pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
STUART NIEMTZOW,	:	
Requester	:	
	:	
v.	:	**Docket No.: AP 2026-3463**
	:	
PENNSYLVANIA DEPARTMENT	:	
OF CORRECTIONS,	:	
Respondent	:	
	:	
and	:	
	:	
WELLPATH, LLC,	:	
Direct Interest Participant	:	

On June 5, 2026, Stuart Niemtzow, Esq. ("Requester") submitted a request ("Request") to the Pennsylvania Department of Corrections ("Department" or "DOC") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., stating:

> I am seeking records relating to contract AGR-15-221 with Wellpath Care Solutions [("Wellpath")]. If any portion of a record is determined to be exempt, please redact only the exempt material and provide all nonexempt portions.
>
> 1. The AGR-15-221 contract and all amendments, exhibits, addenda, insurance riders, procurement materials, insurance specifications.
>
> 2. All Certificates of Insurance (COIs) provided by or on behalf of Wellpath relating to AGR-15-221.
>
> 3. All correspondence between DOC and Wellpath/Correct Care Solutions regarding insurance requirements, COIs, coverage, limits, deductibles, Self-

insurance retention ("SIRs"), cancellations, lapse, or deficiencies pertaining to the AGR-15-221 contract.

4. All non-privileged audits, compliance reviews, risk assessments, reports, or internal memoranda relating to Wellpath/Correct Care Solutions' insurance compliance related to the AGR-15221 contract.

5. All non-privileged DOC documents and communications with the Governor's Office, General Counsel, Commonwealth risk management, Board of Claims, or Treasury, from 2015-2024, relating to vendor insurance compliance for Wellpath/Correct Care Solutions for the AGR-15-221 contract.

6. All non-privileged correspondence from 2015-2024 between DOC and any insurer, broker, agent, Third-party administrator, or risk consultant regarding Wellpath/CCS insurance or coverage status including Zurich-related entities and Lexington-related entities, related to the AGR-15-221 contract.

7. All insurance policies provided by Wellpath or Correct Care Solutions pertaining to the AGR-15-221 contract.

On June 9, 2026, the Department invoked a thirty-day extension to respond, and the Requester agreed to an additional extension of time until August 13, 2026. *See* 65 P.S. § 67.902(b)(2).

On August 7, 2026, the Department partially[1] denied the Request, arguing that Items 3, 5, and 6 are insufficiently specific, 65 P.S. § 67.703, and that the Department does not possess the records requested in Item 7 because "because Wellpath, the Department's contractor, declined to turn over responsive records, asserting that records responsive to the Request are exempt from production on the grounds that they are not sufficiently directly related to Wellpath' s performance of a government function as set forth in 65 P.S. § 67.506(d)."

On August 21, 2026, the Requester appealed to the Office of Open Records ("OOR"), challenging the partial denial and stating grounds for disclosure.[2] When originally filed, the appeal

[1] The Department granted Items 1, 2, and 4 of the Request.
[2] During the appeal, the Requester granted the OOR an extension to issue a final determination so that the submission period could be extended. *See* 65 P.S. § 67.1101(b)(1) ("Unless the requester agrees otherwise, the appeals officer

documents did not include a complete copy of the Department's response, resulting in the issuance of a Notice of Deficiency Order on August 25, 2026. *See* 65 P.S. § 67.1303(b). On August 28, 2026, the Requester provided the documents and cured the deficiency. 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 August 30, 2026, the Requester submitted a position statement and three exhibits in support of the appeal. *See* Requester Exhibits A-C.

On September 9, 2026, Wellpath filed a request to participate in this matter as a direct interest participant ("DIP"), which was granted by the OOR. Wellpath also submitted a position statement, reiterating the argument that the records responsive to Item 7 of the Request are not public records, 65 P.S. § 67.506(d), and arguing that the records are exempt from disclosure as Wellpath's trade secrets and confidential proprietary information, 65 P.S. § 67.708(b)(11). In support, Wellpath submitted the sworn affidavit of Brett Arnold, Sr. Director, Senior Associate General Counsel ("Arnold Affidavit"). The Arnold Affidavit addresses Wellpath's position that the records responsive to Item 7 of the Request are exempt trade secrets.

