

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

COVER SHEET

<p>Plaintiff(s) Vs</p> <div style="border: 1px solid black; height: 250px;"></div>	<div style="border: 1px solid black; height: 80px;"></div>
<p>Vs.</p>	<p>Case Number :</p>
<p>Defendant(s)</p>	<p>Type of pleading :</p>
<div style="border: 1px solid black; height: 250px;"></div>	<div style="border: 1px solid black; height: 70px;"></div>
	<p>Filed on behalf of</p>
	<div style="border: 1px solid black; height: 80px;"></div>
	<p>(Name of the filing party)</p>
	<p><input type="checkbox"/> Counsel of Record</p>
	<p><input type="checkbox"/> Individual, If Pro Se</p>
	<p>Address, Telephone Number, and Email Address:</p>
	<div style="border: 1px solid black; height: 120px;"></div>
	<p>Attorney's State ID <div style="border: 1px solid black; width: 150px; height: 30px; display: inline-block;"></div></p>
	<p>Attorney's Firm ID <div style="border: 1px solid black; width: 150px; height: 30px; display: inline-block;"></div></p>

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

ALLEGHENY COUNTY,

Petitioner,

vs.

JORDANA ROSENFELD,

Respondent.

)
)
)
)
)
)
)
)
)
)

Docket No:

PETITION FOR REVIEW

Filed on Behalf of Allegheny County,
Respondent.

Counsel of Record for This Party:

ROSALYN GUY-McCORKLE
County Solicitor
Pa. I.D. # 58827

MAGGIE SHIELS
Assistant County Solicitor
Pa. I.D. No. 321614

ALLEGHENY COUNTY LAW
DEPARTMENT
Firm No. 057
300 Fort Pitt Commons Building
445 Fort Pitt Boulevard
Pittsburgh, PA 15219
(412) 350-1120

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

ALLEGHENY COUNTY,)	
)	
Petitioner,)	Docket No:
vs.)	
)	
JORDANA ROSENFELD,)	
)	
Respondent.)	

PETITION FOR REVIEW

AND NOW, comes Allegheny County, the Petitioner (“the County”), by and through its attorneys, Rosalyn Guy-McCorkle, Allegheny County Solicitor, and Maggie Shiels, Assistant County Solicitor, and respectfully presents the following Petition for Judicial Review averring as follows:

1. This Honorable Court has jurisdiction over this matter pursuant to 65 P.S. § 67.1302.
2. This appeal concerns two Right-To-Know-Law (“RTKL”) requests that the Respondent, Jordana Rosenfeld, submitted to the County. Ms. Rosenfeld submitted the first request on February 2, 2024, and the second request on February 29, 2024. True and correct copies of both requests are attached hereto as Exhibit A.
3. Both requests sought “all bills or invoices submitted to the jail for off-site medical care...including information detailing the service(s) being billed.” The first request sought invoices for the year 2023, and the second request sought invoices for the years 2015-2022.
4. The County’s Open Records Officer denied both requests because the invoices contain information that is exempt from disclosure under Section 708(b)(5) of the RTKL and the

Health Insurance Portability and Accountability Act (“HIPAA”). True and correct copies of the County’s denial letters regarding both requests are attached hereto as Exhibit B.

5. On March 14, 2024, Ms. Rosenfeld appealed the County’s denial of her RTKL requests to the Pennsylvania Office of Open Records (“OOR”). A true and correct copy of Ms. Rosenfeld’s appeals to the OOR is attached hereto as Exhibit C.

6. As directed by the OOR, the County submitted a brief in support of its position that the invoices are exempt from disclosure under the RTKL. The County also argued that searching for, reviewing, and redacting the invoices would be so overly burdensome as to render the request insufficiently specific.

7. The County submitted an affidavit from Jesse Geleynse, the Public Information Officer for the Allegheny County Jail, in support of its position. A true and correct copy of the County’s Brief to the OOR and the Geleynse Affidavit are attached hereto as Exhibit D.

8. On April 22, 2024, an appeals officer for the OOR issued a Final Determination regarding Mr. Rosenfeld’s consolidated appeals. A true and correct copy of the OOR Final Determination is attached hereto as Exhibit E.

9. The OOR appeals officer found that the County was required to redact all of the invoices that Ms. Rosenfeld requested to remove exempt information.

