



are exempt from public disclosure under the personal security and public safety exemptions of the RTKL. *See* 65 P.S. §§ 67.708(b)(1)(ii) and (2).

On June 21, 2024,<sup>1</sup> the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The Requester asserts that he is only seeking the portion of the responsive records that require a unit manager to visit RHU and work one weekend day a month, particularly as it pertains to Section 19 of Policy 6.3.1. The Requester suggests that the remainder of the information can 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 July 9, 2024, the Department submitted a position statement reiterating its grounds for denial under the personal security and public safety exemptions. In support of its position, the Department submitted the attestation of Major Robert Williamson, the Department’s Chief of Security, Bureau of Facility and Special Operations.

### **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.*

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<sup>1</sup> The appeal was received by the OOR on June 25, 2024; however, it was postmarked June 21, 2024. Therefore, pursuant to the “prisoner mailbox rule,” the appeal is considered filed as of June 21, 2024. *See Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

*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 asserts that the records withheld in response to the Request, *i.e.*, Section 19, subsection B(8) of Departmental Policy 6.3.1 (Facility Security Procedures Manual); Section 1, subsection B(3) of Departmental Policy 6.4.1 (Unit Management Procedures Manual); and Section 1, subsection D(9)(c) of Departmental Policy 6.5.1 (Administration of Security Level 5 Housing Units Procedures Manual) are all exempt under Section 708(b)(1)(ii) and (2) of the RTKL. 65 P.S. §§ 67.708(b)(1)(ii), (2). Section 708(b)(1)(ii) of the RTKL exempts from disclosure a record that “would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.” 65 P.S. § 67.708(b)(1)(ii). To establish that this exemption applies, an agency must show: (1) a “reasonable likelihood” of (2) “substantial and demonstrable risk” to a person’s security. *Del. County v. Schaefer*, 45 A.3d 1149 (Pa. Commw. Ct. 2012). The OOR has held that “[b]elief alone without more, even if reasonable, does not meet this heightened standard.” *Lutz v. City of Phila.*, 6 A.3d 669, 676 (Pa. Commw. Ct. 2010) (holding that “[m]ore than mere conjecture is needed” to establish that this exemption applies). Section 708(b)(2) of the RTKL exempts from disclosure “[a] record maintained by an agency in connection with ... law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety ... or public protection activity.” 65 P.S. § 67.708(b)(2). In order to withhold records under Section 708(b)(2) of the RTKL, an agency must show: (1) the record at issue relates to a law enforcement or public safety activity; and (2) disclosure of the record would be reasonably likely to threaten public safety or a public protection activity. *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367, 374-75 (Pa. Commw. Ct. 2013). In order to show a reasonable likelihood, “[a]n agency must offer more than speculation or conjecture to

establish the security related exceptions under the [RTKL].” *California Borough v. Rothey*, 185 A.3d 456, 468 (Pa. Commw. Ct. 2018). The Commonwealth Court has “defined substantial and demonstrable [risk] as actual or real and apparent.” *Borough of Pottstown v. Suber-Aponte*, 202 A.3d 173, 180 (Pa. Commw. Ct. 2019) (quoting *Carey*, *supra.* at 373.).

An agency can satisfy its burden through relevant and credible testimonial affidavits. *Heavens v. Pa. Dep’t of Env’t Prot.*, 65 A.3d 1069, 1073 (Pa. Commw. Ct. 2013). Further, security concerns must be given serious consideration when dealing with the prison setting. *See Ocasio v. Pa. Dep’t of Corr.*, 183 A.3d 506 (Pa. Commw. Ct. 2018) (“This Court has repeatedly recognized that the nature of the prison setting requires that personal security and public safety issues be given serious consideration where a RTKL request seeks records concerning prisons”); *see also Carey*, 61 A.3d at 374 (“Personal security issues are of particular concern in a prison setting”) (citations omitted). However, conclusory and speculative statements in an affidavit will not show a reasonable likelihood to threaten public safety or a public protection activity. *Carey*, 61 A.3d at 376.

