pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
JORDANA ROSENFELD,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2024-0717**
	:	**Consolidated appeal of OOR Dkt. Nos.**
ALLEGHENY COUNTY,	:	**AP 2024-0717 and 2024-0718**
Respondent	:	

FACTUAL BACKGROUND

On February 2, 2024 and February 29, 2024, Jordana Rosenfeld ("Requester") submitted two separate requests (collectively, the "Requests") to Allegheny County ("County") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking:

> **Request 1:** All bills or invoices submitted to the jail for off-site medical care in 2015-2022 including information detailing the service(s) being billed.
>
> **Request 2:** All bills or invoices submitted to the jail for outpatient or inpatient medical care in 2023 including information detailing the service(s) being billed.

On March 5, 2024, after invoking a thirty-day extension to respond to Request 2,[1] *see* 65 P.S. § 67.902, the County denied the Requests, arguing that the records are protected from disclosure by the medical records exemption of the RTKL as records "of an individual's medical, psychiatric or

[1] Request 2 was received by the County on February 2, 2024. The County did not invoke a thirty-day extension on Request 1.

psychological history or disability status", 65 P.S. § 67.705(b)(5), and the Health Information Portability and Accountability Act of 1996 ("HIPAA"), 45 C.F.R. §§ 160 *et seq*.

On March 14, 2024, the Requester appealed[2] to the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure. 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. *See* 65 P.S. § 67.1101(c).

On April 3, 2024, the County submitted a position statement reiterating its grounds for denial. Specifically, the County argues, among other things,[3] that "the invoices [the Requester] seeks are full of information that is both exempt from disclosure under the RTKL and the Jail is barred from disclosing by HIPAA. *See* 65 P.S. § 708(b)(5), 45 C.F.R. § 164.502." In support of its arguments, the County submitted the attestation of Jesse Geleynse ("Geleynse Attestation"), the Public Information Officer at the Allegheny County Jail ("Jail").

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,

[2] The appeal of Request 1 was docketed at OOR Dkt. Ap 2024-0717 and the appeal of Request 2 was docketed at OOR Dkt. AP 2024-0718. Because the appeals involve the same agency, requester, and similar requests, the appeals are hereby consolidated into OOR Dkt. AP 2024-0717. The OOR further notes that the County submitted one comprehensive submission at each docket addressing both Requests. *See* 65 P.S. § 67.1102(b)(3) (stating that "the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute").

[3] The County further argues that the Requests are insufficiently specific. 65 P.S. § 67.703.

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 County asserts that the "Jail is barred from disclosing [the responsive records] by HIPAA." HIPAA provides that "[a] covered entity may not use or disclose protected health information." 45 C.F.R. § 164.502(a). HIPAA defines a "covered entity" as "(1) A health plan; (2) A health care clearinghouse; (3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter." 45 C.F.R. § 160.103. A "health care provider" includes any person or organization who furnishes, bills, or is paid for health care in the normal course of business. *Id*. Further, HIPAA defines a "health care clearinghouse" as

> [A] public or private entity, including a billing service, repricing company, community health management information system or community health information system, and 'value-added' networks and switches, that does either of the following functions:
>
> (1) Processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction.
>
> (2) Receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.

Id.

Here, the County receives "physical invoices that are sent to the [J]ail from numerous hospitals and medical providers." *See* Geleynse Attestation at ¶ 4. Request 1 seeks "[a]ll bills or invoices submitted to the [J]ail for off-site medical care in 2015-2022 including information detailing the service(s) being billed." Meanwhile, Request 2 seeks "[a]ll bills or invoices submitted to the [J]ail for outpatient or inpatient medical care in 2023 including information detailing the service(s) being billed." The County further explains that Patricia King, assistant

business coordinator at the jail, "is the individual who physically pays bills that the jails receives." *See* Geleynse Attestation at ¶ 4.