10. The OOR Final Determination ordered the County to “provide all responsive records on a weekly basis continuing for a total period of ninety days.”

11. The OOR’s decision to order production on a rolling schedule was based on one of its prior decisions in which the agency identified 1,878 records that required redaction. (*See* Exhibit E at 9.) In this case, the County anticipates identifying substantially more records than 1,878. Additionally, if the County is unable to produce all of the invoices to Ms. Rosenfeld within

90 days, the County will have lost its opportunity to file a timely appeal.

12. The OOR erred when it determined that “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.” (*See id.* at 8.)

WHEREFORE, for the reasons stated above, the Petitioner, Allegheny County, respectfully requests that this Honorable Court review and reverse the Final Determination of the Pennsylvania Office of Open Records at docket numbers AP 2024-0717 and 2024-0718 and provide any other such relief as the Court deems proper and just.

Respectfully submitted,

/s/ Maggie Shiels

Assistant County Solicitor
Pa. I.D. No. 321614
Allegheny County Law Department
Firm No. 057
300 Fort Pitt Commons Building
445 Fort Pitt Boulevard
Pittsburgh, PA 15219
(412) 350-1120

CERTIFICATE OF COMPLIANCE

I 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 filing confidential information and documents differently than non-confidential information and documents.

Submitted by: /s/ Maggie Shiels

Attorney No.: 321614

VERIFICATION

I, Jamie Mydlowski, do hereby verify that the information contained in the attached Petition for Review is true and correct based on my knowledge, information, and belief, and is also based upon information provided to me by others. I understand that false statements contained herein are made subject to the penalties of §18 Pa.C.S.A. 4904, relating to unsworn falsification to authorities.

Date: 2024.05.22

Jamie Mydlowski
Jamie Mydlowski

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

ALLEGHENY COUNTY,)	
)	
Petitioner,)	Docket No:
vs.)	
)	
JORDANA ROSENFELD,)	
)	
Respondent.)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Petition for Review was served upon the persons and in the manner set forth below:

Jordana Rosenfeld
Service by electronic mail to: jordanarosenfeld@gmail.com

Pennsylvania Office of Open Records
Service by electronic mail to: openrecords@pa.gov

Date: May 22, 2024

/s/ Maggie Shiels
Assistant County Solicitor

Open Records Request (W017643-020224)

▼ Open Records Request Details

Type of Information Requested:

Department: Jail Please select the appropriate department for the records you are seeking.

Type of Information: Records

Describe the document(s) you are requesting: All bills or invoices submitted to the jail for outpatient or inpatient medical care in 2023 including information detailing the service(s) being billed. Please redact all personal identifying information.

Preferred Method to Receive Documents: Copies by Email

Media Request: Yes

Internal Use Only

Department Requesting Information From: Jail Send notifications to solicitors

Exemption:

Exemptions Details:

Payment Information:

Deposit Required: No

Amount of Payment:

Date Payment Received:

▼ Message History

Date

On 3/5/2024 2:45:06 PM, Kathy Colosimo wrote:

Subject: Open Records Center Update :: W017643-020224

Body:

March 5, 2024

Hi Jordana,

Please see the attached in response to your RTKL request.

-Kathy

Date

On 2/12/2024 2:34:03 PM, Kathy Colosimo wrote:

Subject: Open Records Center Update :: W017643-020224**Body:**

COUNTY OF



ALLEGHENY

SARA INNAMORATO
COUNTY EXECUTIVE

02/12/2024

Jordana Rosenfeld
504 Peebles Street
Pittsburgh, PA 15221RE: Public Information Request Received 2/2/2024
Reference Number: #W017643-020224

Dear Jordana Rosenfeld:

This is in response to your request for records made pursuant the Pennsylvania Right-to-Know Law (RTKL). Your request, which this Office received on 2/2/2024, is for the following records:

All bills or invoices submitted to the jail for outpatient or inpatient medical care in 2023 including information detailing the service(s) being billed.

Please be advised that the County is invoking its right under Section 902 of the RTKL for an extension of time to complete a review of your request and to issue a final response for the following reason:

Section 902 (a) (3) - A timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations. Limited staff requires the need for additional time.

By law, the Office of Open Records has 30 days to issue a final determination regarding this request. A response is expected to be provided within 30 days of this date of this letter.

