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APR 05 2023

OFFICE OF OPEN RECORDS

PHILIP JENSEN

VS.

NO.

PENNSYLVANIA DEPARTMENT

OF CORRECTIONS

NOTICE TO DEFEND-CIVIL

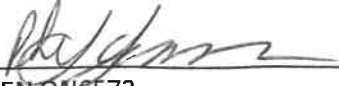
You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**DAUPHIN COUNTY LAWYER REFERRAL SERVICE
213 NORTH FRONT STREET
HARRISBURG, PA 17101**

3-25-2023 AD


PHILIP JENSEN QN6572
SCI-HOUTZDALE
PO BOX 1000
209 INSTITUTION DRIVE
HOUTZDALE, PA 16698

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Philip Jensen
Petitioner

v.

Pennsylvania Department of Corrections
Respondent

CASE NO.:

PETITION FOR REVIEW

PETITION FOR REVIEW

Pursuant to Rule of Appellate Procedure 1513, Philip Jensen, Petitioner files this Petition for Review of the March 17, 2023 Final Determination of the Pennsylvania Office of Open Records ("OOR") Docket AP 2023-0393 provided as EXHIBIT A. In support thereof Petitioner states the following:

JURISDICTION

1. This Court has appellate jurisdiction over this petition for review as an Appeal from a determination of the Office of Open Records involving the Department of Corrections ("DOC"), pursuant to PA. C.S. § 763 and the Pennsylvania Right-to-Know Law ("RTKL") 165 P.S. § 67.1301(a).

PARTIES INVOLVED IN THE APPEAL

2. Philip Jensen, Petitioner, is an Inmate at the SCI-Houtzdale institution with an address of 209 Institution Drive, Po Box 1000 Houtzdale, PA 16698.
3. PENNSYLVANIA Department of Corrections ("DOC") Respondent is an Agency and executive department of the Commonwealth of Pennsylvania with an address of 1920 Technology Parkway Mechanicsburg, PA 17050.
4. Pennsylvania office of Open Records ("OOR") is the Pennsylvania agency charged with reviewing appeals from agency determinations under "RTKL". OOR is not to be named as a party but their address is 333 Market St. 16th floor, Harrisburg PA 17101.

FACTUAL AND PROCEDURAL BACKGROUND

5. ON 11-13-22 AD Petitioner, Pursuant to the "RTKL" submitted a proper sufficiently specific request to Respondent Requesting:

ELECTRONIC RECORD OF: ALL LINE ENTRY/FINANCIAL LEDGER OF DECEMBER 12021 "CUSTODIAL ACCOUNT" RESOURCES OF THE DEPARTMENT OF CORRECTIONS FOR PRISON INMATES.

[see attached commonwealth "CAFR" page 78]

see attached marked "EXHIBIT-B".

6. On 1-24-2023 AD Respondent Mailed a full denial stating that Petitioners request (a) fails to identify or describe the records sought with sufficient specificity to enable the RTKL office to ascertain which records were sought, (b) request contains no limitation with regards to persons, does not provide sufficient descriptive information in any of all of the categories, (c) requests must clearly define universe of documents and must be requested such that there are no judgments to be made as to whether the documents are related to the request because the documents either do or do not fall within the ambit of the request. see attached Marked "EXHIBIT C".

7. On 2-10-23 AD Petitioner Mailed an Appeal to "OOR" stating said request was sufficiently specific because it had (a) a subject matter that identifies the transaction or activity of the agency about which records are sought (b.) properly identify a limited scope of responsive records and (c.) had a finite time frame. See case Pa. Dept. of Edu. v. Pittsburgh Post-Gazette 119 A3d 1121 (2015).

Petitioners request subject matter identifies the agency's activity as "ALL LINE ENTRIES/FINANCIAL LEDGER" of a "Custodial Account" containing the combined resources of the DOC for Prison Inmates and is about which records are sought. I properly identified a limited scope of responsive as such Petitioner was only requesting the "DOC's" "Custodial Account" records and no other account.

Petitioner also had a finite time frame as the request had the month of December and year 2021. See "EXHIBIT D",

8. Said request was proper in all aspects and the records are considered public due to not being exempt under RTKL 3708, is not exempt from being disclosed under any other federal or state law or regulation or judicial order or decree or is not protected by a privilege. Said records also fall within the definition of a Record because it documents a transactions or activity of the agency and it is created received or retained pursuant to law or in connection with a transaction, business or activity of the agency.

9. Petitioner requested one kind of document which is known to Respondent as it is their own account not one Inmate or individual prison but the "custodial account" of the combined resources of ALL the "Doc" for Prison Inmates. Respondents made no attempt to contact 3rd Party's to inquire and see if they had responsive records requested as the Commonwealth of Pennsylvania is most likely the one contracted to perform the agency function of fiduciary financial account services. Petitioner attached to the RTKL request in question, the cover page and page 78 of the Commonwealth of Pennsylvania's Comprehensive Annual Financial Report ("CARF") which states under the heading:

NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Fiduciary Funds

... Custodial funds account for assets held in trustee capacity or as custodian for third party... governmental units...

... "The custodial Accounts a custodial fund represents the combined resources held by the Department of Corrections for Prison Inmates..."

10. Pursuant to 3506 d. of the RTKL because the requested records are in possession of a 3rd Party whom Respondents has contracted to perform a government function on behalf of the Agency i.e. the Commonwealth of Pennsylvania and directly relates to the government function & is not exempt under the RTKL it shall be considered Public Records of the agency and must be retrieved for inspection and copying. Respondents had a mandatory duty to inquire to the Commonwealth of Pennsylvania about requested records.

11. On March 17, 2023 "DOR" issued a Final Determination denying Petitioner's RTKL Appeal. EXHIBIT A. In denying the Petitioner's Appeal "DOR" relied on Respondents Position and affidavit allegedly submitted on March 6, 2023. Petitioner never received any such response as Respondents failed to serve Petitioner. see sci-Houtzdale Incoming Mail Log of Petitioner for January, February and March 2023 Marked EXHIBIT E. Respondents failed to serve Petitioner their argument and affidavit which "DOR" used to deny Petitioner's Appeal.

