



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

:

**EDWARD HATCH,
Requester**

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:

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v.

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Docket No: AP 2019-2637

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**PENNSYLVANIA DEPARTMENT OF
CORRECTIONS,
Respondent**

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INTRODUCTION

Edward Hatch (“Requester”), an inmate at SCI-Houtzdale, 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 video footage of an alleged assault in his correctional facility. The Department denied the Request, arguing, among other things, that the disclosure of the record would likely threaten individual personal security and public safety. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied**, and the Department is not required to take any further action.

FACTUAL BACKGROUND

On December 3, 2019, the Request was filed, seeking “[t]he ‘PRESERVED’ [v]ideo [f]ootage on IA-Block, at SCI-Houtzdale, from the ‘Alleged Staff Assault’ on November 18, 2019 from 3:00 p.m. to 4:00 p.m. (1500 hours to 1600 hours).” On December 5, 2019, the Department

denied the Request, arguing that disclosure of the record would threaten personal security and public safety, 65 P.S. §§ 67.708(b)(1)-(2), that the record relates to criminal and noncriminal investigations, 65 P.S. §§ 67.708(b)(16)-(17), and that the video sought should be denied under 42 Pa.C.S. § 67A02(a) (“Act 22 of 2017”).

On December 27, 2019, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. 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 January 8, 2020, the Department submitted a position statement reiterating that disclosure of the video poses a personal security and public safety risk and that the record relates to criminal and noncriminal investigations.¹ In support of its position, the Department submitted the declaration, made under penalty of perjury, of Kenneth Shea, Intelligence Captain at SCI-Houtzdale (“Captain Shea”). The Requester did not submit anything additional on appeal.

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

¹ In its submission, the Department did not address its denial based on Act 22 of 2017; therefore, the OOR deems the argument abandoned on appeal and will not address the issue in this Final Determination.

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, the parties did not request a hearing; however, the OOR has the necessary information and evidence before it to properly adjudicate the matter.

The Department is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 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 argues that disclosure of the requested video would threaten the personal security of staff and inmates and impede the security operations at SCI-Houtzdale. Section 708(b)(1)(ii) of the RTKL exempts from disclosure a record that “would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.” 65 P.S. § 67.708(b)(1)(ii). Meanwhile, 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). The term “substantial and demonstrable risk” is not defined in the RTKL, however, “reasonably likely” has been interpreted as “requiring more than speculation.” *Id.* at 375. 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].” *California Borough v. Rothey*, 185 A.3d 456, 468 (Pa. Commw. Ct. 2018). The Commonwealth Court has “defined substantial and demonstrable [risk] as actual or *real and apparent*.” *Borough of Pottstown v. Suber-Aponte*, 202 A.3d 173, 180 (Pa. Commw. Ct. 2019) (emphasis in original) (quoting *Carey*, 61 A.3d at 373).

“Belief alone without more, even if reasonable, does not meet this heightened standard.” *See Lutz v. City of Phila.*, 6 A.3d 669, 676 (Pa. Commw. Ct. 2010) (holding that “[m]ore than mere conjecture is needed” to establish that this exemption applies). In the context of a correctional institution setting, a correctional facility need not demonstrate specific prior examples of physical harm to personal security to meet the agency’s burden of proof under 65 P.S. § 67.708(b)(1)(ii).

See, e.g., Harris v. City of Phila. Prison System, OOR Dkt. AP 2015-1167, 2015 PA O.O.R.D. LEXIS 1028 (holding that prison inmate visitor logs are exempt from disclosure based upon the evidence provided); *Mele v. Monroe County*, OOR Dkt. AP 2011-1230, 2011 PA O.O.R.D. LEXIS 1358; *Bernstein v. Pa. Dep't of Corr.*, OOR Dkt. AP 2011-1603, 2011 PA O.O.R.D. LEXIS 1295 (holding that prison inmate policy manuals are exempt from disclosure).

Captain Shea attests that, in his position with the Department, he “oversee[s] the security operations at SCI-Houtzdale, including, supervision of special response teams, security investigations, including use of force incidents, promulgation and administration of local security policies, implementation of state-wide security policies, procedures and investigative practices and generally oversee[s] all other matters pertaining to institutional security.” Captain Shea also attests that he is familiar with the Request. Captain Shea further attests, the following:

5. The requested record[] is a video maintained by the security office at SCI-Houtzdale.
6. The requested record[] [is a] security-sensitive record[] that pertain[s] to past and/or on-going security investigations at SCI-Houtzdale.
7. The requested surveillance record[] [is] primarily used to ensure the safety and security of security operations at the correctional institutions.
8. Security video cameras provide staff with the ability to monitor areas of the prison in real time even when no staff is immediately present in an area.
9. Knowledge that the Department maintains surveillance equipment in the prison assists in curbing illicit activity because individuals do not know for certain when their actions are being viewed and recorded.
10. The locations of security cameras and/or the areas which they observe are not disclosed to staff (unless required for performance of their job) or inmates.
11. Even in instances, where the location of the camera at issue is visible, the surveillance camera is hidden in a tinted glass bubble that prevents individuals from seeing which direction the camera is pointed or is able to view.

