



FINAL DETERMINATION

IN THE MATTER OF

**LAURA PINERO,
Requester**

v.

**LUZERNE COUNTY FLOOD
PROTECTION AUTHORITY,
Respondent**

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Docket No: AP 2025-0720

FACTUAL BACKGROUND

On March 18, 2025, Laura Pinero (collectively “Requester”) filed a request (“Request”) with the Luzerne County Flood Protection Authority (“Authority”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “[a]ny/All Contracts between the [Authority] pertaining to agreement(s) for the Dept. of Homeland Security [“DHS”] to lease office space for Immigration Custom Enforcement, (ICE) from [the Authority].” On March 21, 2025, the Authority denied the Request, arguing that disclosure of responsive records would be reasonably likely to threaten public safety. *See* 65 P.S. § 67.708(b)(2).

On March 24, 2025, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.¹ The OOR invited both parties

¹ The Requester provided the OOR with additional time to issue a Final Determination in this matter. *See* 65 P.S. § 67.1101(b)(1).

to supplement the record and directed the Authority to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On April 8, 2025, the Authority submitted a position statement verified under the penalties of unsworn falsification to authorities by Jeffrey Rockman, Esq., Solicitor for the Authority. The Authority submitted a copy of a Non-Disclosure Agreement (“NDA”) that DHS required the Authority to sign. The Authority also submitted a copy of the email transmitting the NDA.² On April 9, 2025, the Requester submitted a position statement, arguing that the Authority should not have signed the NDA because there is nothing in the document that constitutes a security threat.

On May 5, 2025, the Requester submitted screenshots of correspondence post-dating the Request and related to the intended use of the leased space, a background investigation of the Requester and a protest at an Authority meeting. Although the correspondence is tangentially related to the Request, it is not probative. Because it was also submitted well after the record had closed, the OOR did not consider the correspondence for purposes of this appeal. *See* 65 P.S. § 67.1102(a)(2) (“The appeals officer may admit into evidence ... documents ... believe[d] to be reasonably probative and relevant to an issue in dispute [and] may limit the nature and extent of evidence found to be cumulative.”); *see also* 65 P.S. § 67.1102(b)(3) (“In the absence of a regulation, policy or procedure ..., the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute.”).

LEGAL ANALYSIS

The Authority 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

² Though the NDA itself is dated April 2, 2025, DHS emailed it to the Authority on April 7, 2025.

subject to the RTKL, the Authority 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, 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 Authority argues that that disclosure of the lease or any part thereof would be reasonably likely to threaten public safety. 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).

As an initial matter, the OOR notes that the RTKL defines “financial record” as “[a]ny account, voucher or contract dealing with ... (i) the receipt or disbursement of funds by an agency; or (ii) an agency’s acquisition, use or disposal of services, supplies, materials, equipment or property.” 65 P.S. § 67.102. In *City of Harrisburg v. Prince*, the Pennsylvania Supreme Court acknowledged that “financial records” encompasses a broad class of records that “both bear a ‘sufficient connection’ to a financial ‘account, voucher or contract’ and ‘deal with the receipt or disbursement of funds by an agency.’” 219 A.3d 602, 617 (Pa. 2019) (emphasis in original). Nothing suggests that the lease is not a financial record of the Authority.

Financial records cannot be withheld wholesale, but agencies can 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). As such, the OOR must analyze whether any portions of the lease can be redacted under Section 708(b)(2) of the RTKL.

In *California Borough v. Rothey*, 185 A.3d 456 (Pa. Commw. Ct. 2018), the Commonwealth Court examined the RTKL’s security related exemptions as applied to the video footage of an interaction between an individual and a police officer in a police department holding cell. The Commonwealth Court agreed with the OOR that the police chief’s attestation that “were the video to be distributed publicly, a future prisoner might learn where the blind spots in the holding cell are located and use that knowledge to conceal drugs or weapons not discovered by the police” did not satisfy the “reasonable likelihood” test, and that an agency must “offer more than speculation or conjecture to establish the security-related exceptions under the Right-to-Know Law.” *Id.* at 460, 468 (internal citation omitted).