In support of the Department’s position that the responsive records are exempt from disclosure, Major Williamson affirms as follows in his attestation:<sup>2</sup>

2. In my capacity as Chief of Security, I oversee all security aspects of the Department, including supervision of facility security practices and procedures, and I review all policies and procedures as they relate to security.
3. I am aware that inmate, Darren Gentilquore, has initiated a Right-to- Know Law (“RTKL”) Request to the Department seeking access to the Departmental policy mandating that Unit Managers visit inmates housed in the RHU monthly, and the

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<sup>2</sup> Under the RTKL, a statement, made under the penalty of perjury, or a sworn affidavit is competent evidence to sustain an agency’s burden of proof. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any competent evidence that the Department acted in bad faith, “the averments in [Major Williamson’s 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 *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

policy mandating that Unit Managers work one weekend day per month. *See Request.*

4. I am further aware that the Department has correctly identified as responsive records, Section 19, subsection B(8) of Departmental Policy 6.3.1 (Facility Security Procedures Manual); Section 1, subsection B(3) of Departmental Policy 6.4.1 (Unit Management Procedures Manual); and Section 1, subsection D(9)(c) of Departmental Policy 6.5.1 (Administration of Security Level 5 Housing Units Procedures Manual).

5. In my professional opinion given my years of security-related knowledge and experience in the Corrections/Security field, these three (3) responsive policy records should not be publicly released under the RTKL.

6. While the majority of the Department's policies are publicly available at the Department's public website at [www.cor.pa.gov](http://www.cor.pa.gov), certain policies, such as the responsive Policies 6.3.1, 6.4.1, and 6.5.1, are specifically designated as confidential in their entireties (*i.e.*, specifically not public information), and as such they may not be released to any member of the public without prior approval from the Secretary of Corrections or a designee of the same.

7. Their confidential designations are due to the fact that all three (3) policies pertain to institutional security operations that the Department has determined would constitute a threat to institutional security and public safety if they were publicly disclosed.

8. As a whole, the requested Policy records are maintained by the Department in connection with its law enforcement function of supervising the incarceration of inmates in a safe and secure manner.

9. Safety and security of institutional staff and the inmate population is a critical issue in prison management where each prison institution is lawfully charged with maintaining the care, custody, and control of a multitude of dangerous and potentially dangerous inmates.

10. In that regard, it must first be understood that the potential for violence and/or inmate escape is a real and constant concern within the walls of any and all of the Department's prison institutions.

11. The Department has, unfortunately, had inmates in the past attempt and even effectuate escape without the aid of the Department's highly sensitive and confidential security-related policies like those at issue herein.

12. The inmate population is also quite adept at observing staff behavior and patterns, and at gathering and manipulating information, all for any number of nefarious purposes, including but not limited to gaining possession of dangerous

items or contraband that they should not possess, gaining access to areas where they should not be, and effectuating escape from prison, all of which are most always accompanied by violence resulting in injury and sadly, at times, death.

13. Throughout my extensive experience in the security realm of prison institutions – without providing specific examples of instances of misconduct that could be copied – I am certainly aware of instances where inmates have (or have attempted to) utilized and/or manipulated the sorts of information contained within the responsive Policies 6.3.1, 6.4.1, and 6.5.1 to manipulate housing assignments, to circumvent Departmental authority and security measures, to gain access to areas where they otherwise should not have access, and/or to have themselves removed from a particular unit in order to be placed into general population where they otherwise should not be, all of which pose a direct threat to the safety of other inmates and the Department's staff within the correctional institutions, as well as the surrounding public if an escape were to be successful as a result of dissemination of this information.

14. Policy 6.3.1 (Facility Security Procedures Manual) is a voluminous policy consisting of forty-seven (47) separate Sections that collectively and exhaustively discuss all of the various aspects of maintaining security within the Commonwealth's correctional institutions, and as such, all are designated as confidential and not for public dissemination.

15. Policy 6.3.1 contains a Section dedicated to each facility's Control Center, including staffing and their duties, gaining access to the Control Center, authorized weapons and equipment within the Control Center, and radio usage and checks for staff; obviously this sort of information in the hands of inmates would be manipulated in any number of ways, not the least of which would be breaching and/or overtaking the Control Center in order to effectuate riot and/or escape from the facility that would inevitably include violence to inmates and staff, and a risk to the public related to potential escape.