12. The requested video depicts a staff assault by a third-party inmate that resulted in an investigation and an institutional misconduct.
13. The Department prohibits dissemination of videos depicting the interior of its prisons or security operations.
14. Such records disclose the internal layout of the prison area, including visible security measures taken inside prisons and security processes undertaken by staff in the performance of their duties.
15. Such records also reveal the positions or capabilities of surveillance cameras.
16. For instance, dissemination of the requested record[] would reveal the capabilities and scope of the security surveillance cameras.
17. The Department's surveillance system has blind spots, areas where no camera is able to view, even in areas where multiple cameras are stationed.
18. Access to surveillance video records would allow inmates, staff and others to determine the Department's surveillance capabilities.
19. Safety and security of staff and inmates is a critical issue in prison management.
20. Detection of illicit activity is crucial to maintaining a safe prison environment.
21. Inmates or staff with knowledge of the limits of a fixed camera's view would perform illicit activity out of view or similarly exploit the limitations of a surveillance camera.
22. All of this information would be readily used to facilitate security breaches including attacks upon staff, inmates or others, transfers of drugs or contraband, or similar dangerous misconduct in the correctional facility.
23. In addition, public dissemination of the requested video record[] would threaten institutional security by revealing the physical layout of prison block, a secured inmate housing area within SCI-Houtzdale, a maximum security correctional institution.
24. Publicly accessible security and surveillance video records would certainly facilitate security breaches including attacks upon staff, inmates or others, exchanges of contraband or other illicit activity.
25. Public dissemination of videos of confrontations between staff and inmates would identify inmates and staff involved in the confrontation.

26. Such inmates and staff, or their family and relations, would suffer retaliation, harassment and/or physical harm from others for actions depicted in such video.

27. The Department's public protection activity in monitoring and supervising its inmate population would be jeopardized by allowing access to the requested information.

28. Dissemination of this information will certainly be used by individuals to circumvent existing prison security mechanisms and processes, and therefore, will necessarily lead to a substantial risk of physical harm and harm to the personal security of correctional staff, inmates and others in prisons....

32. ... [D]issemination of the requested video, which constitutes investigative material ... will ... reveal the lay out of internal prison areas.

33. ... [P]rison rules prohibit inmates from possessing security video or security photographs for the reasons stated herein.

34. For all of the foregoing reasons, prison security and administration would be impaired by the public release of the requested record and in my opinion the record should not be released.

Under the RTKL, a sworn affidavit or statement made under the penalty of perjury is competent evidence to sustain an agency's burden of proof. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010).

In the appeal that the Requester verified under penalty of perjury, the Requester argues the Department has not established that the release of the requested video would result in a risk of harm or personal security. The Requester further asserts that the inmates are being sanctioned when no one was injured during the alleged incident depicted in the requested video. However, the Requester's position is not supported by factual evidence that the risks described by Captain Shea are not reasonably likely to occur should the video be released by the Department. While a sworn statement may serve as sufficient evidentiary support to sustain an agency's burden of proof, *Sherry*, 20 A.3d at 520-21, *Moore*, 992 A.2d at 909, conclusory statements are not sufficient to

establish that records are exempt under the RTKL. *See Scolforo v. Office of the Governor*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013) (“[A] generic determination or conclusory statements are not sufficient to justify the exemption of public”)

Here, the evidence presented by the Department demonstrates that release of the requested video would reveal prison layout details and blind spots in the surveillance system that would enable an individual to circumvent facility security to perpetrate a variety of illicit activities, such as an attack on staff and inmates or the transfer of illegal drugs or dangerous contraband without detection. In addition, access to such security information would jeopardize the security operations as a whole such that proper facility supervision would be substantially impaired to the detriment of staff, inmates and visitors. Accordingly, the Department has met its burden of proving that the release of the requested video would be reasonably likely to jeopardize or threaten personal security. *See also Toye v. Fayette County*, OOR Dkt. AP 2018-1414, 2018 PA O.O.R.D. LEXIS 1249 (finding that surveillance footage inside the correctional facility is exempt under Sections 708(b)(1)-(2) of the RTKL); *Halpin v. Luzerne County*, OOR Dkt. AP 2016-1263, 2016 PA O.O.R.D. LEXIS 1323.

Regarding the public safety exemption, there is no dispute that the Department’s administration of the various state correctional institutions is a public safety activity. Furthermore, the OOR finds the professional opinion of Captain Shea, with more than 21 years’ experience with the Department and 3 years as SCI-Houtzdale’s Intelligence Captain, a credible assessment of the security risks attendant to the release of the video and will not substitute its judgment for that of those with far more familiarity with the issues involving personal security. *See Knauss v. Unionville-Chadds Ford Sch. Dist.*, OOR Dkt. AP 2009-0332, 2009 PA O.O.R.D. LEXIS 238.

In *Ford v. Pa. Dep't of Corr.*, the OOR concluded that the disclosure of a correctional facility video depicting an alleged assault would be reasonably likely to jeopardize or threaten public safety. OOR Dkt. AP 2017-1110, PA O.O.R.D. LEXIS 967, *16; *see also Mello and Erie News Now v. Erie County*, OOR Dkt. AP 2018-1770, 2018 PA O.O.R.D. LEXIS 1449. Based on a review of the Department's evidence, it has demonstrated that, like the video in *Ford*, disclosure of the surveillance video requested here would reveal critical details regarding the correctional institution facility including, the correctional institution security system and processing, the layout of the identified prison block, along with other areas of the facility, and their relation to the cameras and the blind spots contained therein. Accordingly, the Department has demonstrated that the release of the requested video would be reasonably likely to jeopardize or threaten personal security and public safety. 65 P.S. §§ 708(b)(1)(ii)-(2); 65 P.S. § 67.708(a).²

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 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.³ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

² Because the requested records are exempt from disclosure under Sections 708(b)(1)(ii) and (2) of the RTKL, the OOR need not reach the Department's alternative grounds for denying access. *See Jamison v. Norristown Borough Police Dep't*, OOR Dkt. AP 2011-1233, 2011 PA O.O.R.D. LEXIS 927.

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

FINAL DETERMINATION ISSUED AND MAILED: January 23, 2020

/s/ Kelly C. Isenberg

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