pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
ALFONSO PEW,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2025-1707**
	:	
PENNSYLVANIA DEPARTMENT OF CORRECTIONS,	:	
Respondent	:	
	:	
And	:	
	:	
WELLPATH, LLC,	:	
Direct Interest Participant	:	

FACTUAL BACKGROUND

On May 14, 2025, Alfonso Pew ("Requester"), an inmate at SCI-Phoenix, filed a request ("Request") with the Pennsylvania Department of Corrections ("Department") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking:

1. Texas Insurance owners['] names, business address, business phone number, business fax, business e-mail and business website, and a copy of the policy contract covering Dr. Anthony Letizio and or Wellpath Inc. LLC ("Wellpath")/H.I.G. Capital employees and physicians in Pennsylvania only!

2. Pennsylvania Professional Liability Joint Underwriting Association (a) Certificate of Liability Insurance for Dr. Anthony Michael Letizio II, (b) a copy of the policy contract insurance with Dr. Anthony Michael Letizio II, (c) "PAJUA" owners['] names, business address, business phone number, fax number, business email, business website.

3. [A copy of the] 2024-2025 Fronting Policy pertaining to Dr. Anthony Michael Letizio II and Wellpath []/H.I.G. Capital coverage in Pennsylvania employee[]s and physicians. Owners[’] names, business address, business phone, business fax, business e-mail, business website.

4. Buffer SIR 2024-2025 policy insurance for Dr. Michael Anthony Letizio II or Wellpath [] H.I.G. Capital Pennsylvania Employee[]s and Physicians, Owners[’] names, business address, business phone, business fax, business e-mail, business website, copy of policy contract.

5. 2024-2025 Captive Policy insurance contract for Dr. Anthony Michael Letizio II and Wellpath []/H.I.G. Capital, owners[’] names, business address, business phone number, business fax, business e-mail, business website, a copy of insurance contract.

6. Umbrella Policy 2024-2025 for Dr. Anthony Michael Letizio II and Wellpath [] H.I.G. Capital insurers Owners[’] names, business address, business fax, business phone, business e-mail, business website and copy of contract for Pennsylvania Employees, Physicians.

On May 30, 2025, after invoking a thirty-day extension to respond, *see* 65 P.S. § 67.902(b), the Department denied the Request, arguing that responsive records do not exist in its possession, custody or control. Although Wellpath, a Department contractor, is in possession of responsive records, Wellpath argues that the documents do not fall within the RTKL’s definition of a “record,” and they are not directly related to the performance of a governmental function.

On June 12, 2025, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. Specifically, the Requester argues that the requested records are publicly accessible financial records that are in the possession of Wellpath and are accessible under the RTKL because Wellpath has a contract with the Department. 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 2, 2025, the Department submitted a position statement, reiterating its arguments. In support, the Department submitted a statement made under the penalties of unsworn falsification

to authorities by Andrew Filkosky ("Filkosky Attestation"). On the same day, the OOR accepted Wellpath's Request to Participate as a direct interest participant. Wellpath submitted a position statement, arguing that the records are not accessible under Section 506(d)(1) of the RTKL, *see* 65 P.S. § 67.506(d)(1), and also arguing that the records contain trade secrets and confidential, proprietary information. *See* 65 P.S. § 67.708(b)(11). In support, Wellpath submitted the sworn affidavit of Stefan Cange, Vice President and Senior Associate General Counsel ("Cange Affidavit"). Among other things, the Cange Affidavit verifies Wellpath's position statement.

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 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)),

1. The requested records do not exist in the Department's possession

The Department argues that it does not possess the requested records. The Filkosky Attestation provides:[1]

> 5. In response to [the] Request, this office contacted officials at SCI-Phoenix as well as the Department's Health Care Administrator here at its Central Office

[1] 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).

> location in Mechanicsburg, all of whom would have access to and knowledge of any existing responsive records within the Department's possession ….
> …
> 7. In response to those inquiries, the aforementioned Departmental officials confirmed that the Department does not possess any [responsive] records ….
>
> 8. Based upon the foregoing, I can attest here that, after conducting a thorough good faith search …, the Department does not possess responsive records.

