



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
WILLIAM PLUMMER,	:
Requester	:
	:
v.	: Docket No: AP 2023-0991
	:
PENNSYLVANIA DEPARTMENT OF	:
CORRECTIONS,	:
Respondent	:

FACTUAL BACKGROUND

On March 23, 2023,¹ William Plummer (“Requester”), an inmate at SCI-Coal 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.*, seeking:

...[A] copy of the job description, responsibilities, job summary reports to and supervises[sic] information regarding the following:

1. CHCA Kimberly Smith (SCI Forest)
2. Gary Prinkoy, RNS (SCI Forest)
3. Joseph Silva, Director of Health Services
4. Superintendent Overmyer (SCI Forest)
5. Superintendent Oberlander (SCI Forest)
6. Dr. Benjamin Robinson (SCI Coal)
7. Jay Cowen, Wellpaths Medical Director of Pennsylvania

And regarding Jay Cowen, I would like the address of where he is employed at.

¹ The Request is dated March 20, 2023, but was not received by the Department until March 23, 2023.

On April 10, 2023, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Department granted the Request in part, providing redacted records to the Requester. The Department redacted personnel numbers under the personal security exemption of the RTKL, 65 P.S. § 67.708(b)(1)(ii), the public safety exemption of the RTKL, 65 P.S. § 67.708(b)(2), and as personally identifiable information pursuant to 65 P.S. § 67.708(b)(6).

On May 1, 2023, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.² Specifically, the Requester argues that “[n]one of the information that I requested is personal information, therefore nothing should be redacted.” 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 May 15, 2023,³ the Department submitted a position statement reiterating its grounds for denial. The Department claims that it “properly asserted a redaction of personnel numbers pursuant to 65 P.S. § 67.708(b)(6)(i)(A).” The Department did not submit an affidavit/attestation in support of its position.

On May 17, 2023, the OOR asked the Department to “confirm that the only information that was redacted from the [records responsive to] the [R]equest was personnel numbers (employee number) as defined in Section 708(b)(6)(i)” of the RTKL and to submit a brief attestation/affidavit describing what exactly was provided to the Requester, along with the redactions that were made pursuant to Section 708(b)(6) of the RTKL.

² Although the OOR did not receive the appeal until May 3, 2023, it is postmarked as of May 1, 2023, and therefore, considered filed on that date pursuant to the “prisoner mailbox rule.” See *Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

³ The Department’s position statement was not uploaded to the OOR’s e-file portal system until May 17, 2023.

On May 18, 2023, the Department responded that it was “unable to obtain the requisite declaration by [close of business] tomorrow, but [the Department is] comfortable relying on the Final Response, already of record, which directly addresses [the OOR’s] two concerns”

The Requester did not submit any evidence on appeal.⁴

LEGAL ANALYSIS

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

The Department argues that it redacted personal identification information (i.e. “personnel number”) from the records provided to the Requester. Section 708(b)(6) of the RTKL exempts from disclosure “[a] record containing all of a part of a[n] ... employee number or other confidential personal identification number.” 65 P.S. § 67.708(b)(6)(i)(A). The RTKL facially exempts employee numbers from disclosure under the RTKL. However, the OOR sought clarification or additional evidence from the Department to demonstrate that the only records it redacted were employee numbers as set forth in Section 708(b)(6)(i)(A) of the RTKL. The

⁴ The Appeal packet also does not include a copy of the records that were provided to the Requester. The OOR notes that the Department’s final response indicates that the Requester can inspect the records or the records can be mailed to the Requester for \$8.72 (26 pages plus postage). It is unknown whether the Requester paid for the records or inspected the records.

Department submitted an additional position statement directing the OOR to its final response. A review of the Department's April 10, 2023 final response shows that the Department merely recited Section 708(b)(6) of the RTKL and did not provide any additional evidence.⁵ Under the RTKL, a "generic determination or conclusory statements are not sufficient to justify the exemption of public records." *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013) (en banc). Here, a brief attestation affirming, under penalty of perjury, that the only redactions the Department made were facially exempt employee numbers under Section 708(b)(6) of the RTKL would have been helpful in determining whether the Department met its burden under the RTKL.⁶ However, to the extent that the Department only redacted employee numbers and challenged to by the Requester, the Department is justified in withholding them. 65 P.S. § 67.708(b)(6)(i)(A).

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.⁷ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

⁵ The Department did not provide an affidavit/attestation at the time it issued its final response.

⁶ Again, the OOR notes that it was not provided a copy of the redacted records on appeal nor was provided any additional information describing what exact records were provided to the Requester. The OOR is unsure what exactly has been provided to the Requester.

⁷ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: May 25, 2023

/s/ Lyle Hartranft, Esq.

LYLE HARTRANFT, ESQ.
APPEALS OFFICER

Sent to: William Plummer, #LZ2255 (via US mail only);
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