For purposes of this Final Determination, we will operate under the assumption that the County is a covered entity under HIPAA, in this instance. As a result, the County is prohibited from disclosing individually identifiable health information *unless the information has been de-identified* pursuant to HIPAA's safe harbor mandates, 45 C.F.R. § 164.514(b), or the information qualifies for an exception under 45 C.F.R. § 164.512.[4]

HIPAA defines "individually identifiable health information" as:

> [I]nformation that is a subset of health information, including demographic information collected from an individual, and:
>
> > (1) Is created or received by a health care provider, health plan, employer or health care clearinghouse; and
> >
> > (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
> >
> > (i) That identifies the individual; or
> >
> > (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

45 C.F.R. § 160.103; *see also Opis Mgmt. Res. LLC v. Sec'y Fla. Agency for Health Care Admin*., 713 F.3d 1291, 1294-95 (11th Cir. 2013) (noting that HIPAA was enacted to address concerns about the confidentiality of patients' individually identifiable health information); *S.C. Med. Ass'n v. Thompson*, 327 .3d 346, 348 (4th Cir. 2003); *Citizens for Health v. Leavitt*, 428 F.3d 167, 172-74 (3d Cir. 2005) (detailing the history of the Privacy Rule's promulgation and explaining its requirements).

[4] There is no suggestion that any of these exceptions apply in the instant matter.

The Federal Department of Health and Human Services ("HHS") has published guidance addressing the safekeeping and de-identification of individually identifiable health information. HHS explains that "§ 164.502(d) of the [HIPAA] Privacy Rule permits a covered entity or its business associate to create information that is not individually identifiable by following the de-identification standard and implementation specifications in § 164.514(a)-(b)."[5] HIPAA defines de-identified information as "[h]ealth information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information." 45 C.F.R. § 164.514(a).

There are two ways to de-identify information; the first involves a formal determination by an expert that the risk is very small that the information could be used to identify an individual. *Id*. at (b)(1). Under this method, the expert must "[d]ocument[] the [generally accepted statistical and scientific principles and methods] and results that justify such determination." Here, the County did not submit any evidence from an expert. The second way information may be de-identified is by the removal of specified identifiers, including names, dates and medical record numbers, among fifteen other enumerated identifiers, provided that the covered entity has no actual knowledge that the residual information could identify the subject of the information. 45 C.F.R. § 164.514(b)(2).

Here, the Request seeks invoices and bills with personally identifiable information, which is subject to redaction under HIPAA. The Geleynse Attestation provides:

> 5. The invoices differ based on the information they contain as they come from different hospital systems, different emergency transport services and different laboratories. However, each invoice contains an incarcerated person's name and personal identification information[.] Each invoice also contains information about an incarcerated person's health or medical status at the time of the service reflected on the invoice. The invoices also contain individually

[5] *See* https://www.hhs.gov/hipaa/for-professionals/privacy/special-topics/de-identification/index.html#rationale (last accessed April 18, 2024).

> identifiable health information about incarcerated individuals, including information about an incarcerated person's physical condition and information about the provision of health care to the incarcerated person.

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 County has acted in bad faith, "the averments in the [attestation] should be accepted as true." *McGowan v. Pa. Dep't of Env't 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)).

The Geleynse Attestation clearly identifies information that is protected by HIPAA; however, there is not sufficient evidence to suggest that the County is unable to de-identify the records. Specifically, the bills and invoices contain "an incarcerated person's name and personal identification information[.] Each invoice also contains information about an incarcerated person's health or medical status at the time of the service reflected on the invoice. The invoices also contain individually identifiable health information about incarcerated individuals, including information about an incarcerated person's physical condition and information about the provision of healthcare to the incarcerated person." Geleynse Attestation, ¶ 5. Accordingly, this information can be properly redacted by the County to ensure that the records have been de-identified in compliance with HIPAA. Thus, the County may redact any medical information, including "information detailing the service(s) being billed" and the medical information specifically listed in the Geleynse Attestation, from the invoices but must disclosure the amount due and payment status of bills. *See Wolfson v. Pittsburgh City,* OOR Dkt. AP 2024-0577 (issued April 15, 2024) (finding that "[w]ith the exclusion of zip codes, and other prohibited identifiers, there is no

reasonable basis to believe that disclosure of the amount due and payment status of bills could identify an individual").

