pennsylvania
OFFICE OF OPEN RECORDS

# FINAL DETERMINATION

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| **IN THE MATTER OF** | : | |
| | : | |
| **AUSTIN NOLEN,** | : | |
| **Requester** | : | |
| | : | |
| **v.** | : | **Docket No: AP 2026-2678** |
| | : | |
| **PENNSYLVANIA DEPARTMENT OF CORRECTIONS,** | : | |
| **Respondent** | : | |

## FACTUAL BACKGROUND

On May 19, 2026, Austin Nolen, 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*., seeking:

> The policy statement, administrative manual, or other general policy documents, as well as associated manual(s), governing the administration of the Interstate Compact on Adult Offender Supervision [("ICAOS")] in Pennsylvania, by Parole Field Services, including both supervising individuals from sending states and processing requests to receiving states.

On June 24, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Department partially granted the Request, providing ten Department policy sections and ICAOS rules. The Department withheld eight Department policy sections, claiming the responsive sections, if disclosed, would jeopardize or threaten public safety, 65 P.S. § 67.708 (b)(2).

On July 6, 2026,[1] the Requester filed an appeal with the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure.[2] Specifically, the Requester claims the responsive records should be disclosed with redactions. 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 July 27, 2026, the Department submitted a position statement, reiterating the basis for denial of the Request. In support of its position, the Department submitted an attestation made subject to the penalties of unsworn falsification to authorities, 18 Pa.C.S. § 4904, authored by Deborah Carpenter ("Carpenter Attestation"), the Department's Deputy Secretary for Parole Field Services.

On August 5, 2026, the Requester submitted a position statement, reiterating the arguments made at the time of the appeal. The Requester additionally claims that the Department has not met its burden to withhold the responsive policy sections in full. The Requester also requests *in camera* review of the withheld records.[3]

On September 15, 2026, the OOR ordered the Department to submit the following withheld Department Policy Sections to the OOR for *in camera* review:

> 12.3.02.14 "Interstate Home Plan Submission and Releases";
> 12.3.02.16 "Interstate Home Plans: Inmates Serving Max with an Active Special Probation/Parole Sentence";
> 12.4.01.10 "Supervision Investigations";

[1] While the appeal was filed on July 3, 2026, the OOR was closed on this date in observance of the Fourth of July holiday. As such, the appeal was received by the OOR on July 6. 2026.

[2] At the time of the appeal, the Requester permitted the OOR a thirty-day extension for issuance of a Final Determination. On September 15, 2026, the Requester agreed to an additional ninety-day extension for issuance of a Final Determination in order for the OOR perform an *in camera* review on the withheld policies. *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] The evidentiary record initially closed in this appeal on July 27, 2026; however, the OOR granted an evidentiary submission extension to the Requester through August 5, 2026. Thus, all 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").

12.4.01.16 “Law Enforcement Collaboration”;
12.4.01.27 “Travel Permission”;
12.4.03.03 “Arrest, Detention, and Place of Confinement”;
12.4.03.09 “Custody and Transportation”; and
12.4.05.04 “Interstate Home Plans: Reentrant or Special Probationer/Parolee Under Active Supervision.”

On October 15, 2026, the OOR received the withheld records for *in camera* review. The Department also provided an *in camera* inspection index and certified that the records provided for *in camera* review are true and correct copies of the withheld policies.

## 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)).

The Department asserts that eight Department policy sections are entirely exempt from access pursuant to Section 708(b)(2) of the RTKL.[4] 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

[4] Specifically, the Department withheld policy sections 12.3.02.14 “Interstate Home Plan Submission and Releases,” 12.3.02.16 “Interstate Home Plans: Inmates Serving Max with an Active Special Probation/Parole Sentence,” 12.4.01.10 “Supervision Investigations,” 12.4.01.16 “Law Enforcement Collaboration,” 12.4.01.27 “Travel Permission,” 12.4.03.03 “Arrest, Detention, and Place of Confinement,” 12.4.03.09 “Custody and Transportation” and 12.4.05.04 “Interstate Home Plans: Reentrant or Special Probationer/Parolee Under Active Supervision.”

safety or preparedness or public protection activity…." 65 P.S. § 67.708(b)(2). In order to establish this exemption, an agency must show: (1) the record at issue relates to a law enforcement or public safety activity; and (2) disclosure of the record would be reasonably likely to threaten public safety or a public protection activity. *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367, 374-75 (Pa. Commw. Ct. 2013. "Reasonably likely" has been interpreted as "requiring more than speculation." *California Borough v. Rothey*, 185 A.3d 456, 468 (Pa. Commw. Ct. 2018) (holding that in order to show a reasonable likelihood, "[a]n agency must offer more than speculation or conjecture to establish the security-related exceptions under the [RTKL]"). To determine the adequacy of an affidavit, the Commonwealth Court considered whether it (1) includes detailed information describing the nature of the records sought; (2) connects the nature of the various records to the reasonable likelihood that disclosing them would threaten public safety in the manner described; (3) shows that such disclosure would impair the agency's ability to perform the public safety functions. *Allegheny Cnty. Dist. Attorney's Office v. Wereschagin*, 257 A.3d 1280, 1298 (Commw. Ct. 2021).

