



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
JOSHUA VAUGHN AND PENNLIVE,	:
Requester	:
	:
v.	: Docket No: AP 2023-0107
	:
DAUPHIN COUNTY,	:
Respondent	:

FACTUAL BACKGROUND

On November 29, 2022, Joshua Vaughn and PennLive (“Requester”) submitted a request (“Request”) to Dauphin County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “[Extraordinary Occurrence Reports (“EORs”)] from Dauphin County Prison for the release of inmates in the hospital” between January 2022 and October 2022.

On January 5, 2023, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the County denied the Request, arguing that disclosure of the responsive records would be reasonably likely to threaten personal security or public safety. 65 P.S. §§ 67.708(b)(1)(ii) and (2). In support of its denial, the County cited to the OOR’s decisions in *Sholtis v. Butler County*, OOR Dkt. AP 2022-0482, 2022 PA O.O.R.D. LEXIS 1120 and *Sholtis v. York County*, OOR Dkt. AP 2022-0666, 2022 PA O.O.R.D. LEXIS 1196.

On January 17, 2023, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.¹ The Requester disputes that the *Sholtis* cases cited to by the County apply to the records at issue in the instant matter and contends that the EORs responsive to the instant Request are significantly different than those at issue in the *Sholtis* cases. As part of his appeal, the Requester attached a copy of an EOR from July 27, 2021, which contained various attachments, including a Petition and Court Order, a Release Notification Form, and Emergency Release Form and an Inmate Property Inventory Form.² The Requester argues that the EORs requested are more analogous to clerical reports and that any information that is of concern to safety or security can be redacted. The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On January 27, 2023, the County submitted a position statement reiterating its grounds for denial. In support of its position, the County submitted an affidavit from Warden Gregory Briggs.

On March 15, 2023, the OOR sought confirmation of the bases upon which the County was relying to withhold the responsive EORs. On March 21, 2023, the County confirmed that it is asserting Sections 708(b)(1)(ii) and (2) of the RTKL as the reasons for withholding the records. 65 P.S. §§ 67.708(b)(1)(ii) and (2).

The OOR subsequently asked the County how many EORs it identified as responsive to the Request and requested that it confirm whether the July 27, 2021 EOR provided in the

¹ The Requester granted the OOR additional time to issue a final determination. See 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

² As part of his appeal, the Requester requests that the OOR direct the County to “provide a line-item response for each numbered item” in the Request to clarify the bases upon which the County relies for denying the Request. However, upon review of the County’s response to the Request and its confirmation during the appeal as to what grounds it is relying on in support of its denial, it is unnecessary to require that the County provide a response to each part of the Request, which differ only as to the applicable timeframe.

Requester's appeal was a true and correct copy. On March 31, 2023, in an effort to authenticate the July 27, 2021 EOR, the Requester submitted three copies of EORs that the County provided to him, in addition to the July 27, 2021 EOR, in response to a previous RTKL request. On April 3, 2023, the County confirmed that the EOR attached to the appeal was an official County prison document. The County asserts, however, that the EOR was produced to the Requester either prior to the aforementioned *Sholtis* cases or prior to the County's position that the *Sholtis* cases permit exemption of the EOR. The County also indicates that it cannot say how many EORs are responsive to the Request as the Request was far too broad and burdensome and that a search for responsive records would have necessitated the Prison to pull the physical copies for each month and inspect each report for the criteria identified in the Request. The County conveys that since it was determined that the Request would be "denied under the law," that search process never took place.³

LEGAL ANALYSIS

The County is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local 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 County 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*

³ In response to a request for records, it is an agency's duty to "make a good faith effort to determine if ... the agency has possession, custody or control of the record" requested. 65 P.S. § 67.901. The fact that agency personnel would have needed to review each potentially responsive record to determine if that record was responsive to the Request is, without more, not enough to absolve the agency from performing its search duties. *Id.*; 65 P.S. § 67.703.

Approval Bd., 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)). Although the Requester requested that the OOR review the responsive EORs *in camera*, the County objected to such review. The appeal record is sufficient enough for the OOR to render a decision and such review is not necessary.

