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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CHARLIE WOLFSON and :  
PUBLICSOURCE :  
Petitioners, :  
 :  
v. : Docket No: \_\_\_\_\_  
 :  
ALLEGHENY COUNTY, :  
Respondent. :

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**NOTICE OF APPEAL AND PETITION FOR REVIEW**

PublicSource, a nonprofit news organization serving the Pittsburgh region, along with a PublicSource reporter, Charlie Wolfson, petition for review of the final determination of the Office of Open Records (“OOR”) docketed at OOR Docket No: AP 2025-0246 and in support of their petition assert:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this statutory appeal pursuant to 42 Pa.C.S. § 933(a)(3) and 65 P.S. § 67.1302(a).
2. Venue is proper in this Court pursuant to 65 P.S. § 67.1302(a).

**PARTIES**

3. Petitioners are “requesters” as defined by to the Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, with offices at 1936 Fifth Ave., Pittsburgh PA 15219.

4. Respondent Allegheny County (“Respondent”) is an “agency” as defined by the RTKL with offices at 445 Fort Pitt Blvd., 3rd Floor, Pittsburgh, PA 15219.

**DETERMINATION TO BE REVIEWED**

5. The OOR, which has its office at 333 Market Street, 16th Floor, Harrisburg, PA 17101-2234, is a governmental unit established to receive and determine appeals of agency RTKL decisions pursuant to Sections 1101 and 1310 of the RTKL.

6. The March 3, 2025 OOR Final Determination to be reviewed is attached as **Exhibit A.**

**STANDARD AND SCOPE OF REVIEW**

7. OOR decisions are not afforded any deference – rather, courts “independently review” and “conduct full de novo reviews of appeals from decisions made by RTKL appeals officers....” *See Bowling v. Office of Open Records*, 75 A.3d 453, 474-53 (Pa. 2013).

**BACKGROUND**

8. On January 10, 2025, Petitioners filed a RTKL request (“Request”) seeking:  
...[I]nformation for all individuals employed by [the County] during 2024, in the form of a digital file such as a .csv or Microsoft Excel file.

Specifically, I request the following for each employee: Name, department, job type, job title, date started, current position date started, date terminated (if applicable), gender, race/ethnicity, employment status, annual salary, regular pay, overtime pay, bonus pay, gross pay.

This [R]equest includes all law enforcement officers, with names redacted as needed for undercover officers.

\*This is a different data set than is posted on [the Western Pennsylvania Regional Data Center (“WPRDC”)], because the WPRDC dataset has additional redactions among law enforcement officers[.]\*

**Exhibit A**, OOR Final Determination, at 1.

9. On January 24, 2025, after sending an extension notice pursuant to 65 P.S. § 67.902(b), Respondent partially denied the Request. Respondent provided a publicly available website link and asserted that the responsive material contained redacted materials that were not subject to disclosure due to the personal security of its employees, 65 P.S. § 67.708(b)(1)(ii), the likelihood of jeopardizing or threatening public safety, 65 P.S. § 67.708(b)(2), revealing the names of law enforcement officers performing undercover or covert law enforcement activities, 65 P.S. § 67.708(b)(6)(iii), and revealing the enrollment in a health care program, 65 P.S. § 67.708(b)(5). *Id.* at 2.

10. On January 30, 2025, Petitioners filed an appeal to the OOR. *Id.*

11. The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in the appeal. *Id.*

12. On February 18, 2025, Petitioners submitted a position statement, stating that Respondent redacted far more law enforcement officers than those currently involved in undercover activity. Petitioners noted that more than three quarters of all employees in the County Sheriff's Department and two thirds of all employee names in the County Police Department were redacted. Moreover, Petitioners asserted that Respondent acted in bad faith by failing to provide the names of public employees. *Id.*

13. On February 20, 2025, Respondent submitted a position statement, which reiterated its grounds for partially denying the Request. Respondent claimed that it was not required to provide a list of employees in which only the employees currently working undercover are redacted because the list could be requested a number of times, allowing a requester to determine the employees that move in and out of an undercover capacity. *Id.* at 3.