16. Policy 6.3.1 also contains Sections dedicated to Perimeter construction and surveillance, including discussions involving access/egress points, perimeter and metal detector testing and inspection, perimeter surveillance and patrols by staff, facility air space, weapons and equipment, and operation of security towers and observation posts; obviously this sort of information in the hands of inmates would be manipulated in any number of ways, most if not all of which would involve identifying perceived weaknesses in perimeter security in order to either cause illegal contraband to enter the facility or to effectuate escape that would inevitably involve violence to inmates and staff and a risk to the public in connection with potential escape.

17. Policy 6.3.1 also contains a Section discussing the Security of Facility Blue Prints, knowledge of which in the hands of inmates would obviously be catastrophic; if inmates were able to locate or otherwise access facility blue prints

they could potentially identify weak points in order to cause contraband to enter the facility, gain access to sensitive areas, and of course to effectuate riot and/or escape that would inevitably lead to violence to inmates and staff and a risk to the public associated with potential escape.

18. Policy 6.3.1 also contains a Section discussing Tools, including controls, restricted tools, tracking, inventory, and storage; this sort of information in the hands of inmates has and will be manipulated in any number of ways, which includes locating and obtaining tools to be used for violence towards other inmates and staff, and of course to attempt to effectuate escape which would risk the public safety.

19. Policy 6.3.1 also contains a Section discussing internal and external Security Audits of correctional facilities, including vulnerability and deficiency assessments and recommendations, which of course would be utilized and manipulated by inmates in an effort to identify weaknesses in order to effectuate escape, which will inevitably lead to violence to inmates and staff, and a risk to the public safety in connection with potential escape.

20. Policy 6.3.1 also contains a Section discussing Inmate Counts and Movement within the correctional institutions, including the pass system and call out list enabling inmates to travel within the institutions; inmates possessing this sort of information will identify patterns and vulnerabilities in order to effectuate riot and/or escape which will inevitably lead to violence to inmates and staff and a risk to the public safety associated with potential escape.

21. Policy 6.3.1 also contains a Section dedicated to Key Control, including discussion of key storage, duplication of keys, lock shop and locksmith operations; such information would obviously be utilized by inmates in a number of ways that could lead to their access to restricted areas or the outside perimeter in efforts to effectuate riot and/or escape which will of course involve violence to inmates and staff and a risk to the public safety in connection with potential escape.

22. Section 6.3.1 also contains a Section dedicated to Contraband, including discovery tactics utilized by staff which information inmates would surely use to avoid detection of various forms of illegal contraband within their possession; contraband includes not only dangerous illicit narcotics but also items like cellular phones and various items used as weapons to perpetrate violence upon other inmates or staff or to effectuate escape.

23. Section 6.3.1 also contains a large Section dedicated to all aspects of Security Transport of Inmates, including discussions relative to vehicle usage, staffing, seating arrangements, weapons and restraints, search of inmates, and vehicle stops; anytime inmates are permitted to leave the correctional institutions under supervision represents a potentially dangerous circumstance ripe for potential violence and/or escape and inmates would surely utilize the information regarding

Inmate Transports to effectuate violence upon staff or other inmates during transports or to otherwise effectuate escape which presents a risk to the public safety.

24. Policy 6.3.1 also contains a Section on the topic of Security Threat Monitoring, including discussion of security threat assessments, monitoring and counter measures; this sort of information in the hands of inmates will certainly be manipulated in order to avoid detection of activities that constitute security threats and increase the risk of violence to inmates and staff, as well as the likelihood of riot and/or escape that poses a risk to the public safety.

25. Policy 6.3.1 also contains a Section on the topic of Searches, including detailed discussions on searches of inmates' persons, as well as searches of their cells and cell inspections; if inmates were to gain any of this knowledge they could anticipate where, when and how searches may be conducted in order to keep unlawful and dangerous contraband hidden from detection by institutional staff which would then be used to perpetrate violence upon other inmates or staff, or to effectuate riot or escape which poses a risk to the public safety.

26. Policy 6.3.1 also contains a Section dedicated to Operation of the facilities' CCTV Monitoring and Recording System, including discussion of camera placement within the institutions; obviously if inmates were privy to this information they would be able to identify potential "safe" areas out of camera view with which to engage in nefarious activities such as sexual or assaultive behavior, or the transfer of unlawful and dangerous contraband which will be used to perpetrate violence upon other inmates and staff, or to effectuate riot or escape which poses a risk to the public safety.