Pursuant to Wishniefsky v. Pa. D.O.C. 144 A-3d 290 (2016) the "RTKL" follows the spirit of "due process" and the right to be heard and to respond. "DOR" Failed Petitioners Due Process rights as they relied on Respondents affidavit and submission that was never forwarded to Petitioner. EXHIBIT E supra

12. "DOR" stated in said Final Determination that Respondents allegedly contacted the Director of the Department's Bureau of Administration where an inquire was made for possible responsive records and they claimed they aware of no "custodial account" like requested. "DOR" stated this was therefore a "good faith" search and Respondents allegedly affidavit under Penalty of perjury served as sufficient evidentiary to support a denial. Quoting Sherry v. Radnor Twp. sch. Dist. 20 A3d 515, 520-21 (2011). This is of no moment; mostly due to Respondents not contacting the Commonwealth of Pennsylvania as pursuant to their "CAFR" they hold the "Custodial Account" (requested) as fiduciary to the "Doc".

See original request EXHIBIT B with the Commonwealth's "CAFR" p. 78. Under section 901 of RTKL Uniontown Newspapers Inc. v. Pa. D.O.C. 185 A3d 1161 (2018) stated a "Good Faith"

Search "Open records officers have a duty to advise all custodians of potentially responsive records about the request and obtain all potentially responsive records from those in possession ... When records are not in an agency's physical possession, an open records officer has duty to contact agents within its control, including third-

contractors". In this instance Respondents have completely failed to contact the Commonwealth of Pennsylvania who would have requested records. In sum Respondents failed to show it has conducted a search "reasonably calculated" to uncover all relevant documents and the allegedly Respondents response and affidavit was not detailed and "conclusory". See cases McGowan v. Pa. Dept. of ENV. PRO. 103 A3d 374, 380, United Healthcare of Pa. Inc. v. Pa. Dept. of Human Services 187 A3d at 381, and Governor v. Scottford 65 A3d 1095, 1103. See also Wexford Health Sources Inc. v. Pa. D.O.C. 247 A3d 1179 --- "conclusory affidavits, standing alone, will not satisfy an agency's burden of proof under RTKL." These cases support a reversal of "OOR's" Final Determination because respondents affidavit failed to contact the Commonwealth of Pennsylvania which retains requested records. Respondents alleged inquire to Director of Department's Bureau of administration would of never teilled fruit and "OOR" relying on that verified statement was a abuse of discretion.

13. "OOR" footnotes^s in Final Determination on p. 5 that while... evidence may establish that a [record] should exist, the OOR lacks jurisdiction to rule on the propriety of the lack of such [record]... Quoting Troupe v. Borough of Punxsutawney OOR DKT. AP2010-0743. OOR admits petitioners requested records exist but ruled in favor of Respondents due to them swearing under oath they made a good Faith search but inquiring

to a department that would not have records. Petitioner in his original request stated who would have requested records and at initial response and appeal to "oor" the respondents have refused to inquire to the Commonwealth of Pennsylvania and in doing so violated MY Right to inspect and copy public records and in Bad Faith.

OBJECTIONS TO THE MARCH 17, 2023 Final Determination

14. The "oor" erred as a matter of Law in relying on the Respondents response and affidavit in denying Petitioners RTKL Appeal when it was never furnished to Petitioner for rebuttal and opposition. This violated Due Process which RTKL follows the spirit of.

15. The "oor" erred as a matter of Law when they relied on Respondents Affidavit when such declaration was "Conclusory" and not detailed as they failed to inquire to the Commonwealth of Pennsylvania who would have responsive records like Petitioner Plead in original request and "oor" Appeal.

16. The "oor" erred as a matter of Law when they failed to affirm Respondents Bad faith actions; contacting a department that would not have responsive records than to claim they do not possess it based on that inquirer

and "DOR" basically admitting the requested records do exist in a foot note but DOR lacks jurisdiction to rule on the propriety of the lack of such record.

WHEREFORE, Petitioner, for all the foregoing reasons Prays this Court ORDER and DECREE that Respondents violated Petitioner's right to inspect and copy Public Records under § 701 of RTKL and in Bad Faith and Direct Respondents to Conduct a Good Faith Search to Commonwealth of Pennsylvania and Reverse "DOR's" Final Determination Docket AP2023-0393 and award Monetary Compensatory under RTKL and the cost for filing this suit and any other relief deemed just and equitable.

Respectfully,



3-28-23 AD

501-Holtzdale

Philip Jensen #PN6572

PO Box 1000

209 Institution Dr.

Holtzdale, Pa 16698

VERIFICATION

I hereby state I have read the averments herein and they are true and correct to the best of MY Knowledge, information and belief, I understand that this verification is being made Pursuant to 18 Pa C.S. 34904 relating to unsworn falsification to Authorities.

BY: Philip Jensen executed 3-28-2023 AD
Philip Jensen

CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial system of Pennsylvania: Case Records of the Appellate and Trial courts that require confidential information and documents differently than non-confidential information and Documents.

BY: Philip Jensen executed 3-28-2023 AD

CERTIFICATE OF SERVICE

I hereby certify that i served the foregoing Petition
for Review this 28 day of MARCH, 2023
to the person(s) on the dates and in the Manner
stated below which service satisfies the requirements
of Pa. R. A.P. 121:

① Certified Mail No. 7021 2720 0000 1210 5840

Department of Corrections
c/o civil litigation
1920 Technology Parkway
Mechanicsburg, PA 17050

② Certified Mail No. 7021 2720 0000 1210 5864

Office of Open Records
333 Market St.
16th Floor
Harrisburg, PA 17101

③ Certificate of Mailing

Commonwealth Court of Pennsylvania
Clerk of Court
601 Commonwealth Ave. Suite 2100
Harrisburg, PA 17106-9185

BY: Philip Jensen executed 3-28-2023 AD

501 Houtzdale

Philip Jensen # QN6572 Page 11 of 12

PO Box 1000

209 Institution Dr.

Houtzdale PA 16698

ORDER

AND NOW, this — day of —, 2023
upon consideration of Petitioners Petition for
Review it is hereby ORDER and DECREE that Respondent
is Directed to Make a "good Faith" Search to the
Commonwealth of Pennsylvania for any responsive records
of said RTKL Request; Reverse Office of Open Records
Final Determination Docket AP 2023-0393 and
Respondents Violated Petitioners Right to access of
RTKL under § 701 of RTKL; Petitioner is awarded monies
and Respondents are Punished the Maximum amount
permitted under RTKL.