14. In support of its position, Respondent submitted three attestations authored by Nichole L. Nagle, the Employee Relations Manager for the County Department of Human Resources; Christopher Kearns, Superintendent of the County Police Department; and John P. Goodrich, Esq., the Solicitor for the County Sheriff. *Id.*

15. Further, Respondent submitted an affidavit authored by Rebecca D. Spangler, Esq., the First Assistant District Attorney and Agency Open Records Officer for the County District Attorney's Office. *Id.*

16. On March 3, 2025, the OOR issued and mailed its Final Determination, denying Petitioners' Appeal and holding that Respondent was not required to take any further action. *Id.* at 12.

**THE OOR ERRED IN HOLDING THAT RESPONDENT APPROPRIATELY REDACTED NAMES OF LAW ENFORCEMENT OFFICERS**

17. Petitioners argue that Respondent may only redact the names of law enforcement officers that are actively "involved in undercover activity" because 65 P.S. § 708(b)(6)(iii) of the RTKL states:

An agency may redact the name or other identifying information relating to an individual performing an undercover or covert law enforcement activity from a record.

18. The OOR erred in deciding that because 65 P.S. § 708(b)(6)(iii) does not specifically detail whether the term "performing" should be read in its present, past, or future tense, Respondent may redact a law enforcement officer's name who is either (1) performing, (2) was performing, or (3) will be performing undercover or covert activities.

19. While the OOR interpreted legislative intent by detailing the rules of grammar and the word "performing's" common and approved usage, it ignored that "the best indication of

legislative intent is the plain language of a statute. *Kistler v. State Ethics Com'n*, 610 Pa. 516, 522 (Pa. 2011).

20. It is clear that the legislature only intended this RTKL exception to apply to individuals actively **performing** undercover or covert law enforcement activity. If the legislature intended this statute to be read more broadly and apply to law enforcement officers who **at any time** performed or will be performing undercover or covert law enforcement activity, this would have been specified in the statute.

21. While Respondent further claims, and the OOR agreed, that the redactions are appropriate, pursuant to the RTKL's personal security exception, 65 P.S. § 67.708(b)(1)(ii), because multiple requests for the same information at different times would positively identify these undercover or covert law enforcement officers or allow the officers to be identified upon comparison of the lists, Respondent has not demonstrated a "reasonable likelihood" of "substantial and demonstrable risk" to an individual's security. *See Del. County v. Schaefer*, 45 A.3d 1149 (Pa. Commw. Ct. 2012); *see also Posey v. Dep't of Corr.*, 329 A.3d 864, 872-73 (Pa. Commw. Ct. 2025) (holding that the names of prison employees could not be withheld pursuant to the security-related exceptions under the RTKL because "an agency must offer more than speculation or conjecture."); *California Borough v. Rothey*, 185 A.3d 456, 468 (Pa. Commw. Ct. 2018) ("An agency must offer more than speculation or conjecture to establish the security-related exceptions under the Right-to-Know Law.") (citation omitted)).

22. Respondent has redacted the majority of names of all employees in the County Sheriff's Department and County Police Department and has only provided conclusory assertions that the disclosure of the names of law enforcement officers who are **not actively** performing, or may never actually perform, undercover or covert law enforcement activities

would jeopardize the personal safety of these individuals. *See Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa Commw. Ct. 2013) ("[A] generic determination or conclusory statements are not sufficient to justify the exemption of public records"); *see also Pa. Dep't of Educ. v. Bagwell*, 131 A.3d, 638 659 (Pa Commw. Ct. 2023) ("Affidavits that are conclusory or merely parrot the exemption do not suffice") (citation omitted)).

