

Case# 2020-03140-4 - JUDGE:39 Received at County of Bucks Prothonotary on 08/03/2020 2:02 PM, Fee = \$0.00. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

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OFFICE OF OPEN RECORDS

NAUMAN, SMITH, SHISSLER & HALL, LLP

Craig J. Staudenmaier, Esquire
Supreme Court ID No. 34966
Joshua D. Bonn, Esquire
Supreme Court ID No. 93967
200 North Third Street, 18th Floor
P.O. Box 840
Harrisburg, PA 17108-0840
Telephone: (717) 236-3010
Facsimile: (717) 234-1925
email: cjstaud@nssh.com
jbonn@nssh.com

Attorneys for Joseph Jaafari, Respondent

BUCKS COUNTY	:	IN THE COURT OF COMMON PLEAS
	Petitioner,	: OF BUCKS COUNTY, PENNSYLVANIA
	:	:
v.	:	CIVIL ACTION – RIGHT TO KNOW APPEAL
	:	:
JOSEPH JAAFARI,	:	NO.: 2020-03140
	Respondent	:

**RESPONSE OF JOSEPH JAAFARI TO PETITION FOR REVIEW
OF THE JUNE 15, 2020 FINAL DETERMINATION
OF THE PENNSYLVANIA OFFICE OF OPEN RECORDS**

AND NOW comes Joseph Jaafari (Requester), by his attorneys, Nauman, Smith, Shissler & Hall LLP, and files the following response to Bucks County’s Petition for Review of June 15, 2020 Final Determination of the Pennsylvania Office of Open Records and avers in support thereof as follows:

THE REQUEST AND RESPONSE AT ISSUE

1. Admitted in part and denied in part. Admitted that Respondent submitted the Right-to-Know Law request attached to the County's Petition for Review as Exhibit 1. Any characterization is denied as the writing speaks for itself.

2. Admitted.

3. Admitted.

4. Admitted in part and denied in part. Admitted Ms. Simon issued the letter attached to the County's Petition for Review as Exhibit 2. Any characterization is denied as the writing speaks for itself.

PROCEDURAL HISTORY IN THE OFFICE OF OPEN RECORDS

5. Admitted.

6. Admitted in part and denied in part. Admitted that the County submitted affidavits to the OOR which are attached to the County's Petition for Review as Exhibit 4. Any characterization is denied as the writings speak for themselves. By way of further response, the OOR correctly determined that said affidavits were conclusory, merely parroted the language of the asserted exemptions, and were legally insufficient to prove that disclosure of the records sought would likely endanger the safety and physical security of the Bucks County Correctional Facility.

7. Admitted in part and denied in part. Admitted the OOR did not hold a hearing before rendering the Final Determination which is attached to the County's Petition for Review as Exhibit 5. Any characterization is denied as the writing speaks for itself. The response to paragraph 6 above is incorporated herein by reference.

8. Admitted. By way of further response, the OOR ordered the County to disclose to Requester the most recent pandemic or emergency preparedness plans or policy for the Bucks County Correctional Facility.

THE COUNTY'S APPEAL TO THIS COURT

14 (sic). Denied as a legal conclusion. By way of further response, the OOR correctly held that the County's affidavits were insufficient as a matter of law to establish that disclosure of the records sought would be reasonably likely to threaten public safety or the physical security of the jail. The County's affidavits merely parrot the language of the exemption and do not state any facts that would be sufficient to support the County's contention that disclosure of the requested records would likely endanger the safety and physical security of the Bucks County Correctional Facility. When security or safety exemptions are asserted, "speculation and conclusory statements in an affidavit do not show a reasonable likelihood of a threat to security." *Carey v. Pennsylvania Dep't. of Corr.*, 61 A.3d 367, 376 (Pa. Commw. 2013). An adequate description of responsive records is crucial to demonstrate how disclosure threatens public safety. *Id.*, at 377. Furthermore, numerous other counties have provided Requester with access to full, unredacted versions of their respective versions of the same policy requested from Bucks County, including Adams County, Bedford County, Berks County, Centre County, Dauphin County, Delaware County, Fayette County, Greene County, Huntingdon County, Indiana County, Jefferson County, and Lebanon County. Nine of these counties, who disclosed full, unredacted versions of their plans, have a contract with the same third-party provider as Bucks County-PrimeCare-and such policies are believed to be substantively identical to the policy that Bucks County claims the release of will endanger public safety. Under these circumstances, where thirteen counties have publicly disclosed policies that are similar to or

exactly the same as Bucks County's policy, it is simply not credible that Bucks disclosure of the policy is reasonably likely to endanger public safety.