Sincerely,
/s/ Jessica Garofolo
County of Allegheny Open Records Officer

On 2/2/2024 7:08:18 PM, System Generated Message:

Subject: Public Records Request :: W017643-020224**Body:** Dear Jordana Rosenfeld,

Welcome to the Allegheny County Right to Know (RTK) Open Records Center. We have received your RTK Request.

Thank you for using the RTK Open Records Center.

Sincerely,

Allegheny County

On 2/2/2024 7:08:18 PM, Jordana Rosenfeld wrote:
Request Created on Public Portal

Request Details

Reference No: W017643-020224
 Create Date: 2/2/2024 7:08 PM
 Update Date: 3/15/2024 10:24 AM
 Completed/Closed: Yes
 Close Date: 3/5/2024 2:34 PM

Status: Appeal
 Priority: Medium
 Assigned Dept: Jail
 Assigned Staff: Jesse Geleynse

EXHIBIT A

Customer Name: Researcher Jordana Rosenfeld

Email Address: jordanarosenfeld@gmail.com

Phone: 4126009426

Source: Web

Open Records Request (W017745-022924)

▼ Open Records Request Details

Type of Information Requested:

Department: Jail Please select the appropriate department for the records you are seeking.

Type of Information: Other Jail

Describe the document(s) you are requesting: All bills or invoices submitted to the jail for off-site medical care in 2015-2022 including information detailing the service(s) being billed.

Preferred Method to Receive Documents: Copies by Email

Media Request: No

Internal Use Only

Department Requesting Information From: Jail Send notifications to solicitors

Exemption:

Exemptions Details:

Payment Information:

Deposit Required: No

Amount of Payment:

Date Payment Received:

▼ Message History

Date

On 3/5/2024 2:48:02 PM, Kathy Colosimo wrote:

Subject: Open Records Center Update :: W017745-022924

Body:

March 5, 2024

Hi Jordana,

Please see the attached in response to your RTKL request.

-Kathy

On 2/29/2024 2:40:11 PM, System Generated Message:

Subject: Public Records Request :: W017745-022924

Body: Dear Jordana Rosenfeld,

Welcome to the Allegheny County Right to Know (RTK) Open Records Center. We have received your RTK Request.

Thank you for using the RTK Open Records Center.

Sincerely,

Allegheny County

On 2/29/2024 2:40:10 PM, Jordana Rosenfeld wrote:

Request Created on Public Portal

▼ Request Details

EXHIBIT A

Reference No: W017745-022924
Create Date: 2/29/2024 2:40 PM
Update Date: 3/15/2024 10:24 AM
Completed/Closed: Yes
Close Date: 3/5/2024 2:38 PM

Status: Appeal
Priority: Medium
Assigned Dept: Jail
Assigned Staff: Jesse Geleynse

Customer Name: Researcher Jordana Rosenfeld
Email Address: jordanarosenfeld@gmail.com
Phone: 4126009426

Source: Web

COUNTY OF



ALLEGHENY

SARA INNAMORATO
COUNTY EXECUTIVE

March 5, 2024

Jordana Rosenfeld
504 Peebles Street
Pittsburgh, PA 15221

Re: RTKL Request – Final Response #17643

Dear Ms. Rosenfeld:

This is in response to your request for records made pursuant the Pennsylvania Right-to-Know Law (RTKL). This office received you request on February 5, 2024 and notified you on February 12, 2024 that an extension of time to respond to you request was necessary due to bona fide staffing limitations.

You requested the following:

All bills or invoices submitted to the jail for outpatient or inpatient medical care in 2023 including information detailing the service(s) being billed. Please redact all personal identifying information.

Your request must be respectfully denied under Section 708 (b) (5) of the RTKL. The records you seek are records of an individual's medical, psychiatric or psychological history or disability status. Furthermore, Section 305 of the RTKL removes the presumption that an agency record is public if that record is, "exempt from disclosure under any Federal or State law." In this instance The Health Insurance Portability and Accountability Act (HIPAA) bars the Allegheny County Jail from disclosing protected health information, which is included in invoices.