23. Respondent lastly argues that the redactions of public officials' names was proper pursuant to an exception to the RTKL that prevents the disclosure of information revealing the enrollment in a health care program. *See* 65 P.S. § 67.708(b)(5). However, the OOR did not cite this exception in their legal analysis, and Respondent did not provide any substantive information to justify this exception being applied. *See Scolforo*, 65 A.3d at 1103.

24. Such overbroad redactions of basic information involving public officials hinders the underlying purpose of the RTKL, which its "to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions." *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. 2010) (en banc), petition for allowance of appeal granted in part, 15 A.3d 427 (Pa. 2011).

25. The public interest in disclosing the names of public officials not actively involved in undercover or covert law enforcement activity far outweighs any interest in keeping such information secret.

**THE OOR ERRED IN DECLINING TO MAKE A FINDING THAT RESPONDENT  
ACTED IN BAD FAITH**

26. The OOR noted that pursuant to the RTKL, a finding of bad faith is appropriate when an agency refuses to comply with its statutory duties under the RTKL. *See Exhibit A*, at 12 (citing *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 243 A.3d 19, 28-29 (Pa. 2020)

(“*Uniontown II*”); *California Univ. of Pa. v. Bradshaw*, 210 A.3d 1134 (Pa. Commw. Unpub. 2021), appeal denied 2019 PA LEXIS (Pa. 2019); *Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119 (Pa. Commw. Ct. 2017)). “The lack of good faith compliance with the RTKL and an abnegation of mandatory duties under its provisions rise to the level of bad faith.” *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161, 1170 (Pa. Cmwlth. 2018) (“*Uniontown I*”).

27. Respondent is aware of the names of public officials not actively performing undercover or covert law enforcement activities that can be disclosed to Petitioners. However, rather than disclose these names, Respondent has “forced [Petitioners] to expend time and resources” to continue to assert their rightful access to the names of these individuals, and therefore Respondent’s “persistent denial of access constitutes bad faith.” *See id.*, at 1174.

28. Because the information Petitioners seek is related to public officials, and Respondent has not provided any evidence that it acted in good faith to fulfill its mandatory duty to only redact the names of individuals actively involved in undercover or covert law enforcement activities, the OOR erred in declining to find that Respondent acted in bad faith.

#### **STATEMENT OF THE RELIEF SOUGHT**

WHEREFORE, Petitioners, PublicSource and Charlie Wolfson, respectfully request that this Honorable Court:

- (a) Reverse the OOR determination of March 3, 2025 and order the release of the requested records or
- (b) In the alternative, allow Requesters to supplement the record before this Honorable Court, or



(c) In the alternative, remand the matter back to the OOR for a full evidentiary hearing pursuant to Pa.R.A.P. 1542, including testimony and argument.

Respectfully submitted,  
*/s/Paula Knudsen Burke*  
Paula Knudsen Burke  
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*Counsel for PublicSource and Charlie Wolfson*

Dated: March 31, 2025

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CHARLIE WOLFSON and  
PUBLICSOURCE

Petitioners,

v.

ALLEGHENY COUNTY,  
Respondent.

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Docket No: \_\_\_\_\_

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**[PROPOSED] ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_\_, the Petition for Review is GRANTED, and the Final Determination of the OOR in *Wolfson v. Allegheny County*, OOR Dkt. AP 2025-0246 is hereby REVERSED. Respondent Allegheny County shall provide the requested unredacted records to Petitioners within seven (7) days of this Order.

BY THE COURT:

\_\_\_\_\_, J.