15 (sic). Denied as a legal conclusion. By way of further response, the fact that the County's witnesses have "over 30 years of collective experience" does not establish the County's bald assertion that disclosure of the records sought would be reasonably likely to threaten public safety and the physical security of the Bucks County Correctional Facility. The fact that witnesses with so much experience cannot provide any evidence to support the County's claim demonstrates that no such evidence exists and that their conclusions are mere speculation.

16 (sic). Denied as a legal conclusion.

17 (sic). Denied. Due to the lack of factual support in the County's affidavits, there is no evidence that the requested records include perimeter security, contingency plans, lock down plans, command team communication, personal cell, home and office phone numbers and resident movement. To the extent such evidence could be produced, it would not support withholding the requested records in their entirety. Where a public record contains non-public information, the agency must produce the record with non-public information redacted. 65 P.S. § 67.706. When public safety is a concern, an agency should not withhold documents in their entirety, but should judiciously redact information to "render them non-threatening to public safety." *Carey*, 61 A.3d at 376.

18 (sic). Denied. Due to the lack of factual support in the County's affidavits, there is no evidence to support this bald, unsupported allegation.

19 (sic). Denied as a legal conclusion. By way of further response, while the trial court may exercise a plenary scope of review and a de novo standard of review "nothing in the RTKL [] prevent[s] a Chapter 13 court from simply adopting the findings of fact and conclusions

of law of an appeals officer when appropriate....” Bowling v. Office of Open Records, 75 A.3d 453, 473 (Pa. 2013).

20 (sic). Paragraph 20 (sic) is a request for relief to which no responsive pleading is required. To the extent a response is deemed required, Paragraph 20 (sic) is denied.

WHEREFORE, Joseph Jaafari, Respondent, respectfully requests the court adopt the findings and conclusions of the Appeals Officer and summarily AFFIRM the Final Determination of the Office of Open Records, or, alternatively, that the Court conduct *in camera* review of the requested records and order disclosure subject to limited redaction of any specific information that the Court determines is exempt from public disclosure.

Respectfully submitted,

NAUMAN, SMITH, SHISLER & HALL, LLP

By: /s/Joshua D. Bonn

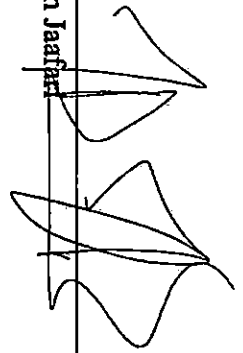
Craig J. Staudenmaier, Esquire
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Supreme Court ID No. 93967
200 North Third Street, 18th Floor
P.O. Box 840
Harrisburg, PA 17108-0840
(717) 236-3010 (phone)
(717) 234-1925 (fax)

Attorneys for Joseph Jaafari, Respondent

Date: August 3, 2020

VERIFICATION

I, Joseph Jaafari, verify that the facts set forth in the foregoing Response are true and correct to the best of my knowledge, information and belief. I understand that my statements are made subject to 18 Pa. C.S. § 4904 providing for criminal penalties for unsworn falsification to authorities.



Joseph Jaafari

Date: _____ 08/02/2020 _____

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Joshua D. Bonn

Signature: /s/Joshua D. Bonn

Name: Attorney

Attorney No. (if applicable): 93967

CERTIFICATE OF SERVICE

AND NOW, I, Karen L, Gagne, employee of the firm of Nauman, Smith, Shissler & Hall, LLP hereby certify that I served the foregoing Response upon the following by First Class Mail:

Keith J. Bidlingmaier
Bucks County Law Department
Administration Building
55 East Court Street, 5th Floor
Doylestown, PA 18901

Kyle Applegate, Esquire
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

/s/Karen L. Gagne
Karen L. Gagne

Date: August 3, 2020