The County contends that disclosure of the requested EORs would threaten personal security, 65 P.S. § 67.708(b)(1)(ii), and/or public safety or protection activities, 65 P.S. § 67.708(b)(2).⁴ Section 708(b)(1)(ii) of the RTKL exempts from access a record that if disclosed “would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.” 65 P.S. § 67.708(b)(1)(ii). To establish that Section 708(b)(1)(ii) applies, an agency must show: (1) a “reasonable likelihood” of (2) “substantial and demonstrable risk” to a person’s security. *Del. County v. Schaefer*, 45 A.3d 1149 (Pa. Commw. Ct. 2012). Meanwhile, Section 708(b)(2) of the RTKL exempts from disclosure “[a] record maintained by an agency in connection with ... law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety... or public protection activity.” 65 P.S. § 67.708(b)(2). In order to withhold records under Section 708(b)(2) of the RTKL, an agency must show: (1) the record at issue relates to law enforcement or public safety activity; and (2) disclosure of the record would be reasonably likely to threaten public safety or a public protection activity. *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 374-75 (Pa. Commw. Ct. 2013).

In order to show a reasonable likelihood, “[a]n agency must offer more than speculation or conjecture to establish the security-related exceptions under the [RTKL].” *Cal. Borough v. Rothery*, 185 A.3d 456, 468 (Pa. Commw. Ct. 2018). In addition, the Commonwealth Court has “defined

⁴ Although the evidence offered by the County seems to describe EORs as investigative records, the County confirms that the only legal bases it is asserting for withholding the responsive records are Sections 708(b)(1)(ii) and (2) of the RTKL. 65 P.S. §§ 67.708(b)(1)(ii) and (2).

substantial and demonstrable [risk] as actual or real and apparent.” *Borough of Pottstown v. Suber-Aponte*, 202 A.3d 173, 180 (Pa. Commw. Ct. 2019) (emphasis in original) (quoting *Carey*, 61 A.3d at 373); *see also Ciavaglia and the Bucks Cnty. Courier Times v. Newtown Borough*, OOR Dkt. AP 2019-0866, 2019 PA O.O.R.D. LEXIS 698.

In the context of a correctional institution setting, an agency need not demonstrate specific prior examples of harm to personal security or public safety to meet the agency’s burden of proof. *See, e.g., Wool v. Pa. Dep’t of Corr.*, OOR Dkt. AP 2018-0447, 2018 PA O.O.R.D. LEXIS 496. The OOR has generally found the professional opinion of individuals assessing the risks of security to be credible and will not substitute its judgment for that of those with far more familiarity with the issues involving personal security and public safety. *See Ocasio v. Pa. Dep’t of Corr.*, 183 A.3d 506, 2018 Pa. Commw. LEXIS 18 (Pa. Commw. Ct. 2018) (“This Court has repeatedly recognized that the nature of the prison setting requires that personal security and public safety issues be given serious consideration where a RTKL request seeks records concerning prisons”); *see also Carey*, 61 A.3d at 374 (“Personal security issues are of particular concern in a prison setting”) (citations omitted). However, the OOR is not required to accept such opinions, especially if those opinions are not supported by an adequate factual basis in the record. *ACLU of Pa. v. PSP*, 232 A.3d 654, 666 (Pa. 2020) (“Courts certainly may grant some degree of deference to law enforcement agencies’ opinions regarding how disclosure of a given document might have such an effect, just as they may attend carefully to the conclusions of credible and duly qualified experts in any case. But courts should not defer so utterly to those opinions that a law enforcement agency’s discretion to cabin its disclosure obligation is only as limited as its ability to fashion an affidavit that ticks off *Carey*’s three boxes”).

In support of its argument that the EORs are exempt from public disclosure under Sections 708(b)(1)(ii) and (2) of the RTKL, Warden Briggs attests in his affidavit as follows:

2. I am over twenty-one years of age and am competent to give the testimony in this affidavit.

3. I am employed by [the County] as the Warden of the Dauphin County Prison. I have served in the corrections field for over sixteen (16) years. I served as Warden in a different prison for seven (7) years. In working for [the County], I was an Associate Warden for one (1) year and I have served as the Warden for three (3) years. I believe based on my training and experience that I am intimately familiar with issues related to the care, custody and control of inmates in a county correctional context and I can render competent professional opinions on the subject.