Pursuant to Section 1101 of the RTKL, a party denied access to a requested record may file a written appeal of the denial with the Pennsylvania Office of Open Records ("OOR") within fifteen (15) business days of the mailing date of the local agency's response. The OOR's address is:

Pennsylvania Office of Open Records
333 Market Street - 16th Floor
Harrisburg, PA 17126-0333

Sincerely,

Handwritten signature of Jessica Garofolo in black ink.

Jessica Garofolo, Director
County of Allegheny Open Records Officer

COUNTY OF



ALLEGHENY

SARA INNAMORATO
COUNTY EXECUTIVE

March 5, 2024

Jordana Rosenfeld
504 Peebles Street
Pittsburgh, PA 15221

Re: RTKL Request – Final Response #17745

Dear Ms. Rosenfeld:

This is in response to your request for records made pursuant the Pennsylvania Right-to-Know Law (RTKL). Your request which this office received on February 29, 2024 is for the following records:

All bills or invoices submitted to the jail for off-site medical care in 2015-2022 including information detailing the service(s) being billed.

Your request must be respectfully denied under Section 708 (b) (5) of the RTKL. The records you seek are records of an individual's medical, psychiatric or psychological history or disability status. Furthermore, Section 305 of the RTKL removes the presumption that an agency record is public if that record is, "exempt from disclosure under any Federal or State law." In this instance The Health Insurance Portability and Accountability Act (HIPAA) bars the Allegheny County Jail from disclosing protected health information, which is included in invoices.

Pursuant to Section 1101 of the RTKL, a party denied access to a requested record may file a written appeal of the denial with the Pennsylvania Office of Open Records ("OOR") within fifteen (15) business days of the mailing date of the local agency's response. The OOR's address is:

Pennsylvania Office of Open Records
333 Market Street - 16th Floor
Harrisburg, PA 17126-0333

Sincerely,

A handwritten signature in black ink that reads "Jessica Garofolo".

Jessica Garofolo, Director
County of Allegheny Open Records Officer

Name: Jordana Rosenfeld
Company:
Address 1: PO Box 81624
Address 2:
City: Pittsburgh
State: Pennsylvania
Zip: 15217
Phone: 412-600-9426
Email: jordanarosenfeld@gmail.com
Email2: jordanarosenfeld@gmail.com
Agency (list): Allegheny County
Agency Address 1: 436 Grant Street
Agency Address 2:
Agency City: Pittsburgh
Agency State: Pennsylvania
Agency Zip: 15219
Agency Phone: 412-350-6109
Agency Email: Kathy.Colosimo@alleghenycounty.us
Records at Issue in this Appeal: 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 Submitted to Agency Via: web form
Request Date: 02/29/2024
Response Date: 03/05/2024
Deemed Denied: No
Agency Open Records Officer: Jessica Garofolo, Director of Office of Open Records
Attached a copy of my request for records: Yes
Attached a copy of all responses from the Agency regarding my request: Yes
Attached any letters or notices extending the Agency's time to respond to my request: Yes

**Agree to permit the OOR
additional time to issue a
final determination:** No

**Interested in resolving this
issue through OOR
mediation:** Yes

Attachments:

- FINAL_RESPONSE_ROSENFELD__17745.pdf
- Screenshot 2024-03-14 111926.png

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

Name: Jordana Rosenfeld
Company:
Address 1: PO Box 81624
Address 2:
City: Pittsburgh
State: Pennsylvania
Zip: 15217
Phone: 412-600-9426
Email: jordanarosenfeld@gmail.com
Email2: jordanarosenfeld@gmail.com
Agency (list): Allegheny County
Agency Address 1: 436 Grant Street
Agency Address 2:
Agency City: Pittsburgh
Agency State: Pennsylvania
Agency Zip: 15219
Agency Phone: 412-350-6109
Agency Email: Kathy.Colosimo@alleghenycounty.us
Records at Issue in this Appeal: All bills or invoices submitted to the jail for outpatient or inpatient medical care in 2023 including information detailing the service(s) being billed. Please redact all personal identifying information.
Request Submitted to Agency Via: web form
Request Date: 02/05/2024
Response Date: 03/05/2024
Deemed Denied: No
Agency Open Records Officer: Jessica Garofolo, Director of Office of Open Records
Attached a copy of my request for records: Yes
Attached a copy of all responses from the Agency regarding my request: Yes
Attached any letters or notices extending the Agency's time to respond to my request: Yes

**Agree to permit the
OOR additional time to
issue a final
determination:** No

**Interested in resolving
this issue through OOR
mediation:** Yes

Attachments:

- Screenshot 2024-03-14 112645.png
- W017643-020224_Message_History.pdf
- FINAL_RESPONSE_ROSENFELD__17643 (1).pdf

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

IN THE PENNSYLVANIA OFFICE OF OPEN RECORDS**IN THE MATTER OF:**

JORDANA ROSENFELD,
Complainant,

Docket Nos. AP 2024-0717
AP 2024-0718

vs.