BY THE COURT

J.

" EXHIBIT F "

DATE RECEIVED	FROM	TO	HOUSING # STATUS
March, 21 2023 16:02:13	DEBBIE JENSEN	PHILIP JENSEN	J-A Delievered
March, 21 2023 15:26:22	DEBBIE JENSEN	PHILIP JENSEN	J-A Delievered
March, 21 2023 14:59:25	DEBBIE JENSEN	PHILIP JENSEN	J-A Print Batch 1258084
March, 21 2023 14:41:58	DEBBIE JENSEN	PHILIP JENSEN	J-A Print Batch 1258060
March, 21 2023 14:15:54	DEBBIE JENSEN	PHILIP JENSEN	J-A Print Batch 1258060
March, 21 2023 10:50:43	PENNSYLVANIA DEPARTMENT OF CORRECTIONS	PHILIP JENSEN	J-A Print Batch 1258060
March, 21 2023 09:39:25	COMMONWEALTH OF PENNSYLVANIA	PHILIP JENSEN	J-A Print Batch 1258060
March, 20 2023 15:50:20	RTS	PHILIP JENSEN	J-A Print Batch 1257140
March, 18 2023 18:14:15	RTS	PHILIP JENSEN	J-A Print Batch 1257140
March, 18 2023 14:52:51	PENNSYLVANIA DEPARTMENT OF GENERAL SERVICES	PHILIP JENSEN	J-A Print Batch 1257160
March, 18 2023 14:32:26	DEBBIE JENSEN	PHILIP JENSEN	J-A Print Batch 1257140
March, 18 2023 14:30:33	DEBBIE JENSEN	PHILIP JENSEN	J-A Print Batch 1257140
March, 18 2023 14:25:16	PENNSYLVANIA INSURANCE DEPARTMENT	PHILIP JENSEN	J-A Print Batch 1257140
March, 17 2023 14:48:36	LEGISLATIVE REFERENCE BUREAU	PHILIP JENSEN	J-A Print Batch 1256492
March, 17 2023 10:25:39	RTS	PHILIP JENSEN	J-A Print Batch 1256492
March, 16 2023 10:38:13	LEGISLATIVE REFERENCE BUREAU	PHILIP JENSEN	J-A Print Batch 1255814
March, 15 2023 14:33:25	RTS	PHILIP JENSEN	J-A Print Batch 1254962
March, 14 2023 16:14:45	UNITED STATES SECURITIES AND EXCHANGE COMMISSION	PHILIP JENSEN	J-A Print Batch 1254962
March, 14 2023 16:12:41	UNITED STATES SECURITIES AND EXCHANGE COMMISSION	PHILIP JENSEN	J-A Print Batch 1253984
March, 14 2023 14:54:35	NATIONAL ARCHIVES AND RECORDS ADMINISTRATION	PHILIP JENSEN	J-A Print Batch 1253984
March, 14 2023 14:45:38	DEBBIE JENSEN	PHILIP JENSEN	J-A Print Batch 1253984
March, 14 2023 14:45:33	DEBBIE JENSEN	PHILIP JENSEN	J-A Print Batch 1253984
March, 10 2023 14:13:35	DEBBIE JENSEN	PHILIP JENSEN	J-A Print Batch 1252554
March, 10 2023 14:11:09	DEBBIE JENSEN	PHILIP JENSEN	J-A Print Batch 1252574
March, 10 2023 13:58:49	DEBBIE JENSEN	PHILIP JENSEN	J-A Print Batch 1252554
March, 03 2023 15:52:44	DEBBIE JENSEN	PHILIP JENSEN	J-A Print Batch 1248724
February, 28 2023 14:53:54	UNITED STATES SECURITIES AND EXCHANGE COMMISSION	PHILIP JENSEN	J-A Print Batch 1246431
February, 28 2023 14:38:50	SECURITIES AND EXCHANGE COMMISSION	PHILIP JENSEN	J-A Print Batch 1246431
February, 28 2023 14:08:26	DEBBIE JENSEN	PHILIP JENSEN	J-A Print Batch 1246452
February, 28 2023 14:05:34	DEBBIE JENSEN	PHILIP JENSEN	J-A Print Batch 1246431
February, 28 2023 13:42:35	PENNSYLVANIA DEPARTMENT OF TRANSPORTATION	PHILIP JENSEN	J-A Print Batch 1246431
February, 28 2023 11:01:09	PENNSYLVANIA DEPARTMENT OF TRANSPORTATION	PHILIP JENSEN	J-A Print Batch 1246431
February, 25 2023 14:29:22	RTS	PHILIP JENSEN	J-A Print Batch 1245560

