



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
DAVID BROWN AND	:
DABROWNLAW, LLC,	:
Requester	:
	:
v.	: Docket No: AP 2026-1553
	:
PENNSYLVANIA DEPARTMENT OF	:
CORRECTIONS,	:
Respondent	:

FACTUAL BACKGROUND

On March 11, 2026,¹ David Brown, Esq. and DABROWNLAW, LLC (collectively, “Requester”) submitted a request (“Request”) to the Pennsylvania Department of Corrections (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

Visitor logs for each and every minimum and medium Pennsylvania Male Correctional Institution, Prison, and-or Camp for the calendar years 2023, 2024, and 2025. To assist in identifying the specific records I am seeking, I am requesting only the logs that reflect visits by an individual named [name omitted] during the covered time period. I am requesting any and all visits by [name omitted], the name or names of the inmates she visited, and the purpose of the visit if that is provided.

On April 13, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Department denied the Request, arguing that disclosure of records responsive to the Request would be reasonably likely to result in a substantial and demonstrable risk of physical

¹ While the Request is dated March 12, 2026, it was received by the Department on March 11, 2026.

harm to or the personal security of an individual, 65 P.S. § 67.708(b)(1)(ii), and the likelihood of jeopardizing or threatening public safety, 65 P.S. § 67.708(b)(2).

On April 20, 2026, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.² The Requester argues, in sum, that the Department “has failed to meet its burden of proving that the requested records are exempt from disclosure.” The OOR invited both parties to supplement the record and directed the Department to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On April 30, 2026, the Department submitted a position statement, asserting that it “is amending its prior position, and is now partially granting and partially denying [the Request and is providing] access to the sole, one-page record that is responsive to [the] Request at issue herein.” In addition, the Department asserts that it properly redacted the responsive record, as the information is protected by the constitutional right to privacy and is exempt personal identification information, 65 P.S. § 67.708(b)(6)(i)(A).³ In support of its position, the Department submitted the declaration, made subject to the penalties of unsworn falsification to authorities, 18 Pa.C.S. § 4904, of Kimberly Grant (“Grant Declaration”), Deputy Open Records Officer (“Deputy AORO”).

To date, the Requester has not sought to make a submission on appeal or respond to the Department’s position statement.⁴

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

² The Requester granted the OOR a 30-day 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).”).

³ An agency is permitted to assert additional grounds for denial on appeal to the OOR. *See Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013).

⁴ Portal submissions have remained open to date.

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. 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 appeal is moot in part

During the pendency of the appeal, the Department provided a redacted record responsive to the Request. *See* Grant Declaration, ¶ 10; *see also* Exhibit “B”. As such, the appeal is dismissed as moot as it relates to the redacted record provided on appeal. *See Chester Water Auth. v. Pa. Dep’t of Cmty. & Econ. Dev.*, 249 A.3d 1106, 1114 (Pa. 2021) (finding that a matter was settled by provision of records and, thus, “the controversy has been mooted”).

2. The Department is permitted to redact certain information

The Department argues that it redacted information protected by the constitutional right to privacy and personal identification information. More specifically, the Department redacted the following information:

- The names of the subject inmate and the specified visitor, the uniquely identifying inmate number of the subject inmate, as well as the personal home address, date of birth, age and sex of the specified visitor are all being redacted in accordance with their [c]onstitutional [r]ights to privacy from the public release of that information.
- The personal e-mail address, date of birth, age, and sex of the specified visitor are likewise being redacted as exempt personal identifying information under the RTKL. *See* Section 708(b)(6)(i)(A) thereof.

Grant Declaration, ¶ 9.

