

**IN THE COURT OF COMMON PLEAS ALLEGHENY COUNTY, PENNSYLVANIA**

**ALLEGHENY COUNTY**

**Petitioner,**

**v.**

**JULIETTE RIHL**

**Respondent.**

**CIVIL DIVISION**

**No. SA-21-000003**

**STATUTORY APPEAL -  
RIGHT-TO-KNOW LAW**

**CERTIFIED RECORD  
IN OFFICE OF OPEN RECORDS  
DOCKET AP 2020-2250**

**Filed on behalf of:**

**OFFICE OF OPEN RECORDS**

Charles Rees Brown, Esq.  
Chief Counsel

COMMONWEALTH OF PA  
OFFICE OF OPEN RECORDS  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234  
Phone: (717) 346-9903  
Fax: (717) 425-5343  
E-mail: [CharleBrow@pa.gov](mailto:CharleBrow@pa.gov)

January 22, 2021

**Filed Online:**

Department of Court Records – Civil Division  
City-County Building  
414 Grant Street  
Pittsburgh, PA 15219

**RE: Submission of Record in:**  
*Allegheny County v. Juliette Rihl,*  
**Civil Division – No. SA 20-000003**

Dear Prothonotary:

We hereby submit the record in the above-referenced matter. Section 1303 of the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq.*, (“RTKL”), defines the Record on Appeal as “the record before a court shall consist of the request, the agency’s response, the appeal filed under section 1101, the hearing transcript, if any, and the final written determination of the appeals officer.” Pursuant to *Department of Transportation v. Office of Open Records*, 7 A.3d 329 (Pa. Commw. Ct. 2010), this record includes all “evidence and documents admitted into evidence by the appeals officer pursuant to Section 1102(a)(2).” The record in this matter consists of the following:

**Office of Open Records Docket No. 2020-2250:**

1. The appeal filed by Juliette Rihl (“Requester”) to the Office of Open Records (“OOR”), received November 6, 2020.
2. Official Notice of Appeal dated November 6, 2020, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
3. Allegheny County’s (“County”) submission received November 18, 2020.

4. Email chain dated December 2, 2020 wherein the Requester grants the OOR additional time to issue the final determination.
5. The Final Determination dated December 10, 2020, issued by the OOR.

The OOR has discretion to hold a hearing on appeals filed but chose not to do so in this matter. Therefore, there is no transcript to transmit. Certification of the record in this case is attached to this letter. Please feel free to contact us for any reason in connection with this matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'Charles Rees Brown', with a stylized, cursive script.

Charles Rees Brown  
Chief Counsel

Attachments

cc: Maggie Shiels, Esq. (County)  
Juliette Rihl (Requester)

**IN THE COURT OF COMMON PLEAS  
ALLEGHENY COUNTY, PENNSYLVANIA**

<b>ALLEGHENY COUNTY</b>	:	
<b>Petitioner,</b>	:	<b>Civil Division</b>
	:	
<b>v.</b>	:	<b>No. SA 20-000003</b>
	:	
<b>JULIETTE RIHL,</b>	:	
<b>Respondent.</b>	:	

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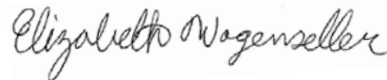
**CERTIFICATION OF RECORD**

I hereby certify the contents of the record transmitted with this Certification of Record pursuant to Pa.R.A.P. 1952 in *Juliette Rihl v. Allegheny County*, OOR Dkt. AP 2020-2250, which is the subject of this appeal.

The record transmitted with this certification is generated entirely from the Office of Open Records database. It is our practice to scan in each and every document submitted in an appeal. Thus, no originals are being transmitted to this Court.

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.

Also, my signature on this Certification of Record and on all other correspondence directed to the Court in connection with this matter may be electronic and not original. I hereby certify that this is my true and correct signature and that I have approved the use thereof for these purposes.