ALLEGHENY COUNTY,
Respondent.

STATEMENT OF INFORMATION AND LEGAL ARGUMENT

AND NOW comes the Respondent, Allegheny County (“County”), by and through its undersigned attorney, and files this Statement of Information and Legal Argument in compliance with the Pennsylvania Office of Open Records’ Official Notices of Appeal dated March 14, 2024, and states as follows:

I. FACTUAL BACKGROUND

The County submits this brief and the attached Affidavit in response to two Right to Know Law (“RTKL”) requests that Jordana Rosenfeld submitted and subsequently appealed. The County received the first request on February 2, 2024. It sought “all bills or invoices submitted to the jail for outpatient or inpatient medical care in 2023 including information detailing the service(s) being billed. Please redact all personal identifying information.” (Exhibit A.) The County assigned this request internal tracking number 17643 and routed it to the Allegheny County Jail (“ACJ” or “Jail”). The County Department of Administrative Services serves as the County’s Open Records Office, and its Director, Jessica Garofalo, serves as the County’s Open Records Officer. On February 12, 2024, the County sent Ms. Rosenfeld a letter informing her that the County was

invoking its right under Section 902 of the RTKL for an extension of time to respond to her request due to the need for legal review and bona fide staffing limitations. (*See id.* at 2.)

The County received the second request on February 29, 2024. It sought “all bills or invoices submitted to the jail for off-site medical care in 2015-2022 including information detailing the service(s) being billed.” (Exhibit B.) The County assigned this request internal tracking number 17745 and routed it to the ACJ as well.

The County sent Ms. Rosenfeld final letters for both requests on March 5. (Exhibits C and D.) Both letters explained that the requests were denied because the records she requested are exempt from disclosure under Section 708(b)(5) of the RTKL and the Health Insurance Portability and Accountability Act (“HIPAA”). (*See id.*) Ms. Rosenfeld appealed both denials to the Office of Open Records on March 14, 2024.

II. ARGUMENT

The County correctly denied Ms. Rosenfeld’s requests because, on their face, the requests seek exempt information. Nonetheless, the County considered Ms. Rosenfeld’s proposal that personal identification information be redacted from the invoices in her first request. After investigating this possibility, the County determined that it would be overly burdensome to perform the redactions Ms. Rosenfeld suggested. Therefore, the County’s position is that the requests, especially the second request, are insufficiently specific to allow the County to search for records and redact exempt information.

A. **The Requests Seek Exempt Information.**

To support its position, the County submits an affidavit from Jesse Geleynse, the Public Information Officer at the ACJ. (Exhibit E.) After receiving Ms. Rosenfeld’s first request, Mr. Geleynse searched for invoices. He determined that each one:

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 health care to the incarcerated person.

(Id. at ¶5.)

The Geleynse Affidavit demonstrates that the invoices Ms. Rosenfeld seeks are full of information that is both exempt from disclosure under the RTKL and that the Jail is barred from disclosing by HIPAA. *See* 65 P.S. §708(b)(5), 45 C.F.R. §164.502. Ms. Rosenfeld herself is surely aware of this fact, which is why her first request contained the phrase “please redact all personal identifying information.” The County was correct, therefore, when it denied both of these requests pursuant to RTKL Section 708(b)(5) and HIPAA.

A. The Requests are Insufficiently Specific.

Both of Ms. Rosenfeld's requests are so broad that responding to them would cause an unreasonable burden on the Jail. Mr. Geleynse explains that he investigated the possibility of complying with Ms. Rosenfeld's first request - for invoices from 2023. (*See id. at ¶4-6.*) He learned about the process that Jail staff would have to undertake in order to provide invoices to Ms. Rosenfeld; staff would have to download invoices from a database, save them under a new name, and review and redact them to remove exempt information. (*See id. at ¶6.*) Mr. Geleynse also avers that 15 different entities sent more than 600 invoices to the Jail for services in 2023. (*See id. at ¶4.*) Reviewing and redacting protected information from such a variety of providers will require concentration and scrutiny. The Geleynse Affidavit states that preparing these invoices to provide to Ms. Rosenfeld “would take 30 days and require the resources of at least five jail employees.”