Deputy Secretary Carpenter supervises all field supervision services throughout the Commonwealth, including interstate parole and interstate probation. Carpenter Attestation ¶ 3. Additionally, Deputy Secretary Carpenter directs and coordinates all statewide activities for the probation and parole supervision of adult offenders. Carpenter Attestation ¶ 4. In support of the Department's position, the Carpenter Attestation provides, in relevant part, the following:

> 11. Offenders who commit crimes incur an obligation to the victim of their crimes and to the community that they must satisfy through completion of their court-ordered sentence, including successful completion of their term of parole supervision.
>
> 12. Parole agents provide professional services to protect the safety of the public, ensure accountability of offenders for crimes they committed, and connect

offenders with appropriate resources to assist in their successful reintegration into the community.

13. Parole agents (including parole supervision staff) are peace officers in the Commonwealth with police power and authority to arrest without warrant, writ, rule or process any parolee or probationer under the supervision of the Department for failing to report as required by the terms of his probation or parole or for any violation of probation or parole. …

14. The public should be afforded safe and secure communities and must be protected during the time offenders are under parole supervision.

15. Parole agents must undertake a range of strategies and interventions geared to the varying risks presented by individual offenders.

16. Supervision staff must assist victims and communities in getting their losses restored by the actions of offenders making reparation.

17. The Department strives to have offenders successfully complete their parole obligation, and exit the system capable of being productive and responsible members of their community.

18. Successful reintegration of offenders back into the community includes: [n]o further victimization; [c]ompliance with the conditions of their probation/parole supervision; and [c]ompetency development.

19. Rather than simply receiving treatment and services aimed at suppressing problem behavior, offenders must also demonstrate measurable improvements.

20. Case planning and referrals for appropriate services target increasing the offenders' stability, which leads to enhanced public safety.

…

23. While many of the Department's policies are publicly available/accessible on their respective public websites, certain policy sections, such as those at issue here, are designated as "confidential" (i.e., specifically not public information), and as such may not be released to any member of the public without prior approval from the Secretary of Corrections or a designee of the same.

24. Department policy 12.3.02.14, "Interstate Home Plan Submission and Releases," sets forth the process for transferring inmates from a Pennsylvania state facility to another state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands in accordance with the ICAOS. This section contains information about victim notification and input that might endanger victims if this policy was made public.

25. Department policy 12.3.02.16, "Interstate Home Plans: Inmates Serving Max with an Active Special Probation/Parole Sentence," sets forth the process for transferring Pennsylvania special probation and special parole cases from a correctional setting to another state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands in accordance with the ICAOS. This section also contains information on victim input and Office of Victim Advocates (OVA) holds.

26. Department policy 12.4.01.10, "Supervision Investigations," discusses investigations on other states' reentrants being subject to the regulations of the ICAOS. This section also discusses victim notification and contact.

27. Department policy 12.4.01.16, "Law Enforcement Collaboration," []discusses using reentrants as a confidential informant/witness (CI/CW) and reaching out to the sending state on ICAOS cases to determine whether the sending state approves or disapproves. CI/CW information is highly sensitive and there would be a danger to informants and witnesses if this information was made public.

28. Department policy 12.4.01.27, "Travel Permission," discusses travel not to conflict with the rules established by the ICAOS, notifying the sending state via Compact Action Request when an ICAOS offender is issued a temporary travel permit to the sending state, and governs travel permission to another State or Territory that is signatory to the ICAOS. This section discusses victim and OVA notification, as well as victim input for travel requests by reentrants.

29. Department policy 12.4.03.03, "Arrest, Detention, and Place of Confinement," discusses issuing a DC-P 141 for ICAOS reentrants in PA and outside of PA. This policy lays out operational procedures, decision making criteria, and internal processes that could jeopardize safety if released to the public.

30. Department policy 12.4.03.09, "Custody and Transportation," discusses interstate transports and contains information about how agents transport officers. If such information were made public, the safety of such officers would be threatened.