THIS MAILING
WAS NOT IT

February, 25 2023 12:34:32	DEBBIE JENSEN	PHILIP JENSEN	J-A	Print Batch 1245582
February, 22 2023 17:09:22	DEBBIE JENSEN	PHILIP JENSEN	J-A	Print Batch 1244208
February, 17 2023 15:14:49	DEPARTMENT OF STATE	PHILIP JENSEN	J-A	Print Batch 1241621
February, 15 2023 11:02:17	PENNSYLVANIA DEPARTMENT OF GENERAL SERVICES	PHILIP JENSEN	J-A	Print Batch 1240276
February, 15 2023 09:42:50	LEGISLATIVE REFERENCE BUREAU	PHILIP JENSEN	J-A	Print Batch 1240276
February, 15 2023 07:43:46	RTS	PHILIP JENSEN	J-A	Print Batch 1240276
February, 14 2023 14:12:48	DEBBIE JENSEN	PHILIP JENSEN	J-A	Print Batch 1239280
February, 14 2023 13:34:52	DEBBIE JENSEN	PHILIP JENSEN	J-A	Print Batch 1239280
February, 14 2023 13:21:19	DEBBIE JENSEN	PHILIP JENSEN	J-A	Print Batch 1239280
February, 14 2023 10:32:12	RTS	PHILIP JENSEN	J-A	Print Batch 1239280
February, 14 2023 10:32:08	RTS	PHILIP JENSEN	J-A	Print Batch 1239280
February, 13 2023 11:38:18	SECURITIES AND EXCHANGE COMMISSION	PHILIP JENSEN	J-A	Print Batch 1238447
February, 12 2023 09:05:27	DEBBIE JENSEN	PHILIP JENSEN	J-A	Print Batch 1238447
February, 10 2023 09:09:54	PA DEPARTMENT OF CORRECTIONS	PHILIP JENSEN	J-A	Print Batch 1237600
February, 08 2023 11:54:17	PENNSYLVANIA ATTORNEY GENERAL	PHILIP JENSEN	J-A	Print Batch 1236307
February, 08 2023 08:24:15	DEBBIE JENSEN	PHILIP JENSEN	J-A	Print Batch 1236307
February, 08 2023 07:33:33	PENNSYLVANIA OFFICE OF THE BUDGET	PHILIP JENSEN	J-A	Print Batch 1235317
February, 07 2023 15:26:00	RTS	PHILIP JENSEN	J-A	Print Batch 1235317
February, 07 2023 07:40:22	U.S. DEPARTMENT OF JUSTICE	PHILIP JENSEN	J-A	Print Batch 1235317
February, 06 2023 16:48:28	DEBBIE JENSEN	PHILIP JENSEN	J-A	Print Batch 1235317
February, 06 2023 16:45:49	DEBBIE JENSEN	PHILIP JENSEN	J-A	Print Batch 1235317
February, 06 2023 16:18:15	DEBBIE JENSEN	PHILIP JENSEN	J-A	Print Batch 1235317
February, 06 2023 15:38:55	DEBBIE JENSEN	PHILIP JENSEN	J-A	Print Batch 1234386
February, 06 2023 10:24:29	RTS	PHILIP JENSEN	J-A	Print Batch 1234386
February, 04 2023 07:38:36	CHARLOTTE WAREHAM	PHILIP JENSEN	J-A	Print Batch 1234386
February, 01 2023 10:55:29	NATIONAL ARCHIVES AND RECORDS ADMINISTRATION	PHILIP JENSEN	J-A	Print Batch 1232601
February, 01 2023 08:03:45	RTS	PHILIP JENSEN	J-A	Print Batch 1232601

INMATE'S REQUEST TO STAFF MEMBER

Commonwealth of Pennsylvania
Department of Corrections

INSTRUCTIONS

Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.

1. To: (Name and Title of Office)

Mail Room Supervisor

2. Date:

3-21-23

3. By: (Print Inmate Name and Number)

Phillip Jackson QN672

4. Counselor's Name:

Unit Manager's Name:

6. Work Assignment:

SLP

7. Housing Assignment:

JA17

8. Subject: State your request completely but briefly. Give details.

CAN YOU PLEASE CHARGE MY ACCOUNT

FOR COPS OF MY INCOMING MAIL LOG

FOR FEBRUARY & MARCH OF 2023.

THANK-YOU,

Attended

To DC-14 CAR only ☐To DC-14 CAR and DC-15 IRS ☐

STAFF MEMBER NAME

W. Neidrick

Print

Signature

DATE

3/22/23

CASH
SLIPCOMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS

1. REQUISITIONING INMATE

DOC NUMBER NAME (PRINT) LOCATION DATE
QN 1572 Phillip Jackson JA17 3-22-23

2. ITEMS TO BE CHARGED TO MY ACCOUNT

Please charge my Account
for Cops of my incoming
Mail log for Feb & March
of 2023.

Thank you!

2 pages of 50





"EXHIBIT A"

pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

PHILIP JENSEN,
Requester

v.

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS,
Respondent

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Docket No: AP 2023-0393

FACTUAL BACKGROUND

On January 20, 2023, Philip Jensen ("Requester"), an inmate at SCI-Houtzdale, 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, in pertinent part, "[a]ll line [entries]/financial ledger[s] of December 2021 'custodial account' [for] resources of the [Department] for prison inmates."

On January 24, 2023, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Department denied the Request, arguing that the Request lacked the required specificity pursuant to 65 P.S. § 67.703.

On February 13, 2023,¹ the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The Requester argues that his Request was sufficiently specific and references his research, a portion of the Comprehensive Annual Financial Report for the Fiscal Year ended June 30, 2020 for the Commonwealth of Pennsylvania, which he attached to his appeal, arguing that the responsive records should exist. Further, the Requester argues that the Department acted in bad faith by denying his Request. 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 6, 2023, the Department submitted a position statement in response to the appeal. On appeal, the Department advised that based on the Requester’s assertions in his appeal, the Department conducted a good faith search and consulted with relevant Department personnel to confirm that it is not in possession, custody or control of any responsive records. In support of its position, the Department submitted the attestation of Andrew Filkosky (“Filkosky Attestation”), Open Records Officer for the Department (“AORO”).²

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. §

¹ The appeal was received by the OOR on February 22, 2023; however, it was postmarked February 13, 2023. Therefore, pursuant to the “prisoner mailbox rule,” the appeal is considered filed as of February 13, 2023. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

² The Filkosky Attestation was made subject to the penalties under 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

67.708(a)(1). The preponderance of the evidence standard 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)). Likewise, “[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

1. The Department has demonstrated that it does not have any responsive records in its possession, custody or control

On appeal, the Department asserts that it does not have any responsive records in its possession, custody or control. In response to a request for records, “an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the record[.]” 65 P.S. § 67.901. The RTKL does not define the term “good faith effort.” However, the Commonwealth Court concluded that:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession... When records are not in an agency’s physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors...After obtaining potentially responsive records, an agency has the duty to review the record and assess their public nature under... the RTKL.

Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr., 185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff’d*, 243 A.3d 19 (Pa. 2020). An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency’s records, that it has conducted a search reasonably calculated to uncover all relevant documents. *See Burr v. Pa.*

Dep't of Health, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

Here, the Filkosky Attestation states, in part:

5. In response to [the Requester's] RTKL Request, this office contacted the Director of the Department's Bureau of Administration[,] which is responsible for all departmental budget and fiscal matters.
6. That official explained that neither she nor officials within her office understand what records [the Requester] is referring to and seeking access to[,] and therefore they cannot conduct a search for responsive records.
7. As such, this office issued a Final Response to [the Requester], dated January 24, 2023, indicating that his RTKL Request lacked sufficient specificity in order to enable the Department to conduct a good faith search. *See* Final Response.
8. Instead of submitting a follow-up Request sufficiently describing the records to which he seeks access, I am aware that [the Requester] ha[d] initiated [a] RTKL [a]ppeal to the [OOR] challenging the Department's denial of his requested access, and arguing that his Request was sufficiently specific.
9. On [a]ppeal, [the Requester] repeatedly refers to and describes the records sought as being from one account, the "custodial account" containing the combined resources of the Department for all prison inmates. *See* Appeal Documents.
10. In response to [the Requester's] RTKL [a]ppeal filing, I shared another discussion with the Director of the Department's Bureau of Administration[,] where I extended [the Requester's] assertions on [a]ppeal.
11. In response, the Director explained to me that [the Requester] is basing his RTKL Request on a flawed premise; there is no one "custodial account" containing the combined resources of the Department for all of its inmates, and therefore the entries for December 2021 for that account...does not exist[/]likewise do not exist.
12. Therefore, after conducting a good faith search in response to [the Requester's] RTKL Request as described above, I can state here that the Department does not possess any responsive records.

Under the RTKL, an 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. Off. 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 or that responsive records do, in fact, exist, “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 *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

Here, the Filkosky Attestation explains how the Department undertook a search of its records in sufficient detail. Specifically, in response to the Request and on appeal, the AORO explains how he consulted more than once with the Director of the Department’s Bureau of Administration, which is responsible for all departmental budget and fiscal matters. Filkosky Attestation ¶¶ 5,10. Further, the Filkosky Attestation sufficiently explains that there is no one “custodial account” containing the combined resources of the Department for all its inmates, and therefore, the entries for December 2021 that the Requester seeks does not exist. Filkosky Attestation ¶¶ 11-12.

The OOR recognizes that the Department cannot provide access to a record that does not exist in its possession. Accordingly, the Department’s submissions are sufficient to prove that it conducted a good faith search and that there are no records responsive to the Request in the Department’s possession, custody, or control.³ See *Pa. Dep’t of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022); *Hodges*, 29 A.3d at 1192.

³ Despite the Requester’s arguments, the OOR makes no determination as to whether records should exist, only that the Department does not possess responsive records. See *Duffy v. Kennett Township*, OOR Dkt. AP 2022-0404, 2022 PA O.O.R.D. LEXIS 1126 (quoting *Troupe v. Borough of Punxsutawney*, OOR Dkt. AP 2010-0743, 2010 O.O.R.D. LEXIS 731) (“While ... evidence may establish that a [record] should exist, the OOR lacks jurisdiction to rule on the propriety of the lack of such [record] -- the OOR may only determine whether a responsive record does, in fact, exist”).

2. The OOR declines to make a finding of bad faith

The Requester asserts that the Department has acted in bad faith by denying his Request. Although the OOR may make such a finding, only the courts have the authority to impose sanctions on agencies. *See generally* 65 P.S. § 67.1304(a) (noting that a court “may award reasonable attorney fees and costs of litigation...if the court finds...the agency receiving the...request willfully or with wanton disregard deprived the requester of access to a public record...or otherwise acted in bad faith...”); 65 P.S. § 67.1305(a) (“A court may impose a civil penalty of not more than \$1,500 if an agency denied access to a public record in bad faith”). Under the RTKL, a finding of bad faith may be appropriate where an agency refuses to comply with its statutory duties under the RTKL. *See Uniontown*, 185 A.3d at 1172; *see also Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119 (Pa. Commw. Ct. 2017) (a finding of bad faith was warranted where the agency based a denial on the identity of the requester, refused to provide a legal rationale for denial and did not perform a good faith search). Bad faith involves failing to perform a detailed search and review of records to ascertain if the requested material exists or if any exclusion applies prior to denial of access. *Uniontown*, 185 A.3d at 1172.

Here, the evidence shows that the Department assessed and processed the Request and issued its final response to the Requester. Further, on appeal, the Department proved that it conducted a good faith search by consulting relevant Department personnel to confirm that it does not have responsive records in its possession, custody or control. Accordingly, the OOR declines to find that the Department acted in bad faith.

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.⁴ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: March 17, 2023

/s/ Tope L. Quadri

TOPE L. QUADRI
APPEALS OFFICER

Sent via first class mail to: Philip Jensen, QN6572

Sent via portal to: Andrew Filkosky, AORO
Joseph M. Gavazzi, Esq.

⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).



pennsylvania

OFFICE OF OPEN RECORDS

Received

JAN 20 2023

Right-to-Know Office, Tracking #

Standard Right-to-Know Law Request Form

0061-23

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Department of Corrections (Attn: AORO)

Date of Request: 11.13.22 Submitted via: ☐ Email ☒ U.S. Mail ☐ Fax ☐ In Person

PERSON MAKING REQUEST:

Name: Philip Jensen #QNEWS 72 Company (if applicable): NA

Mailing Address: SMART COMMUNICATIONS | PANDOC | 5611 - Hartzdale PO BOX 33008

City: St. Petersburg State: FL Zip: 33733 Email: Edward.Hughes11@protonmail.com

Telephone: NA Fax: NA

How do you prefer to be contacted if the agency has questions? ☐ Telephone ☒ Email ☐ U.S. Mail

RECORDS REQUESTED: Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.