On September 10, 2026, the Department submitted a position statement, reiterating its grounds for denial. In support of its position, the Department submitted the attestation of its Deputy Agency Open Records Officer, Kimberly Grant ("Grant Attestation"), which describes the Department's search for records responsive to the Request.

On September 18, 2026, the Requester submitted a supplemental position statement and additional exhibits in support of the appeal. *See* Requester Exhibits D-F.

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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).")

On October 7, 2026, in response to the OOR's request for clarification, Wellpath submitted a supplemental statement, identifying the insurance policies pertaining to the AGR-15-221 contract, which are at issue in Item 7 of the Request.

On October 13, 2026, the Requester submitted a supplemental statement in support of the appeal. On that same day, the Department submitted a supplemental statement, reiterating its position that the requested insurance policies are not accessible under Section 506(d) of the RTKL because the "documents are not directly related to Wellpath's performance under the contract."

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. Items 3, 5, and 6 of the Request are insufficiently specific

The Department argues that Items 3, 5, and 6 of the Request are insufficiently specific. *See* 65 P.S. § 67.703. The Requester argues that Items 3, 5, and 6 are sufficiently specific because the items each "identify the particular government contract, AGR-15-221; the contractor, Wellpath/Correct Care Solutions; the subject matter, insurance and insurance compliance; the

types of records sought; and, where applicable, a defined time period and identified categories of correspondents."

Section 703 of the RTKL states that "[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested." 65 P.S. § 67.703. When determining whether a particular request is sufficiently specific, the OOR uses the three-part balancing test employed by the Commonwealth Court in *Pa. Dep't of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015).

First, "[t]he subject matter of the request must identify the 'transaction or activity' of the agency for which the record is sought." *Id.* at 1125 (quoting 65 P.S. § 67.102). Second, "[t]he scope of the request must identify 'a discrete group of documents, either by type … or by recipient.'" *Id.* (quoting *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013). Finally, "[t]he timeframe of the request should identify a finite period of time for which records are sought." *Id*. at 1126 (citing *Carey*, *supra*). "The timeframe prong is, however, the most fluid of the three prongs, and whether or not the request's timeframe is narrow enough is generally dependent upon the specificity of the request's subject matter and scope." *Id.*

The above factors are intended "to facilitate an analysis in order to determine whether an agency can ascertain which records are being requested…. The subject matter, scope, and timeframe of a request are flexible, analytical elements, not evidentiary requirements." *Pa. Dep't of Health v. Shepherd*, No. 377 C.D. 2021, 2022 Pa. Commw. Unpub. LEXIS 207 *6-7 (Pa. Commw. Ct. 2022), *appeal denied*, No. 334 MAL 2022, 2022 Pa. LEXIS 1862 (Pa. 2022). Finally, we must analyze the entirety of a request, as it is possible that portions of a request are insufficiently specific, while other portions provide sufficient guidance. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010) (noting "the valid part of the

request was included in a laundry list of requested materials").

a. Item 3 of the Request is insufficiently specific

Item 3 of the Request has a subject matter, "the AGR-15-221 contract[,]" a broad scope, "correspondences" between the Department and Wellpath, and does not have a stated timeframe. *See Pa. Dep't of Educ.*, *supra*. Failure to provide a timeframe is not fatal to the specificity of a request so long as the subject matter and scope are narrow enough to aid the agency in its search for responsive records.

