510. Likewise, records responsive to parts 6; 10 d. and f.; 11; 12 d. and e.; and 15 e. relate

² By letter dated June 23, 2026 (a copy of which is of record), the same date on which it responded to his appeal, the Department supplemented its response to the Appellant. Discrepancies in the listing of subsections to which particular exemptions apply have been reconciled here by inclusion of any that are listed in either of the responses.

to substance abuse treatment and fall within the parameters of KRS 439.510.³ The Department further explains that KRS 439.510 justifies withholding records responsive to parts 3; 4; 5 f.; 13 b.; and 15 b., relating to inmate grievances.

KRS 439.510 exempts from disclosure “*all* information” that Probation and Parole Officers obtain while discharging their official duties (emphasis added). This privilege is incorporated into the Act by KRS 61.878(1)(l). On appeal, the Department has explained which of the categories of records the Appellant requested were obtained by Probation and Parole Officers while discharging their official duties and the Office has consistently found that such requests to inspect probation and parole records are properly denied under KRS 439.510. 20-ORD-144 (affirming correctional facility’s denial of inmate request for contents of his probation and parole file); *see, e.g.*, 25-ORD-392; 22-ORD-095; 17-ORD-022; 05-ORD-265; 01-ORD-120. This appeal presents no basis to depart from this line of authority.

Regarding parts 8 a.—e. of the Appellant’s request, asking for security and surveillance video recordings, the Department maintains that KRS 439.510 is equally controlling; however, KRS 197.025(1), incorporated into the Act by KRS 61.878(1), also exempts those records from disclosure. 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 long recognized the broad discretion that KRS 197.025(1) affords the Department and has historically deferred to its judgment in determining whether the release of certain records would constitute a security threat. 23-ORD-049; 20-ORD-029; 19-ORD-110; 17-ORD-229; 08-ORD-148. “Institution’ means any institution under the control of the Department of Corrections.” KRS 197.010(5). This definition encompasses the Division of Probation and Parole. *See* KRS 196.030(1)(b) (“The [D]epartment shall, unless otherwise provided by law, exercise all functions of the state in relation to . . . Supervision of probation and parole.”) 26-ORD-224.

In addition, the Office has consistently affirmed the denial of requests for security and surveillance videos under KRS 197.025(1). *See, e.g.*, 26-ORD-224; 23-ORD-089; 18-ORD-074; 13-ORD-022; 10-ORD 055. The release of such video footage poses a security risk because it may disclose the “methods or practices used to obtain the video, the areas of observation and blind spots for the cameras.” *See, e.g.*, 26-ORD-127; 22-ORD-038; 17-ORD-211; 15-ORD-121; 13-ORD-022.

³ In the alternative, the Department correctly states that federal law and the corresponding regulation, specifically, 42 U.S.C. § 290dd-2, and 42 C.F.R. Part 2 (§ 2.13 in particular), which are incorporated into the Act by KRS 61.878(1)(k), prohibit disclosure of substance abuse treatment information. *See* 26-ORD-127. The Department also cites KRS 61.878(1)(a) in the supplemental response but does not provide any explanation of how it applies to specific information withheld on that basis.

Regarding parts 15 a., c., and d., relating to court proceedings involving Mr. Hamm, the Department asserts that such records also fall within KRS 439.510, presumably because they are among the records and information that Probation and Parole Officers compile in discharging their duties, but concedes it should have referred the Appellant to the McCracken Circuit Court Clerk (“Clerk”). The Department provided the Appellant with contact information for the Clerk, as required by KRS 61.872(4), in supplementing its original response. In addition, the Department affirmatively states, for the first time on appeal, that its diligent search did not yield any existing records responsive to parts 12 c. and 15 a., c., and d. of the Appellant’s request. “A public agency violates KRS 61.880(1) ‘if it fails to advise the requesting party whether the’ records exist.” *Univ. of Ky. v. Hatemi*, 636 S.W.3d 857, 873 (Ky. App. 2021) (quoting 20-ORD-010); 26-ORD-127. A public agency cannot simply ignore portions of a request. *See, e.g.*, 21-ORD-090; 25-ORD-027. Accordingly, the Department also violated the Act by failing to affirmatively state in the agency’s initial response whether certain records did or did not exist. 26-ORD-044.

However, once a public agency states affirmatively that certain records do not exist, the burden shifts to the requester to make a *prima facie* case that the requested records exist and are in the agency’s possession, custody, or control. *See Bowling v. Lexington–Fayette Urb. Cnty. Gov’t*, 172 S.W.3d 333, 341 (Ky. 2005). 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*, 406 S.W.3d at 848 n.3 (citing *Bowling*, 172 S.W.3d at 341). A requester’s bare assertion that a public agency must possess the requested records is not adequate to make a *prima facie* case that the agency does, in fact, possess the records. *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 a statute, regulation, or factual support for that contention. *See, e.g.*, 26-ORD-127; 21-ORD-177; 11-ORD-074. Here, the Appellant has not made a *prima facie* case that the Department possesses additional records. Accordingly, the Department did not violate the Act by ultimately denying the Appellant’s request for nonexistent records. 26-ORD-044.

Regarding parts 12 a.–c. and f., the Department advises on appeal that it has provided the Appellant with hyperlinks to the responsive records, which are available on its website. Thus, the appeal is moot as to parts 12 a.–c. and f. of the request. *See* 40 KAR 1:030 § 6.

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.

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/s/ Michelle D. Harrison
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