ELECTRONIC RECORD OF: ALL LIVE ENTRY'S / FINANCIAL
LEDGER OF DECEMBER, 2021 "CUSTODIAL ACCOUNT"
RESOURCES OF THE DEPARTMENT OF CORRECTIONS
FOR PRISON INMATES.

[see attached commonwealth "CAFR" Page 78]
DO YOU WANT COPIES? ☐ Yes, printed copies (default if none are checked)
☒ Yes, electronic copies preferred if available
☐ No, In-person inspection of records preferred (may request copies later)

Do you want certified copies? ☐ Yes (may be subject to additional costs) ☒ No
RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.
Please notify me if fees associated with this request will be more than ☐ \$100 (or) ☒ \$ 10.00

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? ☐ Yes ☐ No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied Cost to Requester: \$ _____

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record.
More information about the RTKL is available at <https://www.openrecords.pa.gov>

Form updated Feb. 3, 2020

Philip Jensen, QN6572
Page 2

You are not precluded from refining and submitting a new request with more specific detail.

You have a right to appeal the above denial of information in writing to the Executive Director, Office of Open Records (OOR), 333 Market Street, 16th Floor, Harrisburg, Pennsylvania 17101. If you choose to file an appeal you must do so within 15 business days of the mailing date of this response and send to the OOR:

1) this response; 2) your request; and 3) the reason why you think the agency is wrong in its reasons for saying that the record is not public (a statement that addresses any ground stated by the agency for the denial). If the agency gave several reasons why the record is not public, state which ones you think were wrong.

Also, the OOR has an appeal form available on the OOR website at:

<http://www.openrecords.pa.gov/RTKL/Forms.cfm>.

Sincerely,



Yihsien Han
Deputy Agency Open Records Officer

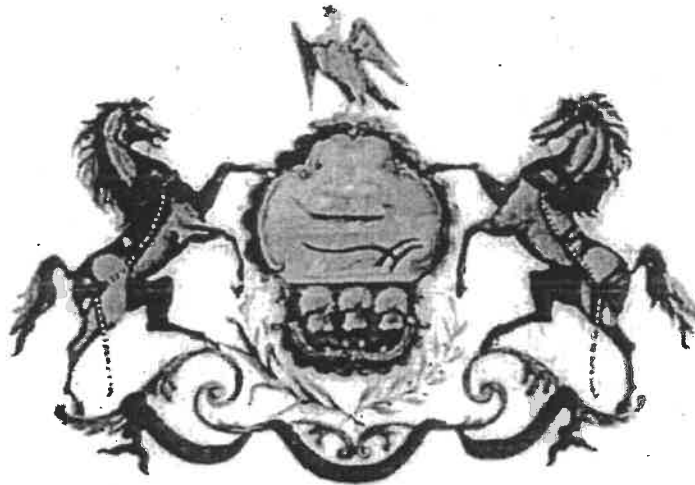
Enclosure

cc: File

Commonwealth of Pennsylvania

Comprehensive Annual Financial Report For the Fiscal Year Ended June 30, 2020

Tom Wolf, Governor



**Prepared By:
Office of the Budget**

***Jen Swails
Secretary***

***Brian Lyman, CPA
Chief Accounting Officer***

**This document is available on the Office of the Budget homepage at: www.budget.pa.gov
Click on Publications & Reports for access to the current and previous reports.**

NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**Fiduciary Funds**

Fiduciary funds are used to account for resources that a government holds as a trustee or custodian on behalf of an outside party and that cannot be used to support that government's own programs.

Trust and custodial funds account for assets held in a trustee capacity or as a custodian for third party beneficiaries, such as individuals, private organizations, other governmental units. Funds are classified as pension (and other employee benefit) trust funds, investment trust funds, private purpose trust funds, and custodial funds. The three types of trust funds are distinguished from custodial funds by the existence of a trust agreement or equivalent arrangement that has certain characteristics. With the exception of employee benefit trust funds, fiduciary fund resources may not be derived from Commonwealth revenues and other resources. The Commonwealth reports pension and other employee benefit trust funds and custodial funds.

The State Employees' Retirement System (SERS)-Pension, a defined benefit pension trust fund, accounts for the payment of retirement, disability, and death benefits to members of the SERS and their beneficiaries. The Deferred Compensation Fund is a pension trust fund that collects and administers amounts contributed by Commonwealth employees who defer a portion of their income until future years, in accordance with Internal Revenue Code Section 457. The SERS-Defined Contribution, a defined contribution pension trust fund, administered by the SERS, was established by Act 5 of 2017 to provide defined contribution retirement benefits to new members of the SERS effective January 1, 2019. The SERS-Pension, SERS-Defined Contribution and the Deferred Compensation Fund are reported for their fiscal years ended December 31, 2020.

The Public School Employees' Retirement System (PSERS)-Pension, a defined benefit pension trust fund, was created to administer and provide pension benefits to public school employees in Pennsylvania. The PSERS-Defined Contribution, a defined contribution pension trust fund, administered by the PSERS, was established by Act 5 of 2017 to provide defined contribution retirement benefits to new public school employees effective July 1, 2019.

The INVEST Program for Local Governments is an external investment pool, not held in trust, reported as a custodial fund that invests amounts owned by local governments, school districts, and not for profit entities. The INVEST Program for Local Governments is reported for its fiscal year ended December 31, 2020. Audited financial statements for that Program are available through the Chief Accounting Officer.

The Tuition Account Investment Program is a custodial fund that invests amounts on behalf of participants who are saving for college tuition costs. Audited financial statements for that Program are available through the Chief Accounting Officer.

The Monetary Penalty Endowments Trust Fund, a custodial fund, was established in accordance with Act 1 of 2013 to account for the monetary penalty payments from the Pennsylvania State University.

The Statutory Liquidator Fund, the largest custodial fund, converts the remaining assets of insolvent insurance companies to cash for remittance to policyholders, creditors, and stockholders. The order of distribution of the assets is established in Article V of the Pennsylvania Insurance Department Act of 1921 and on a Commonwealth Court approved percentage of claim basis. Although not yet determined, the actual amounts to be paid based on the amount of the remaining assets are expected to be less than the amounts actually claimed by creditors, policyholders, and stockholders.