Although Item 3 of the Request has a clearly defined subject matter, the scope is extremely broad because it does not identify the type of correspondences sought, such as emails or letters, and only generally identifies the senders and recipients as the Department and Wellpath. Item 3 does attempt to narrow its scope by providing a list of insurance-related topics of the requested correspondence. However, this list does not overcome the failure to identify a specific type of correspondence or more specific senders and recipients. Therefore, its broad scope and lack of a specified timeframe render Item 3 of the Request insufficiently specific. *Id.*; *see also* 65 P.S. § 67.703. However, nothing in this Final Determination precludes the Requester from filing a new, more specific request, and if necessary, filing an appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

b. Item 5 of the Request is insufficiently specific

Item 5 of the Request has the same subject matter, the AGR-15-221 contract, has an extremely broad scope, insurance-compliance "documents and communications," and has a stated, yet lengthy, timeframe of nine years. *See Pa. Dep't of Educ.*, 119 A.3d 1121. A long timeframe is not fatal to the specificity of a request if the subject matter and scope are otherwise specific. *Id.*

The scope of Item 5 of the Request is extremely broad and does not specify a discrete group

of documents, either by type or individual recipient. Rather, the Request seeks simply "documents and communications," without specifying any particular types of communication. These broad terms do little, if anything, to help the Department in its search for records responsive to the Request. While Item 5 provides a general list of senders and recipients—"the Governor's Office, General Counsel, Commonwealth risk management, Board of Claims, or Treasury"—there is still not enough information for the Department to ascertain what types of "documents and communications" are responsive to the Request. Thus, its lengthy timeframe coupled with a scope that does not meaningfully aid the Department in its search for responsive records makes Item 5 of the Request insufficiently specific.[3]

c. Item 6 of the Request is insufficiently specific

Item 6 of the Request has the same subject matter, the AGR-15-221 contract, has an extremely broad scope, "correspondences" about Wellpath's "insurance or coverage status[,]" and a finite but lengthy timeframe of nine years. Like Items 3 and 5, the scope of Item 6 is extremely broad because it does not identify the type of correspondences sought nor does it identify any individual senders and recipients of the correspondences to enable the Department to search for responsive records. As such, item 6 of the Request does not meet the specificity requirements of Section 703 of the RTKL. *See Pa. Dep't of Educ.*, *supra*; *see also* 65 P.S. § 67.703. However, nothing in this Final Determination precludes the Requester from filing a new, more specific request, and if necessary, filing an appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

2. The records requested in Item 7 of the Request are not accessible under 506(d)(1) of the RTKL

[3] *See Pa. Dep't of Educ.*, *supra*; *see also* 65 P.S. § 67.703. However, nothing in this Final Determination precludes the Requester from filing a new, more specific request, and if necessary, filing an appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

The Department argues that it conducted a good faith search for records responsive to the Request, including Item 7, and that it does not possess records responsive to Item 7 because the records are in Wellpath's possession and Wellpath would not provide the records to the Department. Wellpath argues that the records requested in Item 7 of the Request are not "records" as defined by the RTKL and are also not accessible under the RTKL because they do not relate to a governmental function as required by Section 506(d)(1). *See* 65 P.S. §§ 67.102, 506(d)(1). The Requester argues that any records held by Wellpath are accessible under the Section 506(d)(1) of RKTL because Wellpath has a contract with the Department that "required Wellpath to maintain specified insurance," which Wellpath represented it possessed, and the records requested in Item 7 are "directly related to the governmental function Wellpath performs for…[the Department]."

More specifically**,** Wellpath argues the requested insurance policies are not accessible under Section 506(d) of the RTKL because the policies "deal with insurance contracts that Wellpath maintains with other private parties" and, thus, are not "directly related to Wellpath's provision of medical services to the…[Department]." The Requester argues that "[c]ontract AGR-15-221 itself required Wellpath to maintain specified insurance, …[that] Wellpath furnished Certificates of Insurance [to the Department] representing that the contractual insurance requirements were being satisfied[,]" and that, as such "[t]he underlying policies are therefore evidence of whether Wellpath performed an express obligation imposed by the public contract."

Under the RTKL, records in the possession of third parties may be indirectly accessible through Section 506(d) of the RTKL. *See Dental Benefit Providers, Inc. v. Eiseman*, 86 A.3d 932, 938-39 (Pa. Commw. Ct. 2014), *aff'd* 124 A.3d 1214, 86 A.3d at 939. 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…

5 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). 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*. 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." *See SWB Yankees LLC v. Wintermantel*, 45 A.3d 1029, 1044 (Pa. 2012). The "'directly relates' test…'focuses on *what* services are performed and *how* they are performed, not *who* performs them.'" A*llegheny Cnty. Dep't of Admin. Servs. v. Parsons*, 61 A.3d 336, 347 (Pa. Commw. Ct. 2013) (internal citation omitted) (emphasis in original).