**VERIFICATION**

I, Charlie Wolfson, hereby state that the facts above set forth in the Notice of Appeal and Petition for Review are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

*/s/Charlie Wolfson*

\_\_\_\_\_  
**(signature)**

**Date:** \_\_\_\_\_ 03/25/2025 \_\_\_\_\_

**CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Paula Knudsen Burke

Signature: /s/Paula Knudsen Burke

Attorney No.: 87607

**PROOF OF SERVICE**

I hereby certify that I have served the foregoing document, Notice of Appeal and Petition for Review, upon the persons listed on the date and in the manner indicated below, which satisfies the requirements of Pa.R.A.P. 121:

**Notification by email with consent from recipients:**

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Dated: March 31, 2025

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# EXHIBIT A



On January 24, 2025, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the County partially denied the Request. The County provided a publicly available website link in order for the Requester to obtain the records responsive to the Request, 65 P.S. § 67.704(b)(1).<sup>1</sup> The County asserted that the responsive records contained redacted material that is not subject to disclosure due to the personal security of its employees, 65 P.S. § 67.708(b)(1)(ii), the likelihood of jeopardizing or threatening public safety, 65 P.S. § 67.708(b)(2),<sup>2</sup> revealing the names of law enforcement officers performing undercover or covert law enforcement activities, 65 P.S. § 67.708(b)(6)(iii), and revealing the enrollment in a health care program, 65 P.S. § 67.708(b)(5).

On January 30, 2025, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.<sup>3</sup> 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. 65 P.S. § 67.1101(c).

On February 18, 2025, the Requester submitted a position statement, asserting that the County redacted names of far more law enforcement officers<sup>4</sup> than those currently involved in undercover activity.<sup>5</sup> Additionally, the Requester claims the County is acting in bad faith by failing to provide the names of the public employees.

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<sup>1</sup> The OOR last attempted access on February 26, 2025 and was able to locate records responsive to the Request at <https://data.wprdc.org/dataset/allegheeny-county-employee-salaries>.

<sup>2</sup> Because the County abandoned its public safety argument under Section 708(b)(2), the OOR will not further address the argument in this Final Determination.

<sup>3</sup> On February 21, 2025, the Requester granted the OOR a one-week extension to issue a Final Determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

<sup>4</sup> The Requester claims that redactions include more than three quarters of all employees in the County Sheriff’s Department and two thirds of all employee names in the County Police Department. *See* Requester position statement p. 1.

<sup>5</sup> The County notes that it redacted names of employees at the Kane Regional Centers based upon modified duty positions and based upon an individual being a victim of a violent crime. *See* Nagle Attestation ¶ 4. As the Requester only challenges the redaction of the names of law enforcement officers made by the County, the redactions of the



On February 20, 2025, the County submitted a position statement, reiterating its grounds for partially denying the Request. The County additionally claims that it is not required to provide any requester with a list of employees in which only the employees currently working undercover are redacted because the list could be requested a number of times, allowing a requester to determine the employees that move in and out of an undercover capacity. In support of its position, the County submitted three attestations made subject to the penalties of unsworn falsification to authorities, 18 Pa.C.S. § 4904, authored by: Nichole L. Nagle (“Nagle Attestation”), the Employee Relations Manager for the County Department of Human Resources; Christopher Kearns (“Kearns Attestation”), Superintendent of the County Police Department; and John P. Goodrich, Esq. (“Goodrich Attestation”), the Solicitor for the County Sheriff. Additionally, the County submitted an affidavit, duly sworn, authored by Rebecca D. Spangler, Esq. (“Spangler Attestation”), the First Assistant District Attorney and Agency Open Records Officer (“AORO”) for the County District Attorney’s Office.<sup>6</sup>

### 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

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names of the employees at the Kane Regional Center and the claimed exemptions related thereto will not be further addressed in this Final Determination. Of note, Kane Community Living Centers are nursing facilities. *See* <https://www.alleghenycounty.us/Services/Seniors/Kane-Community-Living-Centers> (last accessed by OOR on February 26, 2025).