4. I am providing this [a]ffidavit for use in [RTKL] Appeal designated in the style of the case hereinabove.

5. I believe the disclosure of any other information or records relating to [EORs] in this matter and under this [R]equest will result in jeopardizing the safety of corrections officers and other staff at the facility and in the community, and as a result overall public safety.

6. Extraordinary occurrences range in character from events involving small numbers of individuals (such as incidents of violence or sexual assault) to matters affecting large-scale operations, such as a lock-down of an institution. They may also involve medical events, transports to medical facilities relating to medical events, and procedures relating to custody of inmates present in hospitals or other medical facilities both on and off-site.

7. An [EOR] is a tool used by the senior staff to identify and detect issues, principally security and safety issues, that should be addressed or which warrant further review or attention, as well as to determine the efficacy of existing policies and practices by capturing and reviewing specified information, and further to document and analyze events in the event litigation arises from the event being reported.

8. The EORs often contain a detailed description of the extraordinary occurrence, a report by each staff member involved in the extraordinary occurrence, the appropriate investigation and/or other responses to the occurrence, including, if any, the possible issuance of disciplinary action. In this instance the EORs requested were for “all EORs from [the County’s] Prison for the release of inmates in the hospital from January, 2022 through October, 2022.”

9. Public disclosure of the EORs and the information contained therein would result in grave security issues at correctional institutions.

10. Further, if inmates become knowledgeable of such “unusual occurrences” in the Prison or incidents involving inmates outside of the [P]rison, the health and safety of corrections officers and other staff will be compromised. If the information on fights and/or assaults is made public and released, this information may result in inmates seeking to retaliate against other inmates and/or corrections officers. Information about transportation and custody procedures as found in EORs relating to visits to outside medical facilities and other locations may result in the increased likelihood of violence against prison staff, prison medical staff, non-prison medical staff and others as well as increase the risk of escape attempts either during transport to or at off-site medical facilities such as hospitals and other off-site facilities.

11. I am concerned about inmates becoming aware of how the Prison responds to such “unusual occurrences” so that inmates can anticipate such actions and plan around such measures with regard to disruptive activity such as fights or assaults; the obtaining and hiding of contraband; attempted suicides or violent activity directed at another inmate or prison staff; the use of violence during medical/hospital transports or treatment; and risk of escape attempts while at hospitals or other outside medical facilities.

12. It has been my experience that incarcerated persons will use whatever information they can garner with regard to the operations of the Prison and its procedures to attempt to gain an advantage over corrections officers and staff. In my experience this rule of thumb also applies to medical/hospital transports and procedures during medical/hospital care both on-site and off-site.

13. Public disclosure of the contents of investigational records, such as the EORs, to unauthorized individuals, would deprive the affected inmate or inmates, affected staff and/or the alleged abuser of the right to an impartial review of the underlying matter. Staff, inmates, or others who may be adversely interested in the matter would be aware of its existence and the allegations and would be likely to subject the witnesses, alleged victim/abuser, or reviewing investigator to threats, manipulation, abuse or other pressure to obtain a particular result. As noted above, the revelation of information relating to hospital/medical transportation and custody or release from custody procedures relating to medical/hospital procedures both on-site and off-site pose a substantial risk of harm to medical professionals and staff.

14. Public disclosure of investigational records is reasonably likely to result in retaliation by inmates and staff whose alleged misbehavior is described in the investigational records. Such individuals would be reasonably likely to identify, harass, threaten or retaliate against the inmate or the other persons identified in the investigational records.

15. Moreover, such individuals would be put on notice to change behavior or destroy evidence related to the investigation, thereby jeopardizing the ability of the Prison investigator to gather all relevant facts and reach an impartial or just conclusion with regard to the merits of the investigation.

16. Public availability of investigational records would hinder the Prison's ability to secure administrative or civil sanctions or pursue criminal charges in appropriate cases.

17. Violent attacks are always a real danger in the prison context, and violent retaliation will result in disclosure of investigational records which describe which individuals provided information related to the investigation.