"The burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request." *Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011). An attestation by the individual who searched for responsive records is sufficient to meet an agency's burden of proving the nonexistence of a record. *Id.*; *see also Pa. Dep't of Health v. Mahon*, 283 A.3d 929, 936 (Pa. Commw. Ct. 2022) (holding that, when there is evidence that a record does not exist, "[i]t is questionable to what degree additional detail and explanation are necessary…."); *Campbell v. Pa. Interscholastic Athletic Ass'n*, 268 A.3d 502 (Pa. Commw. Ct. 2021) (noting that an agency need only prove the nonexistence of records by a preponderance of the evidence, the lowest evidentiary standard, and is tantamount to a "more likely than not" inquiry); *but see Mack v. Pa. Dep't of Corr.*, No. 699 C.D. 2022, 2023 Pa. Commw. Unpub. LEXIS 393, *5 (finding that the agency failed to prove that no other records exist where the open records officer's affidavit provided only that she contacted an individual who "would likely have possess[ed] such records if they existed" and that individual reported that no records existed).

In the absence of any evidence that the Department 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 Department contacted officials at the prison where the Requester is housed, as well the Department's Health Care Administrator at the Department's Central Office, who would likely have records if they existed. Accordingly, because custodians of potentially

responsive records reported that the records do not exist, the Department has met its burden of proving that not that no records exist in its possession, custody, or control. *See Hodges*, 29 A.3d at 1192.

2. The records are not accessible under Section 506(d)(1) of the RTKL

The fact that responsive records are not in the possession of the Department does not end the inquiry, because under the RTKL, records in the possession of third parties may be indirectly accessible through Section 506(d) of the RTKL. *See Eiseman*, 86 A.3d at 938-39. Section 506(d)(1) of the RTKL provides that:

> A public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under this act, shall be considered a public record of the agency…

65 P.S. § 67.506(d)(1). "Under the RTKL, to reach records outside an agency's possession the following two elements must be met: (1) the third party performs a governmental function on behalf of the agency; and (2) the information sought directly relates to the performance of that function." *Eiseman*, 86 A.3d at 939 (citation omitted).

The requirement that an agency have a contract with the third party from whom records are sought under Section 506(d) is essential. *See id.* at 1223. A third party performs a governmental function on behalf of an agency where it performs "a function generally performed by that agency and is not ancillary to the agency's functions." *Id.* at 939 (citing *SWB Yankees LLC v. Wintermantel*, 45 A.3d 1029, 1044 (Pa. 2012)). This must include the "delegation of some substantial facet of the agency's role and responsibilities, as opposed to entry into routine service agreements with independent contractors." *Wintermantel*, 45 A.3d at 1043. The "'directly relates' test … 'focuses on *what* services are performed and *how* they are performed, not *who* performs

them.'" *Allegheny Cnty. Dep't of Admin. Servs. v. Parsons*, 61 A.3d 336, 347 (Pa. Commw. Ct. 2013) (internal citation omitted) (emphasis in original).

In *Parsons*, the requester sought payroll lists from the third-party contractor of Allegheny County, seeking "the full name of each employee, job position/title, salary and hire date." 61 A.3d at 340. On appeal, the Commonwealth Court analyzed the connection between the County's government function and the contractor's execution of it and found that the contractor was fulfilling a governmental function, but that the records sought did not directly relate to that function. *Id*. at 344. The Court found that the names, dates of birth and hire dates of the contractor's employees were immaterial both to the agency contract and to the agency's execution of that contract, and therefore the requested records did not directly relate to that governmental function. *Id*. at 346.