Subsequently, in *Borough of Pottstown v. Suber-Aponte*, the Court applied the “reasonable likelihood” test to a request for a copy of police video footage from “the time [the Requester was] brought in [to the police department] ... and all the activity at [the Department] that day.” 203 A.3d 172, 177 (Pa. Commw. Ct. 2019). The Court found that the testimony provided by the agency’s police chief was more detailed than that at issue in *Rothey* and included a description of the locations and operations of the surveillance cameras, the specific weaknesses in the system, the steps taken to monitor safety in the building and particular examples of events that would likely occur should the video footage be disclosed. 203 A.3d at 180-82. The Court concluded that this testimony was the type of evidence that would sufficiently demonstrate an “actual or real and apparent” risk of harm, rather than a general conclusion or speculation of harm to individuals or the public at large. *Id.*

Here, the email transmitting the NDA states that the NDA:

[L]imits/restricts the disclosure of information ... such as the lease agreement which contains law enforcement sensitive information about the public safety use of designated areas within the building, building layout, homeland security/public safety communications network, and security apparatus. Federal agencies are

required by federal regulation to assess and address the risks to their facilities. Due to the unique activities of [DHS Investigations (“HSI”)] personnel, HSI federally owned or leased facilities are generally vulnerable to threats from domestic and foreign sources that may target information systems, sensitive property and affect the physical/personal security of the occupants and pose public safety concerns. Accordingly, [the Authority] is requested to decline identifying lessor information about DHS-HIS’s leases. Disclosure information pertains to tenant agency (HSI) occupying high-security leased space which could present security risks such as espionage and unauthorized cyber and physical access³

The evidence does not rise to the level of specificity set forth in *Suber-Aponte*. As in *Rothey*, there is no evidence linking disclosure to a particular threat, let alone one that is reasonably likely to occur. The email states that “[f]ederal agencies are required by federal regulation to assess and address the risks to their facilities” and that “HSI federally owned or leased facilities are generally vulnerable to threats ... that *may* target information systems, sensitive property and affect the physical/personal security of the occupants and pose public safety.” (emphasis added). The OOR does not doubt these assertions; however, there is no evidence linking disclosure of the lease to any particular threat, let alone one that is reasonably likely to occur.⁴ Furthermore, the Pennsylvania Supreme Court has noted that a public agency’s agreement to hold confidential a

³ The NDA limits disclosure of protected critical infrastructure information (“PCII”), 6 U.S.C. 671-674; Sensitive Security Information (“SSI”), 49 CFR 1520.5; and other sensitive but unclassified information (“SUI”), 5 U.S.C.S. § 552a. Section 306 of the RTKL provides that “[n]othing in this act shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree.” 65 P.S. § 67.306. However, it is not at all clear how the lease or any part thereof constitutes PCII, SSI or SUI. See *Pa. Dep’t of Labor and Industry v. Heltzel*, 90 A.3d 823, 834 (Pa. Commw. Ct. 2014) (“OOR enjoys authority under the RTKL to interpret federal statutes when performing its adjudicatory role.”).

⁴ Further, while not raised by the Authority, Section 708(b)(3) of the RTKL expressly exempts:

A record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building [or] facility, which may include: ... (ii) lists of infrastructure, ... including those defined by the Federal Government in the National Infrastructure Protections, which are deemed critical due to their nature and which result from risk analysis[, etc.]; and (iii) building plans ... that expose or create vulnerability through disclosure of the location, configuration or security of critical systems.

65 P.S. §§ 67.708(b)(3)(ii)-(iii). However, it is not evident how the lease could possibly fall under the ambit of this exemption. Finally, the OOR notes that the NDA was executed after the Request was submitted and the appeal was filed. Because the Authority never argued that no records responsive to the Request existed, it is apparent that a lease in some form did exist at the time of the Request, but DHS did not ask the Authority to sign the NDA until later.

public record is unenforceable as a matter of public policy. *Tribune-Review Publishing Co. v. Westmoreland Cnty. Housing Auth.*, 833 A.2d 112, 120 (Pa. 2003).⁵

Accordingly, the Authority has not met its burden of proving that any portions of the lease may be redacted. 65 P.S. §§ 67.706, 708(a)(1); *Off. of the Governor v. Davis*, 122 A.3d 1185, 1191 (Pa. Commw. Ct. 2015) (en banc) (holding that, under the RTKL, “exceptions to disclosure of public records must be narrowly construed.”).

CONCLUSION

For the foregoing reasons, the Requester’s appeal is **granted**, and the Authority is required to produce a copy of the lease within thirty days. 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 Luzerne 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: May 13, 2025

/s/ Blake Eilers
Blake Eilers, Esq.
Senior Appeals Officer

Delivered via e-file portal to: Laura Pinero; Christopher Belleman; Jeffrey Rockman, Esq.

⁵ As noted, Section 1101(c) permits a third party with a direct interest in the record to request to participate in the appeal. See 65 P.S. §§ 67.1101(c). On appeal, the OOR advised the Authority to notify any third parties of the appeal, but there is no evidence that the Authority has notified DHS of the appeal nor is there any indication that the Authority thinks it is necessary to do so.

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