Here, Wellpath is an inmate 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* Grant Attestation, ¶ 6; *see also* Arnold Affidavit, ¶¶ 4, 9. Thus, the question is whether the records are directly related to the performance of the governmental function of inmate healthcare provision.

In primary support of its argument, Wellpath relies on *Pew v. Pennsylvania Department of Corrections*, where the OOR determined that the requested insurance-related records concern Wellpath's internal insurance arrangements rather than its supplying of healthcare services, and, therefore, do not directly relate to the governmental function of inmate healthcare provision even though Pennsylvania law requires healthcare providers to maintain liability insurance. OOR Dkt. AP 2025-1707, 2025 PA O.O.R.D. LEXIS 1729; s*ee also Pew v. Pa. Dep't of Corr.*, OOR Dkt.

AP 2025-1907, 2025 PA O.O.R.D. LEXIS 1878; *Pelino v. Pa. Dep't of Corr.*, OOR Dkt. AP 2026-2444, 2026 PA O.O.R.D. LEXIS 2550. The Requester differentiates the instant matter from *Pew*, arguing that the contract that is the subject of the Request has specific insurance requirements and the requested insurance policies "directly relate to contractual performance and [to] whether the Certificates of Insurance accurately described the coverage Wellpath represented to [the Department]."

In *UnitedHealthcare of Pennsylvania, Inc. v. Baron*, the Commonwealth Court held 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. 71 A.3d 943, 964 (Pa. Commw. Ct. 2017). Here, Wellpath identifies the responsive policies as "one Commercial General Liability ('CGL') policy and one Medical Professional Liability ('MPL') policy pertaining to the AGR-15-221 contract" and states that "[t]he CGL and MPL coverage is combined under one Correctional Healthcare Facility liability policy form but there are separate limits for each coverage." The Requester provided a copy of the Request for Proposal ("RFP") "provisions incorporated into AGR-15-221" and argues that the provisions require not only liability insurance as required by Pennsylvania law[4] but also "Worker's Compensation Insurance" and "Public Liability and Property Damage Insurance." *See* Requester Exhibit D. However, like in *Pew*, there is no evidence in the instant appeal record showing that the third-party insurance policies requested in Item 7 are directly related to Wellpath's performance of the governmental function of providing inmate healthcare for the Department. 2025 PA O.O.R.D. LEXIS 1729; *see also* 40 P.S. § 1303.711; 49 Pa. Code § 25.281. This situation is analogous to *Baron* where the Court found that knowledge of the requested information was not necessary "to assure compliance with

[4] *See* 40 P.S. § 1303.711; 49 Pa. Code § 25.281.

the…contract" or that the agency "use[d] the information to monitor compliance with the contract." 71 A.3d 943. Here, as in *Baron*, Wellpath provides inmate healthcare without the Department's knowledge of the information contained within Wellpath's Correctional Healthcare Facility liability policy. *Id*. Moreover, in *Baron*, the Court rejected the proposition that an agency's right to review the requested nursing home provider rates made them publicly accessible.[5] *Id*. Accordingly, because there is no evidence that records are directly related to the performance of a governmental function, the policies requested Item 7 of the Request are not accessible under Section 506(d)(1) of the RTKL.[6] *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 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.[7] 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: October 21, 2026

/s/ *Erika Similo*

ERIKA SIMILO

[5] Notably, however, the Requester has received the relevant COIs.
[6] Because the records are not accessible under 65 P.S. § 67.506(d), the OOR need not address the Wellpath's alternate grounds for denial. S*ee Jamison v. Norristown Bor. Police Dept.*, OOR Dkt. AP 2011-1233, 2011 PA O.O.R.D. LEXIS 927.
[7] *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

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