<sup>6</sup> The County’s submissions were received after the record closed; however, to develop the record, the submissions were considered. *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”).

fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

**1. The County has demonstrated it appropriately redacted names of law enforcement officers performing undercover or covert activities**

Section 708(b)(6)(iii) of the RTKL exempts from disclosure “the name or other identifying information relating to an individual *performing* an undercover or covert law enforcement activity from a record.” 65 P.S. § 67.708(b)(6)(iii) (emphasis added). The County argues that it is not required to provide the Requester with a list that contains only redactions of law enforcement officers currently working undercover. To do so, the County reasons, would allow the list to be requested a number of times, allowing a requester to determine the employees that move in and out of an undercover capacity. The County argues this would be contrary to the RTKL’s explicit protection of the identities of undercover law enforcement officers. In support of the County’s position, the Nagle Attestation indicates, in relevant part, the following:

2. The County publishes salary and demographic information online at <https://data.wprdc.org/dataset/alleggheny-county-employee-salaries>. Data for individuals employed in the Executive Branch departments, Row Offices and the Office of County Council who worked for the County in 2024 is currently available.

3. Before the data is published, I review it to ensure the names of every individual whose job title indicates that they are, or could be assigned to perform an undercover or covert law enforcement activity[, ] are redacted because assignments are not static. Two examples are detectives who work for the Office of the District Attorney [(“DAO”)] and sergeants with the [County] Police Department [(“PD”)].

In further support of the County’s position, the Kearns Attestation notes as follows:

2. The [PD] is aware that [the County] publishes salary and demographic information online at <https://data.wprdc.org/dataset/alleggheny-county-employee-salaries>. Before this information is published, the [PD] requests that the County’s Human Resources Department redact[] the first and last name of all [PD] sergeants, lieutenants, and most of our police officers.

3. The redactions at issue are necessary because publicizing these names could result in a substantial risk to the personal security of these officers.

4. Our Department has three uniform divisions and three detective divisions. Every January[,] we transfer officers and detectives between and among the various uniform districts and detective divisions. Some members may be transferred quickly after short stays within a unit or district, others may stay for longer periods of time. In addition to regular annual transfers, members may be transferred throughout the year. Particularly these detective units, but our uniform districts also, are called upon in a variety of high risk, dangerous situations.

5. One of our detective units that members transfer into and out of is the narcotics/vice unit, which unit utilizes their members in an undercover capacity. Very often, the investigations persist for days, months and sometimes years. Any of the [PD] police officers, sergeants, and lieutenants whose names are redacted may be called upon to perform undercover law enforcement functions. If the [PD] provided lists of police officers with redactions only for those officers currently performing undercover law enforcement functions at the snapshot in time that the list is provided, this would compromise the safety and security of the officers. We would expect multiple requests throughout the years in an effort to determine which officers' names went in and out of redaction. It would be reasonable to conclude thereby that those officers perform undercover functions.

6. The redaction is done in an attempt to shield the identification and disclosure of our members, as well as the chain of command, which could endanger the personal safety of these officers and make them and their families targets of the violent individuals they have or will seek to apprehend.

Additionally, the Spangler Affidavit provides the following:

...The [DAO] has an Investigations Unit to which approximately 20 detectives are assigned.

These detectives work interchangeably on the District Attorney's Narcotics Enforcement Team, the Gun Violence Task Force, Nuisance Property and Bar Task Force, and complex fraud and theft investigation cases. Any and all of the detectives may be assigned to work undercover surveillance in any of these investigations along with other law enforcement agencies. For the safety of the individual officers and the integrity of investigations, the names and other identifying information of the [DAO] detectives must be redacted.

Lastly, the Goodrich Attestation provides the following support for the County's position:

3. As the Solicitor for the [Sheriff's] Office, I am aware of the many dangers and the potential harm that our sworn personnel are subject to in the due course of their duty.

4. The [Sheriff's Office] is aware that [the County] publishes salary and demographic information online at <https://data.wprdc.org/dataset/allegheeny-county-employee-salaries>. Before this information is published, the [Sheriff's Office] requests that the County's Human Resources Department redact[] names of all [Sheriff's Office] investigative sworn personnel[,] as well as members of the Federal Task Force.

