pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
NICHOLAS DUPREE,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2022-2542**
	:	
PENNSYLVANIA DEPARTMENT OF	:	
CORRECTIONS,	:	
Respondent	:	

FACTUAL BACKGROUND

On September 6, 2022, Nicholas Dupree ("Requester"), an inmate in SCI-Benner Township, 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*., which stated:

> Pursuant to the RTKL and DC-ADM 003 ("[r]elease of [i]nformation), I hereby request all financial records pertaining to "Check Nos. 13090, 15662, and 15887" from the Riverview (CBT Bank), and/or inmate General Welfare Fund for inmate Dupree, including "bank transit numbers, dates of issuance, dates of transactions (i.e. the date in which the instruments was cashed by the payee or the holder upon order or demand) between October 2016 and August 2017.

On September 7, 2022, the Department invoked a thirty-day extension to respond; however, as the Department did not respond within the extension period, the Request was deemed denied on October 13, 2022. *See* 65 P.S. § 67.902(b)(2).[1]

On November 4, 2022, the Requester appealed to the Office of Open Records ("OOR"), stating grounds for disclosure. 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 November 4, 2022, the Requester submitted his position statement alongside his appeal. The Requester explained that he had submitted three cash slips to SCI-Benner's bookkeeping on different dates, directing them to issue payments to Elaine Q. Ratliff, Deputy Director for the Office of Judicial Records.[2] The Requester further argued that the records were financial and subject to disclosure under RTKL.

On November 18, 2022, the representative for the Department, Tara J. Wikhian, Esquire, submitted a position statement claiming that the responsive records to the Request are the Requester's inmate account statement and copies of check numbers 13090, 15662, and 15887. Based on this, the Department argued that responsive records are exempt from disclosure under 65. P.S. § 67.708(b)(6) because they contain personally identifying information. In support of its position, the Department submitted the attestations of Andrew Filkosky, Agency Open Records Officer ("AORO"), and Adam Beck, Corrections Institutional Business Manager.[3]

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[1] The Department submitted during the appeal that a timely final response was drafted and sent out, but it was accidentally addressed to another inmate.
[2] These statements were not made subject to penalties under 18 Pa. C.S. § 4904, unsworn falsification to authorities.
[3] Both individuals made these statements subject to penalties under 18 Pa. C.S. § 4904, unsworn falsification to authorities.

LEGAL ANALYSIS

The Department is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in 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 fact-finder … 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). Furthermore, under the RTKL, a sworn affidavit or statement made under the 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 evidence that the Department has acted in bad faith, "the averments in [the attestations] should be accepted as true." *McGowan v. Pa. Dep't of Envtl. 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)).

Personal identification information is exempt from disclosure under the RTKL. *See* 65 P.S. § 67.708(b)(6). Personal identification information includes a record containing all or part of a person's personal information. 65 P.S. § 67.708(b)(6)(i)(A). This includes personal financial information. Section 102 of the RTKL defines "personal financial information" as "[a]n individual's personal credit, charge or debit card information; bank account information; bank, credit or financial statements; account or PIN numbers and other information relating to an

individual's personal finances." 65 P.S. § 67.102. The OOR has held, and the Commonwealth Court has affirmed, that "inmate account records ... showing money in an inmate's account, along with deposits and withdrawals made to and from that account ... [are] the functional equivalent of bank statements," constituting personal financial information within the meaning of the RTKL. *Boyd v. Dep't of Corr.*, 2013 Pa. Commw. Unpub. LEXIS 275, *5 (Pa. Commw. Ct. 2013).[4]

The Department submitted that the responsive records were inmate account statements and copies of the checks numbered 13090, 15662, and 15887. Based on the nature of the records, the Department argued that they were exempt from access by the Requester because they contained personal identification information.[5]

The Filkosky Attestation states:

7. In response to Mr. Dupree's RTKL Request, I contacted the Business Managers at both SCI-Benner Township and SCI-Phoenix, the two institutions where Mr. Dupree has been housed, which would likely possess such records if they existed.
8. Joe Seilus, Business Manager at SCI-Phoenix, indicated that the only responsive record they possessed would be Mr. Dupree's inmate account statements for the relevant time period evidencing transactions from his account. Mr. Seilus informed me that there are no other records from SCI-Phoenix to provide in response to Mr. Dupree's RTKL Request.
9. Adam Beck, Business Manager at SCI-Benner Township, informed me that the only responsive records in their possession are copies of the three checks referenced in the RTKL Request, which were issued on behalf of Mr. Dupree from his inmate account.
10. Therefore, after conducting a good faith search in response to Mr. Dupree's RTKL Request as described above, I can state here that the Department does not possess any additional responsive records to the RTKL Request.

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[4] An unpublished opinion of the Commonwealth Court may be cited for its persuasive value. 210 Pa. Code § 69.414.

[5] All of the responsive records were the Requester's own personal information. However, the status of the individual requesting the record and the reason for the request, good or bad, are irrelevant as to whether a document must be made accessible under Section 301(b) [of the RTKL]. *Hunsicker v. Pa. State Police*, 93 A.3d 911, 913 (Pa. Commw. Ct. 2014). Therefore, the RTKL must be interpreted and applied without regard to the Requester's identity beyond meeting the RTKL's requestor definition. *See Clinkscale v. Dep't of Pub. Welfare*, 101 A.3d 137, 141 (Pa. Commw. Ct. 2014).

The Beck Attestation states:

5. Check numbers 130990, 15662, and 15887 were issued by SCI-Benner Township, on behalf of Mr. Dupree; all three checks were paid to the Office of Judicial Records.
6. Department policy describes the IGWF's purpose:

> The IGWF has two distinct purposes. *The first is to house inmates' individual accounts and process revenue and payment transactions for these accounts.* The second is use revenue from inmate-related functions to provide recreational and other services, as more fully defined in the IGWF List of Approved/Non-Approved Purchases and Services (Attachment A), to the inmate and reentrant population.

See Departmental Policy 3.1.1 (Fiscal Administration), Part IV Procedures, Section J (public policy https://www.cor.pa.gov).

7. Per Departmental Policy 3.1.1, each facility is responsible for maintaining a single checking account covering IGWF activities, including inmate accounts. *Id*., Section L, subsection 1.
8. In situations such as the one pertaining to the checks at issue, when an inmate needs a check to be sent to a third party, the inmate sends a cash slip to Inmate Accounts making such a request.
9. At that time, funds are withdrawn from the inmate's personal account and used to issue a check based on the information contained on the cash slip.
10. Public funds are not used when issuing these checks.

The inmate account statements are exempt from access because they contain personal financial information. In line with the reasoning in *Boyd*, the inmate account statements are functional equivalent of bank statements. *See Boyd v. Dep't of Corr.*, 2013 Pa. Commw. Unpub. LEXIS 275, *5 (Pa. Commw. Ct. 2013). They contain information about how much money an inmate has, how much they spent in a given time frame, and display withdrawals and deposits made into the account for the personal use of the inmate.

The checks are exempt from access because they also contain personal financial information. The above attestations reflect that the issuance of these checks, although through an agency-controlled general fund, does not involve funds utilized for the use of the government agency. Financial records of an agency are ordinarily subject to access under the RTKL, *see* 65

P.S. § 67.708(c), and an agency's financial records cover "dealing with" disbursements of public money and services acquisitions by the agency. *Commonwealth, Dep't of Pub. Welfare v. Eiseman*, 125 A.3d 19 (Pa. 2015). However, in this instance, it is clear from the explanation of IGWF's functions that the checks were issued on behalf of the Requester for the Requester's financial activities. Again, under the Commonwealth Court's holding in *Boyd*, the checks issued by IGWF are personal to the inmates, contain information about how inmates spend their money and might reflect what wealth the inmates may possess.

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. 65 P.S. § 67.1303. 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.[6] This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: November 29, 2022

/s/ Berk V. Demiral

BERK V. DEMIRAL
APPEALS OFFICER

Sent via US Mail to: Nicholas Dupree
Sent via Portal to: Andrew Filkosky,
Tara Wikhian, Esq.

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