27. Policy 6.4.1 (Unit Management Procedures Manual) is a policy reflecting procedures for managing the inmate housing units contained within the Department's various correctional institutions.

28. Policy 6.4.1 contains information regarding the makeup of the Unit Management Team, discussion of the various roles and responsibilities of each particular position, their hierarchy, how that hierarchy evolves in emergency and other situations, particular zones of responsibility for each position, etc.

29. Given inmates' penchants for staff observation and manipulation of information, the contents of Policy 6.4.1 if publicly available would be used by inmates to impede the Department's law enforcement and public safety activities in maintaining a safe and secure prison environment.

30. If inmates were privy to which Departmental staff members had certain keys or access to certain areas, for instance, those staff members would be immediate targets for bribery, extortion and violence by the inmate population.

31. Similarly, if inmates understood the particulars of staff hierarchy, and how it evolves and changes in emergency and other situations, those staff members in roles of authority would also become immediate targets for bribery, extortion and violence by the inmate population.

32. In short, if inmates were permitted information regarding the Department's Unit Management Team, their mandatory duties, whereabouts, roles and responsibilities, and the interplay between those positions, the Department's law enforcement and public safety activities would be hampered, and the safety of those staff members as well as the inmates they are tasked with supervising would all be placed into immediate jeopardy.

33. Policy 6.5.1 (Administration of Security Level 5 Housing Units Procedures Manual) establishes policy and procedure for those facilities operating a Security Level 5 (L5) Housing Units (or Restricted Housing Units, "RHUs") and Special Management Units ("SMUs"), which involve the housing of inmates whose particular circumstances and behavior render them inappropriate for classification in the general population, and who therefore require closer supervision and control, have demonstrated mal-adjustive or assaultive behavior, or have otherwise been deemed to have serious behavioral problems and a high potential for repeating that behavior.

34. Policy 6.5.1 contains Sections dedicated to the administration of its various Units, including discussion relative to inmate daily routines and privileges, exercise entitlement and related escort off of the housing unit for that purpose, the transfer and release of inmates, the classification and eligibility of inmates, and cell inspection checklists; therefore, all of its various contents will pose a danger to individuals and the public in the hands of inmates.

35. In terms of daily routines, topics such as counts or restraint procedures constitute information ripe for manipulation by inmates seeking to plan and effectuate violence and/or escape.

36. Similarly, inmates will manipulate any information regarding escorts and restraints involved with their movement within the institution for exercise or any other permissible purpose in order to attempt escape, which always involves violence to inmates or staff and a risk to the public safety.

37. Additionally, where and why inmates are housed and classified within the Department's correctional institutions is a direct security function required for the orderly operation of all correctional institutions.

38. Allowing the public, including other inmates who routinely utilize the RTKL, to ascertain when and why inmates are classified and/or moved to specific housing units poses a security threat and impacts the safety of both inmates and staff, as well as the public.

39. Any insight into this process of housing placement and classification can facilitate the manipulation of the population management of correctional institutions and create a security risk for inmates and staff for a variety of reasons including retaliation and general increased risk of violence.

40. Inmates will use any information relative to classification and eligibility for particular housing units to manipulate their classification or eligibility in order to obtain release from those units and gain access back to general population where they will inevitably perpetrate violence upon other inmates and staff or attempt to effectuate escape, which is often why they are housed in those special units to begin with.

41. Inmates will also of course utilize any information on cell searches or inspections in order to better conceal dangerous and unlawful contraband from detection or discovery by institutional staff that they will use to perpetrate violence upon other inmates or staff, or to effectuate riot and/or escape which poses a risk to the public safety.

42. It should also be noted and understood that forgery is another common problem and threat posed by inmates.

43. Policies 6.3.1 and 6.5.1 both contain numerous blank example forms and checklists on various topics, including cell and inmate inspections and searches, inmate property and other sorts of inventory, security audits, medical forms, transfer forms, etc.

44. Obviously, within the hands of inmates, the vast array of Departmental forms contained within those policies can and will be manipulated and forged by inmates in any number of ways, such as gaining impermissible access to certain areas, information, or items, all of which will inevitably result in violence to inmates and staff, or to effectuate riot or escape and pose a serious risk to the public safety.