31. Department policy 12.4.05.04, "Interstate Home Plans: Reentrant or Special Probationer/Parolee Under Active Supervision" sets forth the process for transferring Pennsylvania reentrants and special parolees/probationers from a Pennsylvania supervision plan to another state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands in accordance with the ICAOS. This section also speaks to victim notification and input and should not be made public.

32. The above policy sections include sensitive operational details, and much of their content deals with victim notification and input, confidential informant procedures, and officer-safety practices. Sharing such information openly could

> put victims at risk, expose law-enforcement tactics, or create safety issues for staff and reentrants.
>
> 33. If the public were given access to the contents of the above policy sections, offenders would with certainty manipulate that information in various ways, all of which would hamper the Department's official law enforcement function of supervising parolees and protecting the public until such time as they are fully integrated into the community.

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). 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 Envtl. 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)).

Deputy Secretary Carpenter explains how disclosure of each of the withheld policy sections would affect the safety of the public and serve to hamper law enforcement functions, including the impact to victims, confidential informants and officers. Specifically, Deputy Secretary Carpenter explains that the policy sections contain sensitive operational details and the sharing of the information would put victims at risk, expose law enforcement tactics and create safety issues for staff. Opinions of safety and security rendered by a qualified individual, such as Deputy Secretary Carpenter, in police and prison settings are more than mere speculation or conjecture to show a real risk of harm. *See Borough of Pottstown v. Suber-Aponte*, 202 A.3d 173, 182 (Pa. Commw. Ct. 2013) (holding that the agency demonstrated a real risk of harm to the staff and the detainees when a qualified individual from the agency offered evidence).

Upon i*n camera* review of the withheld policies, the OOR confirms that the Department withheld policies in full that relate to: parole of inmates and notification to victims regarding

parole; the usage of a parolee as a confidential witness; and the transportation and confinement of inmates and parolees. The OOR's review reveals that the majority of each of the policies reveals information that if released, would impact public and personal safety by impacting victims, confidential informants and officers; however, some of the sections of the withheld policies are purely administrative and do not reveal information that impacts security, such as statements of law, some definitions and particular statements of policy. Thus, the following sections of the withheld policies are not exempt and are subject to disclosure:

> 12.3.02.14 "Interstate Home Plan Submission and Releases": Sections I, II, III, IV,[5] V, VII, VIII, IX. A, X.
> 12.3.02.16 "Interstate Home Plans: Inmates Serving Max with an Active Special Probation/Parole Sentence": Sections I, II, III, IV,[6] V, VII, VIII, IX. A., X.
> 12.4.01.10 "Supervision Investigations": Sections I, II, III, V, VII, VIII, X.
> 12.4.01.16 "Law Enforcement Collaboration": Sections I, II, III, V. Paragraphs 1 and 3, VII, VIII, IX. A, X.
> 12.4.01.27 "Travel Permission": Sections I, II, III, IV,[7] V, VII, VIII, IX. A, X.
> 12.4.03.03 "Arrest, Detention, and Place of Confinement": Sections I, II, III, VI, VII, IX.
> 12.4.03.09 "Custody and Transportation": Sections I, II, III, VII, VIII, X.
> 12.4.05.04 "Interstate Home Plans: Reentrant or Special Probationer/Parolee Under Active Supervision": Sections I, II, III, IV,[8] V, VII, VIII, IX. A, X.

Further, the OOR has previously found that the Department's parole related policies are exempt under the security related exemptions. *See Lewis v. Pa. Dep't of Corr.*, OOR Dkt. AP 2024-0343, 2024 PA O.O.R.D. LEXIS 755; *see also Rider v. Pa. Dep't of Corr.*, OOR Dkt. AP 2024-0339, 2024 PA O.O.R.D. LEXIS 495. Accordingly, the Department has demonstrated that the withheld policy sections, not included above, are exempt pursuant to Section 708(b)(2) of the RTKL.

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[5] Of note, this section refers to Department Policy 12.4.05.01, Glossary, accessed at https://www.pa.gov/content/dam/copapwp-pagov/en/cor/documents/about-us/doc-policies/12.4.05.01%20glossary.pdf (last accessed by the OOR on November 18, 2026).
[6] *Id.*
[7] *Id.*
[8] *Id.*

## CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the Department is required to release the sections of the withheld policies, as outlined herein, 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 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; 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.[9] 65 P.S. § 67.1303. 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: November 23, 2026**

*/s/ Bandy L. Jarosz*

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BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

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