Personal telephone numbers and email addresses are facially exempt. 65 P.S. § 67.708(b)(6)(i)(A). Further, the Department redacted the names of the subject inmate and the specified visitor, and the personal home address, date of birth, and sex of the visitor. If a request for records implicates personal information that is not expressly exempt from disclosure under the RTKL, the Pennsylvania Supreme Court has held that individuals still possess a constitutional right to privacy in certain types of information. *Pa. State Educ. Ass'n v. Commonwealth*, 148 A.3d 142 (Pa. 2016). When considering information that is not expressly exempt from disclosure under the RTKL, the OOR must balance the individual's interest in informational privacy with the public's interest in disclosure and may release the personal information only when the public benefit outweighs the privacy interest. *Id.* Examples of personally identifying information that are subject to the balancing test include private citizens' addresses and full dates of birth. *See Sapp Roofing Co. Inc. v. Sheet Metal Workers' International Assoc.*, 713 A.2d 627 (Pa. 1998) (finding names, home addresses, social security numbers, and telephone numbers of private citizens to be personal information subject to the balancing test).

The redacted information is the type that is subject to the constitutional balancing test, and the Requester has not set forth any public interest in the release of the information. While all of the information does not implicate the same privacy concerns,⁵ in the absence of a stated public interest, we find that the redactions are permissible.⁶

⁵ For example, birth years do not implicate the same security concerns as the release of birth date and month. In *Governor's Office of Admin v. Purcell*, where a requester sought the birth dates of all active state employees, the Commonwealth Court held that the month and date of birth are exempt from disclosure under the RTKL but did not find that birth years were exempt because birth years do not implicate the same security concerns as full birth dates. 35 A.3d 811 (Pa. Commw. Ct. 2011). Accordingly, although there is a privacy interest in birth years as a component of a birth date, the interest is diminished.

⁶ This Final Determination shall not be read as to stand for the proposition that the redacted information will always be automatically exempt. If, in a different appeal, we are presented with argument or evidence concerning a public interest, we will perform the balancing test accordingly.

3. The Department demonstrated that additional records responsive to the Request do not exist in its possession, custody or control

The Department argues that “after a thorough good faith search, the Department possesses a single, one-page, responsive record that has been partially granted and provided to [the Requester], with the appropriate redactions applied as indicated herein.” Grant Declaration, ¶ 10.

In response to a request for records, “an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the identified record[.]” 65 P.S. § 67.901.

While the RTKL does not define the term “good faith effort,” in *Uniontown Newspapers, Inc. v. Pennsylvania Department of Corrections*, the Commonwealth Court stated:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession ... When records are not in an agency’s physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors ... After obtaining all potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff’d*, 243 A.3d 19 (Pa. 2020).

An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency’s records, that it has conducted a search reasonably calculated to uncover all relevant documents. *See Burr v. Pa. Dep’t of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

In support of the Department’s assertions, the Department has provided the Grant Declaration,⁷ authored by the Department’s Deputy AORO, who is responsible for logging in and

⁷ Under the RTKL, a sworn affidavit or statement made under penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Department has acted in bad faith or that additional records exist, “the averments in [the declaration] should be accepted as true.” *McGowan*

issuing responses to RTK requests received by the Department, as well as coordinating the research and information-gathering efforts in response to requests submitted to the Department. Grant Declaration, ¶ 3. In response to the Request, Ms. Grant “contacted officials at every Departmental institution to determine which, if any, possessed responsive records” and in response to that inquiry, received a “single, one-page, responsive record indicating one visit by the specified visitor to an inmate at a Departmental institution in March of 2023.” *Id.* at ¶ 6. Thus, “after a thorough good faith search, the Department possesses a single, one-page responsive record that has been partially granted and provided to [the Requester], with the appropriate redactions applied[.]” *Id.* at ¶ 10.

Accordingly, based on the evidence provided, the Department has met its burden of proof that additional responsive records do not exist in its possession, custody or control. *See Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011) (“[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request”); *Pa. Dep’t of Health v. Mahon*, 283 A.3d 929 (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).

CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**, and the Department is not required to take any further action. This Final Determination is binding

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)).

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 as per Section 1303 of the RTKL. 65 P.S. § 67.1303. 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.⁸ 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 OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: June 18, 2026

/s/ Lyle Hartranft

LYLE HARTRANFT, ESQ.
APPEALS OFFICER

Sent via e-file portal to: David Brown, Esq.; Andrew Filkosky, AORO;
Joseph Gavazzi, Esq.

⁸ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).