---

Elizabeth Wagenseller, Executive Director  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234  
Phone: (717) 346-9903  
Fax: (717) 425-5343  
E-mail: [openrecords@pa.gov](mailto:openrecords@pa.gov)

Dated: January 22, 2021

**IN THE COURT OF COMMON PLEAS  
ALLEGHENY COUNTY, PENNSYLVANIA**

<b>ALLEGHENY COUNTY</b>	:	
<b>Petitioner,</b>	:	<b>Civil Division</b>
	:	
<b>v.</b>	:	<b>No. SA 20-000003</b>
	:	
<b>JULIETTE RIHL,</b>	:	
<b>Respondent.</b>	:	

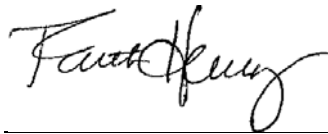
---

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of the Certified Record upon the following persons via email or First Class mail as follows:

Juliette Rihl  
Public Source  
1936 Fifth Avenue  
Pittsburgh, PA 15214  
[juliette@publicsource.org](mailto:juliette@publicsource.org)

Maggie Shiels, Esq.  
Assistant County Solicitor  
Allegheny County Department of Law  
445 Fort Pitt Blvd. 3<sup>rd</sup> Floor  
Pittsburgh, PA 15219  
[Maggie.Shiels@alleghenycounty.us](mailto:Maggie.Shiels@alleghenycounty.us)



---

Faith Henry, Administrative Officer  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234  
Phone: (717) 346-9903  
Fax: (717) 425-5343  
E-mail: [fahenry@pa.gov](mailto:fahenry@pa.gov)

Dated: January 22, 2021

**IN THE COURT OF COMMON PLEAS  
ALLEGHENY COUNTY, PENNSYLVANIA**

<b>ALLEGHENY COUNTY</b>	:	
<b>Petitioner,</b>	:	<b>Civil Division</b>
	:	
<b>v.</b>	:	<b>No. SA 20-000113</b>
	:	
<b>JULIETTE RIHL,</b>	:	
<b>Respondent.</b>	:	

---

**CERTIFIED RECORD**

Charles Rees Brown  
Chief Counsel  
Commonwealth of Pennsylvania  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234  
Phone: (717) 346-9903  
Fax: (717) 425-5343  
E-mail: [CharleBrow@pa.gov](mailto:CharleBrow@pa.gov)

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**IN THE COURT OF COMMON PLEAS  
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	:	
<b>JULIETTE RIHL,</b>	:	
<b>Respondent.</b>	:	

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**TABLE OF CONTENTS  
RECORD**

*Juliette Rihl v. Allegheny County,*  
OOR Dkt. No. AP 2020-2250

**Office of Open Records Docket No. 2020-2250:**

**OOR Exhibit 1**



## Devenyi, Dylan

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**From:** no-reply@openrecordspennsylvania.com  
**Sent:** Friday, November 6, 2020 10:24 AM  
**To:** juliette@publicsource.org  
**Subject:** [External] PA Office of Open Records - Appeal Confirmation

**ATTENTION:** This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to [CWOPA\\_SPAM@pa.gov](mailto:CWOPA_SPAM@pa.gov).



You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

<b>Name:</b>	Juliette Rihl
<b>Company:</b>	PublicSource
<b>Address 1:</b>	1936 Fifth Avenue
<b>Address 2:</b>	
<b>City:</b>	Pittsburgh
<b>State:</b>	Pennsylvania
<b>Zip:</b>	15214
<b>Phone:</b>	267-306-0570
<b>Email:</b>	juliette@publicsource.org
<b>Agency (list):</b>	Allegheny County
<b>Agency Address 1:</b>	436 Grant Street – Room 202 Courthouse
<b>Agency Address 2:</b>	
<b>Agency City:</b>	Pittsburgh
<b>Agency State:</b>	Pennsylvania
<b>Agency Zip:</b>	15219
<b>Agency Phone:</b>	412-350-6109
<b>Agency Email:</b>	Kathy.Colosimo@allegheny.county.us