18. Escapes are always a real and present danger in the prison context and there is an increased likelihood of escapes and attempted escapes during transport and off-site custody. Revelation of information in EORs related to hospital custody, releases related to hospitals, or transport must be protected from exposure to those who would use such information for nefarious purposes.

Under the RTKL, statements made in a sworn affidavit 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 County has acted in bad faith, "the averments in [the affidavit] 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 County argues that its denial of access to the requested EORs is premised on two decisions issued previously by the OOR: *Sholtis v. Butler County*, *supra.* and *Sholtis v. York County*, *supra.* The *Sholtis* cases cited to by the County involved essentially the same RTKL requests, submitted to different agencies, seeking, among other things, use of force reports from county prisons, records detailing the instances involving "the use of spit hoods, restraint chairs, shackles, handcuffs and chemical irritants," records tied to "the use of ...CERT teams or tactical response teams," and records involving "the use of 'anti-suicide smocks'...". *Sholtis v. Butler*

County, supra. at *1-*2; *Sholtis v. York County, supra.* at *1-*2. In each case, the agencies identified extraordinary occurrence reports as the responsive records to the RTKL request; each agency also claimed that those reports were exempt under both the personal security and public safety exemptions of the RTKL. In both cases, the OOR agreed with the arguments of the agencies and found, based on the evidence provided, that the EORs were exempt from public access. Specifically, the OOR noted in *Sholtis v. York County*, that the agency explained “in detail how EORs are related to the Prison’s efforts to maintain stability, safety, and security, and how their disclosure would enable interference with the Prison’s public protection activities, thus posing a threat to inmates, staff, and the public.” *Id.* at *10. The OOR further acknowledged the agency’s evidence showing “the regularity of violent attacks and how disclosure of the EORs would have a chilling effect on the Prison’s investigations and result in threats to all individuals involved.” *Id.* at *11. Similarly, in *Sholtis v. Bucks County*, the OOR noted that the agency’s evidence “links the disclosure of the EORs to specific risks to inmates, staff, and the public, as well as to the administration of the Prison, that are likely to result therefrom.” *Id.* at *11. The OOR further indicated that the requester in that case had not submitted any evidence to counter the agency’s evidence. *Id.*

Contrary to the County’s arguments that the *Sholtis* cases must control the outcome of the instant appeal, the EORs sought by the Request in this matter are distinguishable from the EORs responsive to the requests in the *Sholtis* cases. As the Requester correctly notes, the requests in both *Sholtis* cases sought records related to the use of force within correctional facilities. The Request here, however, seeks EORs for “the release of inmates in the hospital” for different time periods. Thus, while the same *type* of record is at issue, an EOR, the underlying event for which the responsive reports were created is quite different in the instant matter. Moreover, the fact that

the OOR's decisions in the *Sholtis* cases found EORs related to the use of force exempt under the RTKL's security exemptions is not necessarily conclusive as to whether the EORs in the instant appeal are exempt from access. Indeed, when examining whether the RTKL's security exemptions apply, it is essential that, as part of our analysis, we look to, not only to the type of record at issue, but also to the content of that record in order to determine whether the disclosure of the record would be reasonably likely to result in the harm contemplated by the RTKL's exemptions. The County's assertion that the OOR's decisions in the *Sholtis* cases would be rendered meaningless were we to grant access to the EORs in the instant matter is without merit. Rather, in any appeal before the OOR, it is the agency's burden to present sufficient factual evidence to prove the exemptions relied upon by the agency apply to the record or records at issue. See 65 P.S. § 67.708(a)(1).

Moving to the evidence before us in the instant matter, we note that, with certain exceptions, much of the evidence presented by the County in Warden Briggs' affidavit is essentially the same evidence verbatim as was presented by the affiant in the *Sholtis v. Butler County, supra*. While it is understandable how much of the evidence provided may relate to an EOR stemming from a "use of force" event, as was the scenario in the *Sholtis* cases, it is not as clear how this same evidence applies in the event of the "release of an inmate in the hospital." For example, in Paragraph 10 of Warden Briggs' affidavit, he indicates that:

...if inmates become knowledgeable of such 'unusual occurrences' in the Prison or incidents involving inmates outside of the [P]rison, the health and safety of corrections officers and other staff will be compromised. If the information on fights and/or assaults is made public and released, this information may result in inmates seeking to retaliate against other inmates and/or corrections officers.

