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26-ORD-502

November 3, 2026

In re: Ashley Elgin/Department of Corrections

Summary: The Department of Corrections ("the Department") did not violate the Open Records Act ("the Act") when it denied a request for telephone call records because such records are not "public records" under KRS 61.870(2). The Department also did not violate the Act when it withheld telephone call records that, if released, would pose a security threat under KRS 197.025(1). Finally, the Department did not violate the Act when it did not provide records it does not possess.

Open Records Decision

On August 2, 2026, Ashley Elgin ("Appellant") submitted a request to the Department seeking records related to telephone conversions placed by her husband when he was an inmate at the Eastern Kentucky Correctional Complex. In particular, the Appellant sought five categories of records dated between August 1, 2024, and September 30, 2025: (1) "audio recording of telephone calls placed by" the inmate; (2) "call detail records (CDRs)"; (3) "associated metadata, including date, time, duration, originating facility, recipient number, and unique call identifiers"; (4) "records indicating whether any calls were recorded, blocked, restricted, incomplete, or otherwise unavailable for production"; and (5) "retention, deletion, purge, overwrite, archive, or preservation logs relating to this account, the recipient phone number, or this date range."

In response, the Department denied part 1 of the request under KRS 61.878(1)(s) because "requested recordings consist of private communications between an inmate and third parties" and the "content of those communications is purely personal and unrelated to any governmental function." The Department denied parts 2 and 3 of the request, explaining that those parts did not seek "public records" within the meaning of KRS 61.870(2). The Department denied part 4 of the

request under KRS 197.025(1) on the grounds that disclosure of those records would pose a threat to the security of its facilities by "identifying which calls were recorded, blocked, restricted, incomplete, or otherwise unavailable." And the Department explained that it located no records responsive to part 5 of the request. This appeal followed.

To start, the Department now explains that the phone records requested in part 1 of the request, like the records requested in parts 2 and 3 of the request, are not "public records" within the meaning of KRS 61.870(2). 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 Department argues that the call recordings, call detail records, and associated metadata requested by the Appellant are not public records within the meaning of KRS 61.870(2) because they are not "prepared, owned, used, in the possession of or retained by" it.

On appeal, the Department 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 Department, it only "has access to call logs, in the event they are needed for investigative purposes." Therefore, the Department argues, the requested call recordings, the call detail records, and associated metadate are not "public record[s]" under KRS 61.870(2) because the Department 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 Department's assertion that it is not the custodian of the records, the Appellant asserts that if "any responsive records or data were accessed, monitored, reviewed, or otherwise used by [Department] personnel," then they are public records under the Act. Although that statement is true, the Appellant has not made a *prima facie* case that the Department has actually used the requested records. And the Department'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 Department did not violate the Act when it denied parts 1, 2, and 3 of the Appellant's request.

Regarding part 4 of the Appellant's request, the Department maintains that disclosing "records indicating whether any calls were recorded, blocked, restricted, incomplete, or otherwise unavailable for production" would threaten the security of its correctional facilities. Under KRS 197.025(1), "no person shall have access to any records if the disclosure is deemed by the commissioner of the [Department of Corrections] or his designee to constitute a threat to the security of the . . . correctional staff [or] the institution." KRS 197.025(1) is incorporated into the Act under KRS 61.878(1)(l), which exempts from inspection public records the disclosure of which is prohibited by enactment of the General Assembly.

On appeal, the Department explains that "identifying which calls were recorded, blocked, restricted, incomplete, or otherwise unavailable would reveal how telephone-monitoring and security controls operate" and would "enable inmates to avoid those controls." The Office has historically deferred to the judgment of a correctional facility in determining whether the release of certain records would constitute a security threat. Specifically, the Office has previously upheld the denial of telephone recordings under KRS 197.025(1) where disclosure would enable inmates to learn which calls are monitored. *See, e.g.*, 24-ORD-240 (upheld a denial for

telephone recordings that posed a security threat under KRS 197.025(1)); 23-ORD-338 (same); 17-ORD-111 (upholding denial of telephone recordings because of the risk inmates could learn which calls are monitored). Therefore, the Department did not violate the Act when it withheld a copy of a recorded telephone call that, if released, would pose a security risk under KRS 197.025(1).

Finally, the Department maintains that it possesses no records responsive to part 5 of the request. The Appellant has not attempted to make a *prima facie* case that records responsive to part 5 of the request exist. Instead, she asks that the Office "require [the Department] to clarify the scope of its search, including whether it searched facility records, legal files, investigative files, emails, communications with Securus, and preservation materials." However, the Act only requires the Department to demonstrate the adequacy of its search if the Appellant has made a *prima facie* case that responsive records exist. Because the Appellant has not done so, the Department does not need to describe its search. Accordingly, the Office cannot find that the Department violated the Act when it did not provide records it does not possess.

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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