Similarly, in *UnitedHealthcare of Pennsylvania, Inc. v. Baron*, 171 A.3d 943, 964 (Pa. Commw. Ct. 2017), the court rejected the proposition that an agency's right to review nursing home provider rates made them accessible, holding that to be accessible under Section 506(d)(1), requested information must have "a direct bearing on the third-party contractor's obligations" under the contract. *See also Giurintano v. Pa. Dep't of Gen. Servs*., 20 A.3d 613, 615 (Pa. Commw. Ct. 2011) (finding that "independent contractor agreements with interpreters who have not actually performed translation services under the Contract ... are not directly related to the Contract because the interpreters have not actually performed, and may never perform, translation services under the Contract") (emphasis removed).

In *Pew v. Pennsylvania Department of Corrections*, OOR Dkt. AP 2025-0140, 2025 Pa. O.O.R.D. LEXIS 367, the Department provided the names of the insurance companies that insure Wellpath and a certificate of insurance for Dr. Anthony Letizeo, but denied the request for the full

names, licenses numbers, certificates of insurance and related information about the insurance companies for two psychologists and a psychiatrist employed by another healthcare provider that contracted with the Department. Neither the Department nor the healthcare provider provided any argument explaining why the names, license numbers and insurance information are not related to its contract, and the OOR concluded that the identities, qualifications and insurance of psychologists and psychiatrists providing mental health services to the Department seemed reasonably related to the Department's duty to maintain inmate health and wellness. Therefore, the OOR was constrained to find that the responsive records were accessible under 65 P.S. § 67.506(d)(1).

As in *Pew*, the instant Request seeks information about insurance provided to the employees of an entity that has a contract with the Department. Wellpath is a healthcare provider at Department facilities, and there is no dispute that Wellpath has a contract with the Department to provide healthcare services to inmates. *See* Cange Affidavit, ¶ 4. The question becomes whether the records are directly related to the performance of a governmental function.

In *Pew*, because doctors' names, license numbers and insurance information seemed reasonably related to the Department's duty to maintain inmate health and wellness, and there was no evidence establishing that such information is not so related, the OOR found that the information was accessible under Section 506(d)(1).

Unlike in *Pew*, Wellpath has submitted evidence in the instant matter. This evidence establishes that the requested records relate to Wellpath's insurance program that it provides to its employees, including, among other things, premiums, limits, deductibles, coverages, exclusions, and insuring agreements. *See* Cange Affidavit, ¶ 8. Responsive records include contracts with other entities, details of the identities, credentials, experience, licenses and employment history of

Wellpath's employees. *See id.* Just as in *Parsons*, this information is related to a contractor's employees; it does not directly relate to Wellpath's *performance* of its governmental function, which is the provision of medical services to inmates.

However, the OOR notes that Pennsylvania law requires healthcare providers to maintain liability insurance. *See* 40 P.S. § 1303.711; 49 Pa. Code § 25.281. Although the operative contract is not before the OOR, even if the Department is entitled to review documents related to the insurance Wellpath maintains on behalf of itself or its employees, as in *Baron,* such documents are not directly related to Wellpath's performance under the contract. While these documents may verify compliance with the law and the Department may well have contractual right to review them, they are not directly related to Wellpath's provision of healthcare services to inmates.[2] Section 506(d)(1) affords access to records in the possession of third-party contractors that are directly related to the contractor's performance of a governmental function; it does not enable requesters to audit contractors' compliance with other laws. As the records are not directly related to the performance of a governmental function, they are not accessible under Section 506(d)(1) of the RTKL. *See* 65 P.S. § 67.506(d)(1).

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

[2] The Requester argues that the requested records are financial records. 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. As the requested records are related to insurance provided to Wellpath's own employees, they are not related to an agency's receipt or disbursement of funds or use or disposal of services. As such, they are not financial records. The Requester also argues that the RTKL allows access to all contracts with contractors. While contracts between an agency and a contractor are accessible, contracts between a contractor and a sub-contractor, where there is not a contractual relationship between the agency and the subcontractor, are not accessible. *See Eiseman*, 86 A.3d at 1223.

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 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.[3] 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: July 23, 2025

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

Delivered to: Alfonso Pew, BT7263 (via regular mail);
Andrew Filkosky; Joseph Gavazzi, Esq.; William Wickard, Esq. (via e-file portal)

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