Briggs' Aff. at ¶ 10. While the foregoing statement makes sense in a "use of force" context in terms of how disclosure of the record may result in harm other individuals, it is not as clear how

such statements relate to the release of an inmate from the hospital. On the other hand, Warden Briggs does offer certain statements concerning EORs as they pertain to hospital transports and custody. Warden Briggs indicates that “[i]nformation about transportation and custody procedures as found in EORs relating to visits to outside medical facilities and other locations may result in the increased likelihood of violence against prison staff, prison medical staff, non-prison medical staff and others as well as increase the risk of escape attempts either during transport to or at off-site medical facilities...” Briggs Aff. at ¶ 10. According to Warden Briggs, the “revelation of information relating to hospital/medical transportation and custody or release from custody procedures relating to medical/hospital procedures both on-site and off-site pose a substantial risk of harm to medical professionals and staff.” Briggs Aff. at ¶ 13. Warden Briggs further states that “[e]scapes are always a real and present danger in the prison context and there is an increased likelihood of escapes and attempted escapes during transport and off-site custody.” Briggs Aff. at ¶ 18. Given the foregoing, there is no question that the evidence offered by the County describes the perceived harm that might occur were the responsive EORs released to the public. Nevertheless, the evidence offers very little description of the actual records at issue - *i.e.* EOR’s that document the release of inmates in the hospital – and how the disclosure of that information connects to a reasonable likelihood of the described harm. The responsive EORs are generally described in Warden Briggs’ affidavit as containing “a detailed description of the extraordinary occurrence, a report by each staff member involved in the extraordinary occurrence, the appropriate investigation and/or other responses to the occurrence.” Briggs’ Aff. at ¶ 8. Such a description, however, is somewhat conclusory.

Adding to our concerns about what the responsive records in this matter actually contain and how the disclosure of that information has a reasonable likelihood of causing the described

harm, are the sample EORs submitted by the Requester which were provided to him by the County in response to a prior RTKL. While the County's use of its discretion to provide the EOR documents to the Requester previously is not a basis for requiring disclosure of similar documents responsive to the instant Request, a review of those documents is helpful in understanding what information the EORs responsive to the instant Request might contain.

The County has verified that the July 27, 2021 EOR that was submitted with the appeal is an authentic County document. In addition, we have been given no reason to doubt the authenticity of the additional EOR forms submitted during the course of the appeal by the Requester. Notably, all of the copies of EORs submitted by the Requester were redacted. Sections 1 through 5 of each of the EORs contain the names and title of the reporting officer and supervisor in charge, along with the date of the report. Section 6 of the EORs identifies the "Type of Extraordinary Occurrence." In that section, the "other" checkbox is selected on all of the EORs and the occurrence is described as "Release of Hospitalized Inmate" or "Inmate released from Dauphin County Prison Custody while Admitted to Harrisburg Hospital" or some variation thereof. Thus, given those descriptions, these forms, had they been generated between January 2022 and October 2022, would be the type of record responsive to the instant Request.

Sections 7 and 8 of the EORs identify the date and time of the event. Section 9 identifies the inmate by name, inmate number, date of admission to the prison, criminal offenses, and "sentence or detention," which includes the bail amount on most of the forms. Section 10 on each of the reports, which pertains to circumstances where the occurrence is a natural death of the inmate, is blank on all of the forms. Section 11 of the EORs is titled "Description of Extraordinary Occurrence." The descriptions set forth on each of the forms is very similar:

EOR of July 21, 2019 - On the above listed date and time, [the inmate] was released from Dauphin County Prison Custody while admitted to Harrisburg Hospital.

EOR of September 16, 2019 - On the above listed date and time [the inmate] was released from Dauphin County Prison custody while admitted to the Harrisburg Hospital. [The inmate's] property was taken to the hospital and [the C.O.s] returned to the Prison.

EOR of August 21, 2020 - On the above date and time, [the inmate] was released from Prison custody while at the hospital. All his property was take[n] to the hospital and staff returned to the facility.