<b>Records at Issue in this Appeal:</b>	Access to all policies involving the use of a restraint chair at the Allegheny County Jail. Note: I would like OOR to conduct an in-camera review of the records, as these records have been made public in the past. I am happy to provide OOR the 2017 unredacted policy, which was also obtained through an RTK.
<b>Request Submitted to Agency Via:</b>	e-mail
<b>Request Date:</b>	09/25/2020
<b>Response Date:</b>	10/27/2020
<b>Deemed Denied:</b>	No
<b>Agency Open Records Officer:</b>	Kathy Colosimo
<b>Attached a copy of my request for records:</b>	Yes
<b>Attached a copy of all responses from the Agency regarding my request:</b>	Yes
<b>Attached any letters or notices extending the Agency's time to respond to my request:</b>	No
<b>Agree to permit the OOR additional time to issue a final determination:</b>	No
<b>Interested in resolving this issue through OOR mediation:</b>	No
<b>Attachments:</b>	<ul style="list-style-type: none"> <li>• #208_Emergency_Restraint_Chair.pdf</li> <li>• ACJ restraint chair policies RTK (1).pdf</li> <li>• FINALRESPONESRIHL#6288.pdf</li> </ul>

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

COUNTY OF



ALLEGHENY

October 27, 2020

Juliette Rihl  
PublicSource  
1936 Fifth Avenue  
Pittsburgh, PA 15214

Re: RTK – Final Response - #6288

Dear Ms. Rihl:

This is in response to your attached request for records made pursuant the Pennsylvania Right-to-Know Law (RTKL). This Office received your request on September 25, 2020 and notified you on October 1, 2020 that an extension of time to respond to your request was necessary due to bona fide staffing limitations.

You requested the following:

*Access to all policies involving the use of a restraint chair at the Allegheny County Jail.*

Your request is granted in part and denied in part for the reasons set forth below.

A document responsive to your request is being provided and attached in electronic format. However, portions of this record required redactions to remove information exempt from disclosure upon the following provisions of the RTKL: 1) information that would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual, exempt from disclosure under Section 708 (b) (1) (ii) of the RTKL; and 2) a record maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity, exempt from disclosure under Section 708 (b) (2) of the RTKL.

Pursuant to Section 1101 of the RTKL, a party denied access to a requested record may file a written appeal of the denial with the Pennsylvania Office of Open Records ("OOR") within fifteen (15) business days of the mailing date of the local agency's response. The OOR's address is:

Pennsylvania Office of Open Records  
333 Market Street - 16th Floor  
Harrisburg, PA 17126-0333

October 27, 2020

Page Two

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Tyskiewicz". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

Jerry Tyskiewicz, Director  
County of Allegheny Open Records Officer

## Standard Right-to-Know Law Request Form

SUBMITTED TO AGENCY NAME: \_\_Allegheny County Jail\_\_ (Attn: AORO)

Date of Request: \_\_9/25/2020\_\_ Submitted via: ☒ Email ☐ U.S. Mail ☐ Fax ☐ In Person

### PERSON MAKING REQUEST:

Name: Juliette Rihl Company (if applicable): PublicSource

Mailing Address: 1936 Fifth Avenue, Pittsburgh, PA 15219

Email: juliette@publicsource.org

Telephone: 267-306-0570

How do you prefer to be contacted if the agency has questions? ☒ Telephone ☒ Email ☐ U.S. Mail

### RECORDS REQUESTED:

Under the Pennsylvania Right to Know Law, 65 P.S. §67.101, et seq., I am requesting **access to all policies involving the use of a restraint chair at the Allegheny County Jail.**

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request to be filled electronically, by e-mail attachment if available or by mail if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 5 business days, as the statute requires.

DO YOU WANT COPIES? ☒ Yes, electronic copies preferred if available

☐ Yes, printed copies preferred

☐ No, in-person inspection of records preferred (*may request copies later*)

Do you want certified copies? ☐ Yes (*may be subject to additional costs*) ☒ No

*RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.*

Please notify me if fees associated with this request will be more than ☐ \$100 (or) ☒ \$25.00\_.