The Custodial Accounts, a custodial fund, represents the combined resources held by the Department of Corrections for prison inmates, the Department of Human Services for residents of state health facilities, and the Department of Military and Veteran affairs for the residents of veteran long-term living facilities.

The Sales and Use Tax Fund, the Allegheny Regional Asset District Sales and Use Tax Fund, the PA Intergovernmental Cooperation Authority Tax Fund, and the Local Cigarette Tax Fund serve to collect and distribute local sales taxes to the appropriate local taxing authority for the convenience of taxpayers. These funds are reported as custodial funds.

AFFIDAVIT OF PHILIP JENSEN

"EXHIBIT D"

RTKL #0061-23 APPEAL TO OOR

Philip Jensen v. Pa. D.O.C.

RECEIVED

FEB 22 2023

Date: 2-10-23 AD

OFFICE OF OPEN RECORDS

Dear OOR Appeal Officer,

I hereby Appeal the above mentioned RTKL Request to you based on the following:

- ① On 11-13-22 AD I submitted a proper RTKL Request to Pennsylvania Department of Corrections "DOC", see attached
- ② On 1-24-23 AD I received a Bad faith denial from DOC, see attached
- ③ Respondents, DOC, have stated in support I failed to identify or describe the records I sought with sufficient specificity to enable them to ascertain which records I was seeking § 703. Respondents state my request contains no limitation with regard to persons; does not provide sufficient descriptive information in any or all of the categories. Respondents cite Hucker v. Young, scholars AP Dkt. 2009-0901; Anderson v. City of Phila., OOR Dkt. 2009-0618; Nanayakkara Pa. Dept. of General Services 747 A2d 462 (Pa. Commw. 2000) in support thereof.

In addition, Respondents cite 3703 as precluding requests which require files to be reviewed & judgments made as to the relation of the Document to the specific request; Dept of ENV. Protection v. Legere 50 A3d 260 (2012); And rather a clearly defined universe of documents must be requested such that there be NO judgments to be made as to whether the documents are related to the request because the Documents either do or do not fall within the ambit of the request. ID at 265. Respondents finally state section 703 of RTKL in determining whether a request satisfies the specificity of a request might conceivably encompass. AsKew v. Pa. office of the Governor 65 A3d 989, 992 (2013).

④ First, I requested ALL Line entry's / Financial ledger of December 12021 "Custodial Account" Resources of the Department of Corrections for Prison Inmates [see attached Commonwealth "CAFR" Page 78] see attached Pursuant to 3901 the Doc was mandated to make a good faith effort to determine if the requested record is a Public record and whether the agency has possession, custody or control of the record and to respond promptly after receipt of the written request. Respondents claim my request wasn't specific enough to be able to conduct a search which is untrue.

⑦ I requested one kind of Document which is known to the agency as it is their own account not one inmate or individual Prison but the "custodial Account" of the combined resources of ALL the DOC for Prison inmates. Respondents made no attempt to contact 3rd Party's to see if they had responsive records as the Commonwealth of Pennsylvania is most likely the one contracted to perform the agency function of Fiduciary Financial account services. I attached to my request the cover page and page 78 of the Commonwealth of Pennsylvania's Comprehensive Annual Financial Report ("CAFR") which states under the heading:

NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES
Fiduciary Funds

... custodial funds account for assets held in trustee capacity or a custodian for third Party ... governmental units ...

... "The custodial Accounts, a custodial fund represents the combined resources held by the Department of Corrections for Prison Inmates"...

Pursuant to § 506(d) because the requested records are in possession of a 3rd Party whom the agency has contracted to perform a government function on behalf of the agency i.e. the Commonwealth of Pennsylvania and directly relates to the government function & is not exempt under the RTKL it shall be considered a Public Record of the agency and must be retrieved for requesters inspection & copying.

(5) Second, my request was sufficiently specific because it had (a.) a subject matter that identifies the transaction or activity of the agency about which records are sought (b.) properly identify a limited scope of Responsive records and (c.) had a finite time frame. See case Pa. Dept. of Edu. v. Pittsburgh Post-Gazette 119 A3d 1121 (2015). My requests subject matter identifies the Agency's activity as ALL Line Entry's / Financial Ledger of a "Custodial Account" containing the combined resources of the DOC for Prison Inmates and is about which records are sought. I properly identified a limited scope of responsive records as such I'm only requesting the DOC's "Custodial Account" records and no other account. I also had a finite time frame as I requested the month of December and year 2021.

(6) Said Records I've requested are considered Public Because they're not exempt under 3708, is not exempt from being disclosed under any other federal or state law or Regulation or judicial order or decree or is not protected by a privilege. Such Record falls within the definition of a Record because it documents a transaction or activity of the agency and is created, received or retained Pursuant to law or in connection with a transaction, business or activity of the agency.

(2) Agency denied my Right to inspect and copy Public Records under § 701 and in Bad Faith.


WHEREFORE, I REQUEST THIS APPEAL BE GRANTED AND (1) DIRECT AGENCY TO PRODUCE REQUESTED RECORDS AND (2) DEEM DENIAL OF AGENCY WAS IN BAD FAITH.

Respectfully submitted,



VERIFICATION

I understand that any false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to Authorities.

BY:  executed: 2.10.23 AD

CERTIFICATE OF SERVICE

I certify that I mailed the foregoing to below parties pre-paid USPS First class Mail:

(1) Pa, Doc
RTKL
1920 Technology Parkway
Mechanicsburg, PA 17050

(2) OOR
333 Market St.
16th floor
Harrisburg, Pa 17101

BY: 

executed: 2.10.23 AD

**Pennsylvania Department of Corrections
Right-to-Know Office
Office of Chief Counsel
1920 Technology Parkway
Mechanicsburg, PA 17050
Telephone 717-728-7763
Fax 717-728-0312**

January 24, 2023

Smart Communications/PADOC
Philip Jensen, QN6572
SCI- Houtzdale
PO Box 33028
St Petersburg, FL 33733

Re: RTKL #0061-23

Dear Mr. Jensen:

This letter acknowledges receipt by the Department of Corrections (the Department) of your written request for records under the Pennsylvania Right-to-Know Law (RTKL). Your request was received by this office on January 20, 2023. On January 23, 2023, an interim response was sent to you extending the final response date to February 27, 2023. A copy of your request letter is enclosed.