EOR of July 27, 2021 – On July 27, 2021, at 1743 hours, a Release “Bail/Court” was generated for [the inmate] releasing him from Dauphin County Prison custody. [The inmate] has been admitted to the UPMC Pinnacle Health Harrisburg Hospital since July 24, 2021. [The Sergeant] returned [the inmate's] personal property to him at the hospital and retrieved all Prison issued items. Corrections Officers and (Hospital Detail) returned to the prison at 1820 hours without incident. [The Warden] was notified of this release. Shift Quotas were reduced by two (2) Officers.

Section 12 of each report, which relates to injuries or damages was either left blank or indicated as “none noted” or “N/A.” Section 13 of each of the EORs identifies the various documents attached to each report, and Section 14 of the EORs, the final part of the report, includes the name, signature and title of the reporting officer. The redactions on the EOR forms themselves appear to protect the names or identification of prison personnel. Otherwise, however, the forms are unredacted and the information revealed appears innocuous to the security or safety of corrections/medical staff or the public.

The attachments to each of the EORs vary, but generally included is a Prison Release Notification form, an Inmate Property Inventory Form, and/or a Medical Transport Form. Information on those forms includes redacted names of what appears to be both corrections and medical personnel within the prison or others who signed the documents. The medical transport forms identifies, among other things, the reasons for transporting the individual to the hospital (*i.e.* hanging, minimally responsive, not breathing, etc.) and at least in the case of one form, certain

medical information pertaining to the inmate. Per the attachments, most of the individuals, if not all, to which the EORs pertain, appear to have been released on their own recognizance.

Overall, we must consider the underlying purpose of the RTKL to promote government transparency and the edict that exemptions from disclosure must be narrowly construed. *Borough of Pottstown v. Suber-Aponte*, 202 A.3d 173 (Pa. Commw. Ct. 2017); *Gingrich v. Pa. Game Comm'n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38, *16 (Pa. Commw. Ct. 2012) (“The RTKL must be construed to maximize access to government records”). Given the foregoing discussion and in consideration of all of the evidence in the appeal record before us, we are not persuaded that the type of EORs sought in the Request in this instance are entirely exempt from access under Sections 708(b)(1)(ii) or (2) of the RTKL. While we certainly appreciate the dangers and risks associated with a correctional setting, the evidence in this case does not establish that disclosure of the specific type of EORs requested, when appropriately redacted, make it more likely than not that corrections or medical staff are at risk of substantial and demonstrable risk of physical harm or to their personal security. Nor does the evidence show that disclosure of the responsive records, were they properly redacted, would be reasonably likely to jeopardize or threaten public safety or a public protection activity. Accordingly, the EORs responsive to the Request should be provided to the Requester, but such records may be redacted to conceal the identity of corrections officers, medical staff or other individuals whose personal security could be jeopardized by the release of the documents. *See Stein v. Office of Open Records*, No. 1236 C.D. 2009, 2010 Pa. Commw. Unpub. LEXIS 313 (Pa. Commw. Ct. 2010) (the first names of corrections officers are not subject to public access under the RTKL); *Carey, supra*. In addition, to the extent that any of the records contain information that, if released, could likely pose a security threat to an individual or the public, (e.g. staffing schedules/changes, tactical or

operational procedures, etc.) such information may be redacted. Similarly, any medical information may also be redacted. 65 P.S. § 67.708(b)(5); Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 45 C.F.R. § 164.502(a); Pa. Const. Art. I, Sec. 1. However, we strongly emphasize that the County’s ability to redact identifying or protected information in responsive EORs should not be viewed as a carte blanche to redact the entirety of the responsive EORs. As noted previously, most of the information reviewed in the EOR examples submitted by the Requester does not appear to be the type of information that is protected by Section 708(b)(1)(ii) or (2).

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is required to provide all responsive records within thirty days. Such records may be redacted, if necessary, as discussed above. 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 Dauphin County Court of Common Pleas. 65 P.S. § 67.1302(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.⁵ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: April 12, 2023

/s/ Angela Edris

APPEALS OFFICER
ANGELA EDRIS, ESQ.

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

Sent via the OOR Appeal Portal to: Joshua Vaughn/PennLive;
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