(Id. at ¶6.)

The Geleynse Affidavit also explains that Ms. Rosenfeld’s second request, for invoices covering 2015-2022, would place an even greater burden on Jail staff. Mr. Geleynse states that the jail’s population was “significantly higher” prior to the Covid-19 pandemic in 2020. (*See id.* at ¶8.) Preparation of invoices from this time period “would require the same five jail employees to work for several months.” (*Id.* at ¶9.)

Although the RTKL is a remedial statute aimed at increasing transparency, it does not require agencies to respond to every request without limits. Section 703 of the RTKL provides that “[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” The Commonwealth Court and the OOR have developed a body of case law around the issue of specificity that reflects the reality that some RTKL requests are broad enough to be overly burdensome on agency staff.

When considering a challenge to the specificity of a request, the OOR and reviewing courts must employ “a three-part balancing test, examining the extent to which the request sets forth (1) the subject matter of the request; (2) the scope of documents sought; and (3) the timeframe for which records are sought.” *Penn. Dept. of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121, 1124 (Pa.Cmwlth. 2015.) The OOR has found that “none of these factors are dispositive, instead, the Commonwealth Court has emphasized the importance of a ‘flexible, case by case, contextual application of the test.’” *Wilson v. Covington Township*, OOR Dkt. AP 2020-1238 (quoting *Office of the Dist. Attorney of Phila. v. Bagwell*, 155 A.3d 1119, 1145 (Pa. Cmwlth. 2017.))

“The subject matter of the request must identify the “transaction or activity” of the agency for which the record is sought,” and “[t]he scope of the request must identify “a discrete group of documents, either by type ... or by recipient.” *Penn. Dept. of Educ.*, 119 A.3d at 1125. In *Mollick v. Township of Worcester*, 32 A.3d 859 (Pa.Cmwlth. 2011), the Commonwealth Court held that a request for all emails between certain agency employees “regarding any Township business and/or

activities for the past one and five years” was insufficiently specific. The Court held that the requester’s failure to specify a subject matter would place an unreasonable burden on the agency to examine all the employees’ emails for such a long time period. *See id.* at 861.

In *Sheliga v. Allegheny County*, AP No. 2021-1503, the OOR found that the County demonstrated that a request for emails was insufficiently specific when the request was for a short time frame and only one recipient but did not contain a subject matter. In that case, the County provided an Affidavit from its Information Technology Department explaining that the request resulted in 7,393 results that County employees would have to review and redact. (*See id.* at p. 8-9.) In this case, Mr. Geleynse avers that the Jail identified more than 600 invoices from 2023. Each invoice might be multiple pages long, and each page is likely to contain exempt information. 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. As in *Sheliga*, the County has met its burden in this case to demonstrate that Ms. Rosenfeld’s requests are insufficiently specific due to their burdensome nature.

“While responding to a RTKL request must entail accuracy and a good faith effort to provide the records sought, it is not an exact science, and must also encompass reasonable discretion by the agency to identify and provide the requested information, particularly where the request is a broad one.” *Mezzacappa v. Northampton County*, OOR Dkt. No: AP 2022-2110 at 4-5. In *Mezzacappa*, the OOR found that a request was insufficiently specific when the agency “submitted evidence that, because of the vast number of records it identified as potentially responsive and because the records likely contain exempt information, responding to the Request requires a vast amount of time, resources, and effort.” *Id.* at 8. Similarly, in this case, the Jail is

technically able to search for, locate, review and redact the invoices. But to do so would substantially burden several employees, thus rendering the request insufficiently specific.

III. CONCLUSION

Ms. Rosenfeld's requests seek records reflecting medical services provided to incarcerated people. On their face, the requests seek information that is exempt from disclosure. Furthermore, the County identified more than 600 invoices from 2023 and anticipates a greater number of invoices for the years between 2015 and 2020. County staff cannot locate, prepare, review, and redact that number of invoices in a reasonable amount of time. For these reasons, the County requests that the OOR deny Ms. Rosenfeld's appeals.