# Standard Right-to-Know Law Request Form

SUBMITTED TO AGENCY NAME: Allegheny County Jail (Attn: AORO)

Date of Request: 9/25/2020 Submitted via: ☒ Email ☐ U.S. Mail ☐ Fax ☐ In Person

## PERSON MAKING REQUEST:

Name: Juliette Rihl Company (if applicable): PublicSource

Mailing Address: 1936 Fifth Avenue, Pittsburgh, PA 15219

Email: [juliette@publicsource.org](mailto:juliette@publicsource.org)

Telephone: 267-306-0570

How do you prefer to be contacted if the agency has questions? ☒ Telephone ☒ Email ☐ U.S. Mail

## RECORDS REQUESTED:

Under the Pennsylvania Right to Know Law, 65 P.S. §67.101, et seq., I am requesting **access to all policies involving the use of a restraint chair at the Allegheny County Jail.**

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request to be filled electronically, by e-mail attachment if available or by mail if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 5 business days, as the statute requires.

DO YOU WANT COPIES? ☒ Yes, electronic copies preferred if available

☐ Yes, printed copies preferred

☐ No, in-person inspection of records preferred (*may request copies later*)

Do you want [certified copies](#)? ☐ Yes (*may be subject to additional costs*) ☒ No

*RTKL requests may require payment or prepayment of fees. See the [Official RTKL Fee Schedule](#) for more details.*

Please notify me if fees associated with this request will be more than ☐ \$100 (or) ☒ \$25.00\_.

**ITEMS BELOW THIS LINE FOR AGENCY USE ONLY**

Tracking: \_\_\_\_\_ Date Received: \_\_\_\_\_ Response Due (5 bus. days): \_\_\_\_\_

30-Day Ext.? ☐ Yes ☐ No (If Yes, Final Due Date: \_\_\_\_\_) Actual Response Date: \_\_\_\_\_

Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied Cost to Requester: \$ \_\_\_\_\_

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.



**ALLEGHENY COUNTY  
BUREAU OF CORRECTIONS**

**APPLICABILITY: All Authorized Personnel**

**POLICY NUMBER: #208**

**EFFECTIVE: 5/28/08  
REVISED: 4/28/20**

**TITLE: Emergency Restraint Chair**

**AUTHORIZED BY: ORLANDO L. HARPER**

**SIGNATURE:**

*Orlando L. Harper*

**POLICY**

It is the policy of the Allegheny County Bureau of Corrections to provide an efficient, safe and humane environment for employees and inmates during the admission process and at all times. [REDACTED]

**PURPOSE**

[REDACTED]

**PROCEDURAL GUIDELINES**

[REDACTED]



[illegible]



OOR Exhibit 2

## **NOTICE RELATED TO THE CORONAVIRUS (COVID-19) EMERGENCY**

Pennsylvania is currently under a declared state of emergency related to the coronavirus (COVID-19). Some agencies and requesters may face challenges in regard to their ability to meaningfully participate in Right-to-Know Law (RTKL) appeals. Accordingly, and to ensure due process, the Office of Open Records (OOR) is taking the following temporary steps.

**The timeline for this RTKL appeal may be extended by the OOR during the appeal.** This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **December 7, 2020**.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **November 18, 2020**.

**If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.**

Every staff member of the OOR is working remotely, and we are only able to receive postal mail on a limited basis at this time. Accordingly, we urge agencies and requesters to use email for all communication with the OOR at this time.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters during this time to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.

November 6, 2020

**Via Email Only:**

Ms. Juliette Rihl  
PublicSource  
1936 Fifth Avenue  
Pittsburgh, PA 15214  
juliette@publicsource.org

**Via Email Only:**

Kathy Colosimo  
Agency Open Records Officer  
Allegheny County  
436 Grant Street – Room 202 Courthouse  
Pittsburgh, PA 15219  
Kathy.Colosimo@allegheny.county.us

**RE: OFFICIAL NOTICE OF APPEAL - Rihl and PublicSource v. Allegheny County OOR Dkt.  
AP 2020-2250**

Dear Parties:

**Review this information and all enclosures carefully as they affect your legal rights.**

The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. on November 6, 2020. A binding Final Determination (“FD”) will be issued pursuant to the timeline required by the RTKL, **subject to the enclosed information regarding the coronavirus (COVID-19).**

**Notes for both parties (more information in the enclosed documents):**

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal.