45. The disclosure of the any portion of Policies 6.3.1, 6.4.1, or 6.5.1 would threaten public safety and the Department's public protection activities in maintaining safe and secure correctional institutions by allowing inmates or others to access information that will interfere with the personal security of individuals providing recommendations and opinions relating to the inner workings and operation of a prison.

46. For the reasons set forth above, the disclosure of the requested sensitive and confidential Departmental policy records is reasonably likely to result in a substantial and demonstrable risk of physical harm to, or the personal security of, institution staff, inmates, and/or the general public.

47. Additionally, based on the foregoing reasons, the disclosure of the requested sensitive and confidential policy records is reasonably likely to threaten public safety, as well as compromise the Department's lawful public protection activities of maintaining order and control of its inmate population

Here, Major Williamson, explains how disclosure of any portion of the responsive records would affect the safety of the inmates and staff in sufficient detail. Specifically, Major Williamson explains the confidentiality and purpose of the responsive records, and how disclosure of them could threaten public safety and impair the Department's ability to supervise the inmates, protect inmates and staff from violence, allow inmates to conceal dangerous and unlawful contraband items that can be used to inflict violence on other individuals, and assist attempts to escape custody. These opinions are more than mere speculation or conjecture and show a real risk of harm. *See Borough of Pottstown v. Suber-Aponte*, 202 A.3d 173, 182 (Pa. Commw. Ct. 2013) (holding that the agency demonstrated a real risk of harm to the staff and the detainees when a qualified individual from the agency offered evidence). Moreover, the OOR has previously found that Policies 6.3.1, 6.5.1, and the Management Procedures Manual for Policy Number 6.4.1 are exempt from access under the RTKL's personal security and public safety exemptions in their entirety. *See, e.g., Gentilquore v. Pa. Dep't of Corr.*, OOR Dkt. AP 2024-0392, 2024 PA O.O.R.D. LEXIS 600 (finding Policy 6.5.1 exempt from disclosure); *Fennell v. Pa. Dep't of Corr.*, OOR Dkt. AP 2023-1098, 2023 PA O.O.R.D. LEXIS 1318 (finding Policies 6.5.1 and 6.3.1 exempt under the RTKL); *Bowen v. Pa. Dep't of Corr.*, OOR Dkt. AP 2021-0709, 2021 PA O.O.R.D. LEXIS 732 (concluding that Policy 6.3.1 was exempt in full under Sections 708(b)(1)(ii) and (2) of the RTKL); *Hammond v. Pa. Dep't of Corr.*, OOR Dkt. AP 2020-0073, 2020 PA O.O.R.D. LEXIS 2248 (holding that policies 6.3.1 and 6.5.1 are exempt from disclosure); *Gardner v. Dep't of Corr.*, OOR Dkt. AP 2011-0084, 2011 PA O.O.R.D. LEXIS 240 (finding Policy Manual 6.4.1 "Unit Management" exempt from access under Section 708(b)(2) of the RTKL).

While the Requester asserts on appeal that he is only seeking the portions of the responsive records that reflect the information sought in the Request, and that the Department could redact the remainder of the information contained in the responsive records, the Department has sufficiently shown that the responsive records are wholly exempt from disclosure, as was concluded in the aforementioned cases previously decided. As such, the Department is not required to redact the records. *See* 65 P.S. § 67.706.

Based on the evidence provided, the Department has established that disclosure of the responsive records would create a “reasonable likelihood of ‘substantial and demonstrable risk’ to a person’s security, namely, to Department staff and to other inmates.” *See Delaware County v. Schaefer*, 45 A.3d 1149 (Pa. Commw. Ct. 2012). Likewise, the Department has established that the records relate to a law enforcement or public safety activity and that disclosure of the withheld records would be reasonably likely to threaten public safety or a public protection activity. *See Carey*, 61 A.3d at 374-75. Accordingly, the Department properly withheld the records responsive to the Request.

## 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 according to court rules as per 65 P.S. § 67.1303, but 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.<sup>3</sup> All documents or communications following the

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

issuance of this Final Determination shall be sent to [oor-postfd@pa.gov](mailto:oor-postfd@pa.gov). This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: July 23, 2024**

*/s/ Angela Edris*

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