Even if the County was not a covered entity under HIPAA, the County would be permitted to redact the above information under Section 708(b)(5) of the RTKL, which protects individually identifiable health information from disclosure. Section 708(b)(5) of the RTKL exempts from disclosure:

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

65 P.S. § 67.708(b)(5). While the exemptions found in the RTKL apply in a very limited manner to financial records, Section 708(c) of the RTKL states that "[t]he exemptions set forth in subsection (b) shall not apply to financial records, except that an agency may redact that portion of a financial record protected under subsection (b)(1), (2), (3), (4), (5), (6), (16) or (17)." 65 P.S. § 67.708(c); *see also* 65 P.S. § 67.706 (stating that an agency "shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access"). Invoices for healthcare of inmates are financial records of the County because they document the disbursement of funds by the County. As such, because the invoices are financial records, they are public records subject to limited redaction under Section 708(b)(5) of the RTKL.

Finally, the County argues that the Requests "are so broad that responding to them would cause an unreasonable burden on the Jail." The County further argues that it in order "[t]o redact protected health information about the incarcerated people who received services reflected on

these invoices, [Jail] staff would have to download each invoice, cross-reference the document number with the provider to ensure each invoice was included, rename the file to keep invoices grouped according to provider, and save it in a file for [the County] to access." Geleynse Attestation at ¶ 6. Ms. Geleynse "would then have to scrutinize each invoice carefully to ensure that no protected health information remained before saving the redacted version and providing it to the County's Open Records Office to give to [the Requester]." *Id.* The OOR recognizes the burden imposed by having to redact responsive invoices; however, "[t]he fact that a request is burdensome will not, in and of itself, [render] the request … overbroad[,]" but it may be considered as a factor in determining the specificity of a Request. *See Pa. Dep't of Envtl. Prot. v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012). While the County has submitted evidence that responding to the Requests is burdensome, it has not shown that this burden is sufficient to render the Requests insufficiently specific. *Montgomery Cnty. v. Iverson*, 50 A.3d 281, 283 (Pa. Commw. Ct. 2012) ("An open-ended request that gives an agency little guidance regarding what to look for may be so burdensome that it will be considered overly broad." (*en banc)*. The County identified more than 600 invoices from 2023 and argues that the "number of invoices for 2015-2022 is likely to be *at least* eight times higher than 600, and each invoice might contain multiple pages." (emphasis in original). Although the County has to review and redact many responsive documents (i.e. invoices), there is nothing in the record supporting the assertion that reviewing and possibly redacting many records would be so overly burdensome to render the Requests insufficiently specific.

However, the OOR recognizes that it may not be possible to produce the redacted responsive records within thirty days, based on the County's submission. Accordingly, the OOR directs an alternative rolling production schedule. Specifically, the County is to provide all

responsive records on a weekly basis continuing for a total period of ninety days. *See Harding v. Harrisburg Sch. Dist.*, OOR Dkt. AP 2022-2437, 2022 PA.O.O.R.D. LEXIS 2701 (A rolling production schedule of sixty days was found to be reasonable when the agency identified 1,878 responsive records in electronic format); *see also In re: Appeal of City of Philadelphia,* Nos. 0100, 0105 (Philadelphia Com. Pl. Jan. 17, 2024) (Approval of the OOR's grant of records according to a rolling production schedule).

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted in part** and **denied in part**, and the County is required to provide the Requester with the responsive records subject to redaction and the production schedule specified in this Final Determination. 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 Allegheny 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, but as the quasi-judicial tribunal that adjudicated this matter, the OOR is not a proper party to any appeal and should not be named as a party.[6] All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: April 22, 2024

/s/ Lyle Hartranft
Lyle Hartranft, Esq.
Appeals Officer

Delivered via E-File Portal to: Jordana Rosenfeld; Jessica Garofolo, AORO; Maggie Shiels, Esq.

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