5. The redactions at issue are necessary because publicizing these names would result in a substantial risk to the personal security of these officers.

6. The requested redactions remain until members transfer out of the respective units.

7. The officers' redactions are necessary to protect sworn personnel so they are not targeted by dangerous suspects. The disclosure of their identity would endanger them and their families as targets of the violent individuals they have or will seek to apprehend.

Under the RTKL, a sworn affidavit or attestation 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. Office 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 attestations and affidavit] 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)).

The Requester claims that the County may only redact the names of law enforcement officers that are actively "involved in undercover activity." The Requester relies upon *Wolfson v. Allegheny County*, OOR Dkt. AP 2024-0196, 2024 PA O.O.R.D. LEXIS 513, to support his position. In *Wolfson*, the OOR directed the County to conduct a supplemental review of the redaction of law enforcement officer names to ensure only names exempt pursuant to Section 708(b)(6)(iii) were made in the responsive records. *Id.* The OOR directed the County to perform said search based upon the County's failure to claim any RTKL exemptions permitting the

redaction or withholding of records. *Id.* Of note, the OOR in *Wolfson* did not specify whether that review was limited to past, present or future performance of undercover or covert law enforcement activity. *Id.*

Section 708(b)(6)(iii) of the RTKL indicates that the name of an individual “performing” an undercover or covert law enforcement activity may be redacted. Neither the RTKL nor the Statutory Construction Act of 1972, 1 Pa.C.S. §§ 1501 *et seq.*, defines the term “performing” and therefore, the word must “be construed according to the rules of grammar and to [its] common and approved usage....” 1 Pa.C.S. § 1903(a). “Performing” is defined as “of, relating to, or constituting an art” when used as an adjective; however, “perform” when used as a verb is defined as to “carry out, do.” Merriam-Webster, available at <https://www.merriam-webster.com/dictionary/performing>; Merriam-Webster, available at <https://www.merriam-webster.com/dictionary/perform> (last accessed on February 27, 2025). In order to use performing as a verb, a helping verb, i.e., the verb “is,” becomes necessary to determine the tense of “performing,” whether it is past, present or future. For example, “is performing,” “was performing,” or “will be performing”—present progressive, past progressive and future progressive tense.<sup>7</sup> Section 708(b)(6)(iii) is silent as to whether “performing” is present, past or future tense; thereby, based on the plain language of Section 708(b)(6)(iii) and the rules of statutory construction, the County may redact a law enforcement officer’s name who either is performing, was performing, or will be performing undercover or covert activities.<sup>8</sup> The plain language of a statute generally provides the best indication of legislative intent, and as a result, if the legislature

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<sup>7</sup> See <https://www.grammarbook.com/blog/verbs/helping-verbs/>; see also <https://www.grammarbook.com/blog/verbs/present-progressive-tense/>; <https://www.grammarbook.com/blog/verbs/past-progressive-tense/> (last accessed on February 27, 2025).

<sup>8</sup> Additionally, Section 1902 of the Statutory Construction Act of 1972 indicates “[w]ords used in the past or present tense shall include the future.” See 1 Pa.C.S. § 1902.

intended to only refer to law enforcement officers currently performing undercover or covert activities, this would have been specified in Section 708(b)(6)(iii) of the RTKL.

In further support of this interpretation, the OOR has previously found that the protection of law enforcement officers that perform undercover or covert activities was paramount. In *Barry v. Pa. Governor's Office of Admin.*, OOR Dkt. AP 2020-2363, 2020 PA O.O.R.D LEXIS 2363, the OOR found that a list of users that utilize a criminal justice database was not subject to disclosure under the RTKL because some of the users perform undercover or covert law enforcement activities, and the status of the individuals performing said activities could change at any time without notice to the database. *Id.* The OOR indicated that the disclosure of the list of users would include undercover law enforcement officers and, as a result, “would be reasonably likely to result in substantial and demonstrable risk of physical harm to or the personal security of an individual.” *Id.* The list of users was found to be exempt under Section 708(b)(1) of the RTKL because of the *potential* of the users performing undercover and covert law enforcement activities. *See* 65 P.S. § 67.708(b)(1).

