

CASE NO. ____-CI-_____

JEFFERSON CIRCUIT COURT
DIVISION _____*Electronically filed*

ACLU OF KENTUCKY FOUNDATION

PLAINTIFF

v.

LOUISVILLE/JEFFERSON COUNTY METRO
GOVERNMENT d/b/a LOUISVILLE METRO
DEPARTMENT OF CORRECTIONS

DEFENDANT

Serve: Michael O'Connell
Jefferson County Attorney
531 Court Place, Suite 900
Louisville, Kentucky 40202**COMPLAINT**

Plaintiff, the ACLU of Kentucky Foundation, by counsel, brings this action under Kentucky's Open Records Act against Defendant Louisville/Jefferson County Metro Government d/b/a Department of Corrections seeking *de novo* review from the Kentucky Attorney General Open Records Act decision in 25-ORD-146 (June 4, 2025). In support of its Complaint, Plaintiff states as follows.

PARTIES

1. The ACLU of Kentucky Foundation ("ACLU of Ky.") is a Kentucky non-profit organization with its principal office in Louisville, Jefferson County, Kentucky.

2. The Louisville Metro Department of Corrections ("LMDC") is a department within Louisville/Jefferson County Metro Government's Executive Branch Cabinet for Public Protection by operation of Section 30.20 of Louisville/Jefferson County Metro Code of Ordinances. LMDC is thus a "public agency" as defined in KRS §

61.870(1)(b). LMDC's principal office is located in Louisville, Jefferson County, Kentucky.

JURISDICTION AND VENUE

3. This action is brought within thirty (30) days of the issuance of the Attorney General's opinion at issue (25-ORD-146), and thus is timely under KRS § 61.880(5).

4. This Court has jurisdiction to enforce the rights of the parties pursuant to KRS § 61.882(1), and venue in Jefferson County is likewise proper because LMDC has its principal place of business in Jefferson County, Kentucky. KRS § 61.880; KRS § 67.882(1).

5. The ACLU of Ky. has notified the Attorney General of the filing of this Complaint pursuant to KRS § 61.880(3).

6. This matter is to be determined by the Court under a *de novo* standard of review pursuant to KRS § 61.882(3).

7. Pursuant to KRS § 61.882(4), this proceeding is to take precedence over all other causes of action and shall be assigned to a hearing and trial at the earliest practicable date.

THE OPEN RECORDS REQUEST

8. On April 2, 2025, the ACLU of Ky. submitted its Open Records Act request *via* Louisville/Jefferson County Metro Government's ("Lou. Metro") online Open Records Act portal requesting certain records relating to LMDC's use of inmate labor to monitor or record the physical or psychological condition of other inmates. LMDC refers to the individuals involved in this program as "Inmate Observers." Relevant to this action, the request specifically sought:

a. Copies of all LMDC policies and procedures regarding the use of Inmate Observers to monitor other inmates for health or safety reasons [*see attached* Exh. 1]; and

b. Copies of all books, papers, electronic presentations, or other materials used by LMDC, if any, to train Inmate Observers. [*Id.*]

9. Lou. Metro, on behalf of LMDC, confirmed receipt of the request the same day it was submitted, and it thereafter confirmed that a response would be provided on or before May 9, 2025.

10. On May 9, 2025, Lou. Metro provided its final response in which it produced some responsive records but refused to provide others. [Exh. 2.] Relevant here, Lou. Metro confirmed that it possessed records responsive to the ACLU of Ky.'s requests for Inmate Observer policies and training materials, but it refused to produce them and relied upon the following bases for doing so:

a. LMDC's policy on "Inmate Supervision and Observation" was withheld as a "secure policy" the disclosure of which would be "deemed to constitute a threat to the security of any other inmate, correctional staff, the institution, or any other person pursuant to KRS 197.025(1)." Lou. Metro stated that disclosure of the policy could result in others using it "to assess the manpower, routine procedures and protocol used by LMDC in the management of its facility" or "to develop strategies used to overtake LMDC's Staff, attempt takeover or escape." [Exh. 2.]

b. Lou. Metro also withheld LMDC's training records used to train Inmate Observers asserting that their disclosure would be "deemed to constitute a threat to the security of any other inmate, correctional staff, the institution, or any other person

pursuant to KRS 197.025(1).” Lou. Metro asserted that disclosure of the training records could “be utilized to learn the routine procedures and protocols used by inmate watchers, giving notice of the signs watchers are to look for and report to indicate possible suicidal behavior, and using this information to avoid detection of suicidal ideation.” [*Id.*]

THE APPEAL TO THE ATTORNEY GENERAL

11. The ACLU of Ky. timely appealed Lou. Metro’s partial denial of the Open Records Act request to the Ky. Attorney General on May 13, 2025. [Exh. 3.] In that appeal, the ACLU of Ky. attached as exhibits not only its request and the operative response(s), but also a copy of an Open Records Act request it previously submitted to the Ky. Dept. of Corrections (the “DOC”) for information about DOC’s use of Inmate Observers *as well as* the public records DOC produced in response. [*Id.*]

12. The ACLU of Ky. argued, *inter alia*, that as to the withheld Inmate Observer policy, LMDC failed to justify why the asserted security concern necessitated withholding the *entire* policy rather than merely withholding those portions of it specifically implicating legitimate security concerns. [Exh. 3.]

13. The ACLU of Ky. also argued that in light of the DOC’s production of its own Inmate Observer policies, procedures, and training materials, the purported security rationale in withholding LMDC’s policy and training materials was ostensibly pretextual and thus inadequate. [*Id.*]

14. Similarly, the ACLU of Ky. further argued that the purported security rationale could not justify withholding the responsive training records from public inspection because LMDC provides the content of those materials to the pretrial detainees and misdemeanants who are serving as Inmate Observers. [*Id.*]

15. On May 23, 2025, the Jefferson County Attorney's office timely submitted Lou. Metro's response to the Attorney General's office.

THE ATTORNEY GENERAL'S OPINION

16. Then, on June 4, 2025, the Attorney General issued its opinion in 25-ORD-146. [Exh. 4.]

17. In it, the Attorney General wrongly concluded that the deference accorded correctional facilities in withholding records from public inspection under KRS § 197.025(1) justified the refusal to provide both LMDC's Inmate Observer policy in its entirety as well as the inmate observer training materials. [*Id.*]

18. The Attorney General also erred in refusing to find that disclosure of the Inmate Observer training materials to the prisoners themselves during their training constituted a "waiver" of the confidentiality under KRS § 197.025(1). [*Id.*]

19. And as to LMDC's Inmate Observer policy, the Attorney General acknowledged that KRS § 61.878(4) requires "agencies to separate the excepted and non-excepted material before producing the non-excepted materials," but incorrectly found that the entire record was properly withheld in light of LMDC's unsupported assertion that disclosure of "any part" of it would constitute a security threat. [*Id.*]

WHEREFORE, Plaintiff ACLU of Ky. respectfully prays for the following relief:

- A. An expedited hearing on this matter at the earliest practicable date;
- B. That the Court overrule and vacate 25-ORD-146 (June 4, 2025);
- C. A declaration that Lou. Metro violated Kentucky's Open Records Act by refusing to produce the requested records;
- D. An injunction ordering Lou. Metro to produce the requested records;

E. An award of costs, including reasonable attorney's fees, incurred in connection with this legal action; and

F. All other relief to which Plaintiff may be entitled.

Respectfully submitted,

/s William E. Sharp

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Presiding Judge: HON. JESSICA E. GREEN (630423)

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