Sincerely,



Erik Arneson  
Executive Director

Enc.: Description of RTKL appeal process  
Assigned Appeals Officer contact information  
Entire appeal as filed with OOR

# The Right-to-Know Law Appeal Process

**Please review this information carefully as it affects your legal rights.**

The Office of Open Records (“OOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOR pursuant to the statutory timeline, subject to the enclosed information regarding the coronavirus (COVID-19). If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents.

---

## Submissions to the OOR

**Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer.** Please contact the Appeals Officer as soon as possible.

**Any information provided to the OOR must be provided to all parties involved in this appeal.** Information submitted to the OOR will not be considered unless it is also shared with all parties.

**Include the docket number on all submissions.**

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Generally, submissions to the OOR “other than *in camera* records” will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

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## Agency Must Notify Third Parties

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; **or** are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.**

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer assigned to this case (see 65 P.S. Â§ 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

**A third party's failure to participate in a RTKL appeal before the OOR may be construed as a waiver of objections regarding release of requested records.**

*NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.*

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## Statements of Fact & Burden of Proof

**Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge.** Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, [openrecords.pa.gov](http://openrecords.pa.gov).

*Any evidence or legal arguments not submitted or made to the OOR may be waived.*

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## Preserving Responsive Records

**The agency must preserve all potentially responsive records during the RTKL appeal process**, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process”

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## Mediation

**The OOR offers a mediation program as an alternative to the standard appeal process.** To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court – saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.

---



**APPEALS OFFICER:**

**Ryan Liggitt, Esq.**

**CONTACT INFORMATION:**

Commonwealth of Pennsylvania  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234

**FACSIMILE:**

(717) 425-5343

**EMAIL:**

rliggitt@pa.gov

**Preferred method of contact and  
submission of information:**

EMAIL

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.  
Please include the case name and docket number on all submissions.**

**You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot  
speak to parties individually without the participation of the other party.**

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review  
prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff  
are also available to provide general information about the appeals process by calling (717) 346-9903.



## REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

**NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.**

OOR Docket No: \_\_\_\_\_

Today's date: \_\_\_\_\_

Name: \_\_\_\_\_

**PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.**

Address/City/State/Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Fax Number: \_\_\_\_\_

**Name of Requester:** \_\_\_\_\_

Address/City/State/Zip \_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_ / \_\_\_\_\_

E-mail \_\_\_\_\_

**Name of Agency:** \_\_\_\_\_

Address/City/State/Zip \_\_\_\_\_

Telephone/Fax Number: \_\_\_\_\_ / \_\_\_\_\_

E-mail \_\_\_\_\_

**Record at issue:** \_\_\_\_\_

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) \_\_\_\_\_

**I have attached a copy of all evidence and arguments I wish to submit in support of my position.**

Respectfully submitted, \_\_\_\_\_ (must be signed)

**Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.**

OOR Exhibit 3

**IN THE PENNSYLVANIA OFFICE OF OPEN RECORDS**

**IN THE MATTER OF:**

Juliette Rihl,  
Complainant,  
vs.

Docket No: AP 2020-2250

Allegheny County,  
Respondent.

**RESPONDENT’S STATEMENT OF INFORMATION AND LEGAL ARGUMENT**

AND NOW comes the Respondent, Allegheny County (“County”), by and through its undersigned attorney, and files this Statement of Information and Legal Argument in compliance with the Pennsylvania Office of Open Records’ Official Notices of Appeal in the above-referenced matters, setting forth the following:

**I. FACTUAL BACKGROUND.**

The Petitioner, Ms. Rihl, submitted a request pursuant to the Right To Know Law (“RTKL”) to Allegheny County on September 25, 2020. The request, a copy of which is attached hereto as Exhibit A, sought “access to all policies involving the use of a restraint chair at the Allegheny County Jail.”