You are denied access to the information you are seeking in the enclosed RTKL request for the following reason:

- Your request fails to identify or describe the records that you seek with sufficient specificity to enable the RTKL Office to ascertain which records that you seek. Consequently, your request is denied pursuant to 65 P.S. § 67.703.

Your request contains no limitation with regard to persons. This request does not provide sufficient descriptive information in any or all of the categories noted by the Office of Open Records in *Hocker v. Young Scholars*, OOR Dkt. AP 2009-0901, to enable the Department to determine what information is sought and to locate responsive records. Under both laws, Pennsylvania's courts have consistently held that insufficiently specific requests can be properly denied. See, *Anderson v. City of Philadelphia*, OOR Docket # 2009-0618 (9/25/09); *Nanayakkara v. Casella*, 681 A.2d 857, 859-60 (Pa.Cmwith. 1996); *Associated Builders & Contractors, Inc., v. Pennsylvania Department of General Services*, 747 A.2d 962 (Pa.Cmwith. 2000).

In addition, Section 703 of the RTKL precludes requests which require "files to be reviewed and judgments made as to the relation of the documents to the specific request." *Department of Environmental Protection v. Legere*, 50 A.3d 260, 264 (Pa. Cmwith. 2012). Rather, "a clearly-defined universe of documents" must be requested such that "there are no judgments to be made as to whether the documents are 'related' to the request" because the documents either do or do not fall within the ambit of the request. *Id.* at 265. In determining whether a request satisfies Section 703 of the RTKL, "the specificity of a request must be construed in the request's context, rather than envisioning everything the request might conceivably encompass." *Askew v. Pennsylvania Office of Governor*, 65 A.3d 989, 992 (Pa. Cmwith.) (per curiam), appeal denied, 621 Pa. 660, 72 A.3d 604 (Pa. 2013).

NOTICE OF APPEAL

YOU ARE HEREBY NOTICED THAT RTKL APPEAL AP2023-0393
IS BEING APPEALED TO THE COMMONWEALTH COURT OF PENNSYLVANIA
AND IT IS IN DISPUTE.


PURSUANT TO SECTION 1303 OF RTKL I HAVE SERVED THE
BELOW PARTIES THE FOREGOING:

① U.S.P.S. First class prepaid

D.O.C.
allin; Right-to-know officer
1720 Technology Parkway
Mechanicsburg, PA 17050

② U.S.P.S. First class prepaid

G.O.R.,
333 Market St.
16th fl.
Harrisburg, PA 17101

By:  executed: 3-23-2023 AD: under 18CS4904

**Pennsylvania Department of Corrections
Right-to-Know Office
Office of Chief Counsel
1920 Technology Parkway
Mechanicsburg, PA 17050
Telephone 717-728-7763
Fax 717-728-0312**

" EXHIBIT C "

January 24, 2023

Smart Communications/PADOC
Philip Jensen, QN6572
SCI- Houtzdale
PO Box 33028
St Petersburg, FL 33733

Re: RTKL #0061-23

Dear Mr. Jensen:

This letter acknowledges receipt by the Department of Corrections (the Department) of your written request for records under the Pennsylvania Right-to-Know Law (RTKL). Your request was received by this office on January 20, 2023. On January 23, 2023, an interim response was sent to you extending the final response date to February 27, 2023. A copy of your request letter is enclosed.

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Your request contains no limitation with regard to persons. This request does not provide sufficient descriptive information in any or all of the categories noted by the Office of Open Records in *Hocker v. Young Scholars*, OOR Dkt. AP 2009-0901, to enable the Department to determine what information is sought and to locate responsive records. Under both laws, Pennsylvania's courts have consistently held that insufficiently specific requests can be properly denied. See, *Anderson v. City of Philadelphia*, OOR Docket # 2009-0618 (9/25/09); *Nanayakkara v. Casella*, 681 A.2d 857, 859-60 (Pa.Cmwlth. 1996); *Associated Builders & Contractors, Inc., v. Pennsylvania Department of General Services*, 747 A.2d 962 (Pa.Cmwlth. 2000).

In addition, Section 703 of the RTKL precludes requests which require "files to be reviewed and judgments made as to the relation of the documents to the specific request." *Department of Environmental Protection v. Legere*, 50 A.3d 260, 264 (Pa. Cmwlth. 2012). Rather, "a clearly-defined universe of documents" must be requested such that "there are no judgments to be made as to whether the documents are 'related' to the request" because the documents either do or do not fall within the ambit of the request. *Id.* at 265. In determining whether a request satisfies Section 703 of the RTKL, "the specificity of a request must be construed in the request's context, rather than envisioning everything the request might conceivably encompass." *Askew v. Pennsylvania Office of Governor*, 65 A.3d 989, 992 (Pa. Cmwlth.) (per curiam), appeal denied, 621 Pa. 660, 72 A.3d 604 (Pa. 2013).

You are not precluded from refining and submitting a new request with more specific detail.


You have a right to appeal the above denial of information in writing to the Executive Director, Office of Open Records (OOR), 333 Market Street, 16th Floor, Harrisburg, Pennsylvania 17101. If you choose to file an appeal you must do so within 15 business days of the mailing date of this response and send to the OOR:

1) this response; 2) your request; and 3) the reason why you think the agency is wrong in its reasons for saying that the record is not public (a statement that addresses any ground stated by the agency for the denial). If the agency gave several reasons why the record is not public, state which ones you think were wrong.

Also, the OOR has an appeal form available on the OOR website at:

<http://www.openrecords.pa.gov/RTKL/Forms.cfm>.

Sincerely,



Yihsien Han
Deputy Agency Open Records Officer

Enclosure

cc: File