



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
MATTHEW SISLER,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2024-0546
	:	
PENNSYLVANIA DEPARTMENT OF	:	
CORRECTIONS,	:	
Respondent	:	

FACTUAL BACKGROUND

On January 8, 2024, Matthew Sisler (“Requester”), an inmate at SCI-Laurel Highlands, submitted a request (“Request”) to the Pennsylvania Department of Corrections (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[1.] Any and all emails, memorandums and internal communications between Dr. Andrew Danca of the [Department], SCI[-]Laurel Highlands [M]edical [D]epartment and C. Carthew, RN[,], of the [Department], SCI[-]Laurel Highlands [M]edical [D]epartment, between [November 1, 2023] and [December 28, 2023], that discuss dialysis machine conductivity, the Granuflo [A]cid [M]ix, the Naturalyte Acid [M]ix and CO2 or CO3 levels in [an] inmate[’s] blood or lab results.

[2.] Any and all emails, memorandums and internal communications between C. Carthew, RN[,], of the [Department], SCI[-]Laurel Highlands [M]edical [D]epartment and Ms. Shanta Zorn of the [Department], SCI[-]Laurel Highlands dialysis unit, between [November 1, 2023] and [December 28, 2023], that discuss dialysis machine conductivity, the Granuflo Acid Mix, the Naturalyte Acid [M]ix and CO2 or CO3 levels in [an] inmate[’s] blood or lab results.

[3.] Any and all emails, memorandums and internal communications between Dr. Andrew Dancho of the [Department], SCI[-]Laurel Highlands [M]edical [D]epartment and Ms. Shanta Zorn of the [Department], SCI[-]Laurel Highlands dialysis unit, between [November 1, 2023] and [December 28, 2023], that discuss dialysis machine conductivity, the Granuflo [A]cid [M]ix, the Naturalyte Acid [M]ix and CO₂ or CO₃ levels in [an] inmate[’s] blood or lab results.

On February 6, 2024, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Department partially denied the Request. The Department provided responsive records, but withheld and redacted information pursuant to the medical records exemption, 65 P.S. § 67.708(b)(5), the personal security exemption, 65 P.S. § 67.708(b)(1)(ii), and the constitutional right to privacy, PA. CONST. ART. 1.

On February 20, 2024,¹ the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. Specifically, the Requester appealed the Department’s decision to withhold records, claiming the records should be provided in redacted format, rather than entirely withheld.² The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On March 7, 2024, the Department submitted a position statement, asserting that the withheld records were wholly exempt medical records, 65 P.S. § 67.708(b)(5).³ In support of its position, the Department submitted an attestation made subject to the penalties under 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities, authored by Andrew Filkosky (“Filkosky Attestation”), the Department’s Agency Open Records Officer (“AORO”).

¹ Although the appeal was received by the OOR on February 26, 2024, the Requester’s appeal was placed in the Department’s mail system on February 20, 2024. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

² As the Requester did not challenge the redactions made by the Department, the redactions will not be addressed in this Final Determination.

³ In its submission, the Department did not address the arguments that the withheld records were exempt pursuant to the constitutional right to privacy and the personal security exemption. As such, the OOR deems the arguments abandoned on appeal and will not address those issues in this Final Determination.

On March 27, 2024, the Requester submitted a position statement.⁴

LEGAL ANALYSIS

The Department is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the Department is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the factfinder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The Request seeks records concerning inmates’ lab results. The Department argues that 59 responsive records were withheld in their entirety because the records constitute exempt medical records. Section 708(b)(5) of the RTKL exempts from disclosure:

[a] record of an individual's medical, psychiatric or psychological history or disability status, including an evaluation, consultation, prescription, diagnosis or treatment; results of tests, including drug tests; enrollment in a health care program or program designed for participation by persons with disabilities, including vocation rehabilitation, workers’ compensation and unemployment compensation; or related information that would disclose individually identifiable health information.

65 P.S. § 67.708(b)(5).

⁴ The Requester’s position statement discusses the redacted records provided in response to the Request and the repetitive nature of the responsive records; however, the Requester does not challenge the redactions made by the Department. Additionally, the submission was received after the record closed; however, to develop the record, the submission was considered. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”).

In support of its position, the Department relies upon the Filkosky Attestation, which indicates, in relevant part, the following:

5. In response to [the Requester's] RTKL Requests, and given the three Requests' substantially similar substantive nature, [the Department] was able to collectively handle their responses by running one large email search of the specified individuals' emails utilizing the unique search terms repeated throughout [the Requester's] three (3) Requests, which yielded 3,936 pages of responsive records (70 records in total).

6. Out of those responsive records, this office then partially granted [the Requester's] requested access to 11 records consisting of 21 pages, and denied his requested access to the remaining 59 records consisting of 3,915 pages.

7. The 11 records to which [the Requester] requested access was partially granted consisted of email communications between the specified individuals in his Request that contained numerous mentions of specifically named inmates' and their medical conditions, statuses, diagnoses, assessments, treatment plans, etc.

8. As such, necessary redactions were applied to those 21 pages of granted records in accordance with the RTKL's medical records exemption.

9. In contrast to the 11 partially granted records, the remaining 59 records consisted of 2 emails between the specified individuals and 57 records that were attachments to responsive emails, all of which constitute in their entirety detailed discussions and evaluations of specified inmates' medical conditions, statuses, diagnoses, assessments, treatment plans, etc., such that redacting exempt medical information from those records would result in 3,915 pages of entirely redacted text.

10. Because those 3,915 pages of records wholly constituted exempt medical records in their entirety, [the Requester's] requested access to those 59 records were properly denied in their entirety.

Under the RTKL, a sworn affidavit or statement made under penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any competent evidence that the Department acted in bad faith, "the averments in [the attestation] should be accepted as true." *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d

374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

The Requester expressly seeks records related to the lab results of inmates. Such records clearly contain medical information of an individual. The OOR has repeatedly held that an individual's medical records are not subject to disclosure under the RTKL. *See Jarowecki v. Pa. Dep't of Corr.*, OOR Dkt. AP 2023-0992, 2023 PA O.O.R.D. LEXIS 1185; *Diebold v. Pa. Dep't of Corr.*, OOR Dkt. AP 2024-0190, 2024 PA O.O.R.D. LEXIS 333. The Requester argues that the responsive records should be provided in redacted form; however, "where a record falls within an exemption under Section 708(b), it is not a public record as defined by the RTKL and an agency is not required to redact the record..." *Pa. State Police v. Office of Open Records*, 5 A.3d 473, 481 (Pa. Commw. Ct. 2010). As the records identified by the Department are medical records in their entirety, the Department does not need to redact them. Therefore, based on the evidence provided, as well as the face of the Request, the records identified by the Department as responsive to the Request are medical records and, thus, are exempt from disclosure under Section 708(b)(5) of the RTKL. *See* 65 P.S. § 67.708(b)(5); *see also Pa. Game Comm'n v. Fennell*, 149 A.3d 101 (Pa. Commw. Ct. 2016) (holding that the OOR must consider uncontradicted statements in the appeal materials when determining whether an exemption applies).

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Department is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL; however, as

the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁵ 65 P.S. § 67.1303. All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: March 28, 2024

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent to: Matthew Sisler, QC3568 (via First-Class Mail only)
Joseph Gavazzi, Esq. (via portal only)
Andrew Filkosky (via portal only)

⁵ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).