Respectfully submitted:

/s/ Maggie Shiels

Assistant County Solicitor
Pa Bar ID: 321614

Allegheny County Law Dept.
445 Fort Pitt Blvd., Suite 300
(412) 350-1120
Attorney for Respondent –
Allegheny County

IN THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:

JORDANA ROSENFELD,
Complainant,

Docket Nos. AP 2024-0717
AP 2024-0718

vs.

ALLEGHENY COUNTY,
Respondent.

PROOF OF SERVICE

I hereby certify that a true and correct copy of the Statement of Information and Legal Argument was served upon the persons and in the manner set forth below:

Service via OOR Appeal E-File Portal:

Appeals Officer Lyle Hartranft
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17120-2234

Jordana Rosenfeld
PO Box 81624
Pittsburgh, PA 15217

Date: April 3, 2024

/s/ Maggie Shiels
Assistant County Solicitor

IN THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:

JORDANA ROSENFELD,

Docket Nos.: AP 2024-0717
AP 2024-0718

Complainant,

vs.

ALLEGHENY COUNTY,

Respondent.

AFFIDAVIT OF JESSE GELEYNSE

I, Jesse GeleyNSE, hereby declare under the penalty of perjury, pursuant to 18 Pa. C. S. A. § 4904, that the following statements are true and correct based upon my personal knowledge, information, and belief:

1. My name is Jesse GeleyNSE. I am the Public Information Officer at the Allegheny County Jail. In this role, I am responsible for drafting and disseminating press releases, updating social media and the jail website, serving as the point of contact and official spokesperson for media inquiries and producing internal and external communication for the jail while working closely with the County Communications Direction.
2. One of my responsibilities is to assist the County's Open Records Office with reviewing and responding to Right to Know Law ("RTKL") requests for Jail records.
3. In February 2024, the County received a RTKL request from Jordana Rosenfeld for "all bills or invoices submitted to the jail for outpatient or inpatient medical care in 2023 including information detailing the service(s) being billed." The County's Open Records Office gave the request internal tracking number 17643 and assigned it to me.
4. I initially spoke to Patricia King, assistant business coordinator at the jail. Ms. King is the individual who physically pays bills that the jail receives. She showed me the physical invoices that are sent to the jail from numerous hospitals and medical providers. The invoices are then uploaded into the OnBase database, where they are filed under their respective contract numbers. I then spoke to Lillian Reese-McGhee, the jail's financial manager and Ms. King's supervisor. Using the OnBase database, Ms. Reese-McGhee located 15 different contracted entities that sent more than 600 invoices to the jail in 2023.
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 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.

6. To redact protected health information about the incarcerated people who received services reflected on these invoices, Ms. Reese-McGhee's 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 me to access. I 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 Ms. Rosenfeld. I estimate that this would take 30 days and require the resources of at least five jail employees.

7. Later in February, the County received another RTKL request from Ms. Rosenfeld for "all bills or invoices submitted to the jail for off-site medical care in 2015-2022 including information detailing the service(s) being billed." The County's Open Records Office gave the request internal tracking number 17745 and assigned it to me.

8. The time period in Ms. Rosenfeld's second request includes the years prior to Covid-19 pandemic. I have no reason to think that there will be fewer invoices for these years than the number of invoices for 2023. In fact, I have reason to believe there may be more. I believe this because the jail had a significantly higher population prior to the pandemic. Courts released many low-level incarcerated individuals in 2020, and the population has remained lower since that time. For example, the average daily population of the jail in 2019 was 2,238. In 2023 it was 1,588, resulting in a decrease of 29 percent.

9. The search, download, cross-reference, rename, review, and redaction process for the invoices in Ms. Rosenfeld's second request would require the same five jail employees to work for several months.



Jesse Geleynse
3/26/24

Date



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

JORDANA ROSENFELD,
Requester

v.

ALLEGHENY COUNTY,
Respondent

:
:
:
:
:
:
:
:
:
:

: **Docket No: AP 2024-0717**
: **Consolidated appeal of OOR Dkt. Nos.**
: **AP 2024-0717 and 2024-0718**

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 appealed² 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 F.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 disclose 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 Env’tl. 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).