Section 708(b)(1) of the RTKL exempts from public disclosure “[a] record the disclosure of which . . . would be reasonably likely to result in substantial and demonstrable risk of physical harm to or the personal security of an individual.” 65 P.S. § 67.708(b)(1)(ii). Actual evidence of physical harm is not required, as the agency’s burden is to “meet the preponderance of the evidence standard, the lowest evidentiary standard, [] tantamount to a more likely than not inquiry.” *Id.* (internal citation omitted). The personal security exception addresses risks of harm to, and the personal security of, “an individual,” rather than the general public. 65 P.S. § 67.708(b)(1)(ii). It may apply to a group of individuals “based upon evidence that establishes that the release of certain information poses a likelihood of a substantial and demonstrable risk to the personal security of

that group of individuals.” *Crocco v. Pa. Dep’t of Health*, 214 A.3d 316 (Pa. 2019) (quoting *State Emps. Ret. Sys. v. Fultz*, 107 A.3d 860, 868 (Pa. Commw. Ct. 2015)). The courts have recognized that the RTKL’s security-related exemptions are of particular concern in police and prison settings. *See Borough of Pottstown v. Suber-Aponte*, 202 A.3d 173, 183 (Pa. Commw. Ct. 2019).

In this instance, the County claims that multiple requests for the same information at different times would positively identify these undercover or covert law enforcement officers or allow the officers to be identified upon comparison of the lists, and as such the redactions are appropriate under the RTKL’s personal security exception. 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); *Bayne v. New Kensington City*, OOR Dkt. AP 2021-0106, 2021 PA O.O.R.D. LEXIS 176. “Reasonably likely” has been interpreted as “requiring more than speculation.” *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 374-75 (Pa. Commw. Ct. 2013); *see also California Borough v. Rothey*, 185 A.3d 456 (Pa. Commw. Ct. 2018) (holding that an agency must offer more than speculation or conjecture and must prove that the alleged risk is substantial, demonstrable and real or apparent to establish the security-related exceptions under the RTKL). The County argues that publicly disclosing these officer’s identities would create a substantial risk to their safety and the safety of their families, by virtue of being able to determine whether the officers may have been undercover or participating in covert operations and who could participate in undercover or covert operations based upon the officer’s transfer into different units.

In *Tribune-Democrat v. City of Johnstown*, the requester sought the current police force roster, including starting employment dates, and the City argued that both the roster and the starting dates were exempt under Section 708(b)(1)(ii) because three officers on the police force were

involved in a shooting death and that threats had been made against the police force. *See* OOR Dkt. AP 2012-1542, 2012 PA O.O.R.D. LEXIS 1280. Considering the evidence and Section 708(b)(6)(iii), the OOR found that the names of the entire police force were not exempt from disclosure, but that the officer starting dates were exempt because a third party would be able to compare the starting dates to the officer names to then identify the three officers involved in the shooting. *Id.* The OOR has also held that the identity of law enforcement involved in specified events may be withheld where the evidence demonstrates that those named officers could be subject to retaliation or harm as a result of their involvement in that event. *See Fennell v. Pa. Dep't. of Corr.*, OOR Dkt. AP 2015-1944, 2015 PA O.O.R.D. LEXIS 1687 (holding that the last names of correctional officers who transported a specific inmate after an assault were exempt under the personal security exemption where evidence was presented that those officers could be the subject of retaliation); *Bayne v. New Kensington City*, OOR Dkt. AP 2021-0106, 2021 PA O.O.R.D. LEXIS 176 (holding the names of officers involved in an officer-involved shooting are exempt under the personal security exemption where the agency submitted credible evidence that the public disclosure of officer identities would place such officers at greater risk of retaliation or harm); *Steinheiser v. SEPTA*, OOR Dkt. AP 2022-1908, 2022 PA O.O.R.D. LEXIS 2352 (holding that a video which would reveal the identities of SEPTA personnel and police officers involved in a specified incident may be redacted to shield those individuals' identities pursuant to the personal security exemption).

The OOR has additionally previously found that a police force need not submit prior examples of actual harm inflicted on an officer or his family after the public release of their names in relation to an officer-involved shooting to demonstrate a credible risk to an officer. *Johnstown, supra* (holding that Section 708(b)(1) exempted from public disclosure records that would identify



officers involved in a shooting death even though there was no actual evidence of physical harm to officers).

Furthermore, the Commonwealth Court upheld the OOR's determination that exempted from disclosure records which, if made public, would jeopardize the personal safety of many individuals, reasoning that the opinions regarding safety and security rendered by a law enforcement officer with over twenty years of experience are "not mere speculation or conjecture." *Adams v. Pa. State Police*, 51 A.3d 322, 325 (Pa. Commw. Ct. 2012). Recently, however, in *Posey v. Dep't of Corr.*, the Commonwealth Court held that the names of prison employees could not be withheld or restricted without the provision of some evidence showing a risk of harm. 2025 Pa. Commw. LEXIS 18.

In this matter, the County has provided evidence that undercover and covert activity assignments are not static, officers transfer in and out of units--including narcotics and vice units, officers work interchangeably with dangerous units such as narcotics and gun violence and that sworn investigative personnel and Federal Task Force Agents are targets of dangerous suspects. *See Nagle Attestation ¶ 3; see also Kearns Attestation ¶¶ 4-5; Spangler Affidavit; Goodrich Attestation ¶¶4-7.* Given the credible evidence submitted by the County and the plain language of Section 708(b)(6)(iii), the OOR finds that the County has met its burden of proof by a preponderance of the evidence that the disclosure of the identities of law enforcement officers who are performing, will be performing or were performing undercover or covert law enforcement activities would permit a third party to identify these officers, thereby jeopardizing the personal safety of these individuals. As a result, the names of these officers are exempt from disclosure and we conclude the names of the law enforcement officers were properly redacted under Sections 708(b)(6)(iii) and 708(b)(1).

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

The Requester presents a claim concerning the County's failure to provide responsive records with fewer redactions. While the OOR may make findings of bad faith, only the courts have the authority to impose sanctions on agencies. *See generally* 65 P.S. § 67.1304(a). Under the RTKL, a finding of bad faith is appropriate where an agency refuses to comply with its statutory duties under the RTKL. *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 243 A.3d 19, 28-29 (Pa. 2020); *California Univ. of Pa. v. Bradshaw*, 210 A.3d 1134 (Pa. Commw. Unpub. 2021), *appeal denied* 2019 PA LEXIS (Pa. 2019); *Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119 (Pa. Commw. Ct. 2017).

In the instant matter, we respectfully decline to make a finding of bad faith. The County submitted a timely response to the Request, provided a detailed final response and fully participated on appeal, and a finding of bad faith is typically reserved only for an egregious or blatant violation of the RTKL.

## CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the County 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 Allegheny County Court of Common Pleas. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL; however, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.<sup>9</sup> 65 P.S. § 67.1303. All documents or communications following the issuance of this Final Determination shall be sent to [oor-](#)

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<sup>9</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

[postfd@pa.gov](mailto:postfd@pa.gov). This Final Determination shall be placed on the OOR website at:  
<http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: March 3, 2025**

*/s/ Bandy L. Jarosz*

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BANDY L. JAROSZ, ESQ.  
APPEALS OFFICER

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