The County Department of Administrative Services serves as the County’s Open Records Office, and its Director, Jerry Tyskiewicz, serves as the County’s Open Records Officer. Requests to County departments, including the Jail, are routed through the Office of Administrative Services. On October 1, 2020, the County sent Ms. Rihl a letter notifying her that the County could not provide a timely response to her request due to bona fide staffing limitations, pursuant to RTKL Section 902(a)(3). (*See* Exhibit B.)

The County sent a final response to Ms. Rihl's request on October 27, 2020. (*See* Exhibit C.) The response explained that Ms. Rihl's request was granted in part and denied in part. The County provided a copy of the policy Ms. Rihl requested, Policy No. 208, but with most of the policy redacted. (*See* Exhibit D.) The letter stated that the redactions were pursuant to RTKL Section 708(b)(1)(ii), which provides that records are exempt from disclosure if disclosing them "would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual," and RTK Section 708(b)(2), which exempts records that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity.

Ms. Rihl appealed the redactions to the OOR on November 6, 2020.

## **II. ARGUMENT**

The Jail policy at issue was properly redacted to remove information that is exempt from disclosure under the RTKL. Two exemptions apply: the personal security exemption cited by the County in its denial letters, and RTK Section 708(b)(2), which exempts records that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity. In support of these arguments, the County offers Warden Orlando Harper's Affidavit, attached hereto as Exhibit E.

### **A. Warden Harper's Affidavit Demonstrates that the Polices are Exempt.**

Warden Orlando Harper has 32 years of experience working in a correctional setting, including eight years of experience running the Allegheny County Jail. (*See* Exhibit E at ¶2.) His Affidavit provides all the information the OOR needs to assess the impact of the disclosure of this policy on the personal security of individuals, public safety, and public protection activity.

When a correctional institution denies a request for records under the personal security and public safety exemptions, the agency need not demonstrate specific prior examples of physical harm to personal security or public safety to meet its burden of proof. *See Castilyn v. Butler County*, OOR Dkt. AP 2019-1419 (citing *Wool v. Pa. Dep't of Corr.*, OOR Dkt. AP 2018-0447; *Bernstein v. Pa. Dep't of Corr.*, OOR Dkt. AP 2011-1603 (prison inmate policy manuals are exempt from disclosure); *Rizzuto v. Pa. Dep't of Corr.*, OOR Dkt. AP 2010-0916 (records of prison staff observations, opinions, and impressions of inmates and inmates' behavior are exempt from disclosure)). The OOR finds experienced correctional agency employees credible and will not substitute its judgment for that of those with far more familiarity with the issues involving personal security in a correctional setting. *See Castilyn*, OOR Dkt. AP 2019-1419 (citing *Ocasio v. Pa. Dep't of Corr.*, 2018 WL 264906 \*3 (Pa. Commw. Ct. 2018) (“[t]his Court has repeatedly recognized that the nature of the prison setting requires that personal security and public safety issues be given serious consideration where a RTKL request seeks records concerning prisons”) and *Carey v. Penn. Dept. of Corr.*, 61 A.3d 367, 374 (Pa. Cmwlth. 2013) (“[p]ersonal security issues are of particular concern in a prison setting”)).

The OOR has also found that possible retaliation against correctional officers is competent evidence of the applicability of the public safety exemption. In *Snider v. Pa. Dept. of Corr.*, OOR Dkt. AP 2019-1105, the OOR held that “[t]he Department has shown that public safety is reasonably likely to be jeopardized if the responsive records are disclosed. Specifically, ... it is reasonably likely to result in retaliation by inmates to the staff described in the records. This would create an unsafe and less secure facility for inmates.” Therefore, an affidavit from a correctional institution pointing to threats of retaliation against officers by inmates is enough to prove that the

public safety exemption applies without citing specific examples of such retaliation occurring in the past. Warden Harper's Affidavit meets the County's burden of proof in this case.

**B. ACJ Policy No. 208 is Exempt Under  
the Personal Security Exemption to the RTKL.**

The first exemption that applies to Policy No. 208 is RTKL Section 708(b)(1)(ii), which provides that records are exempt from disclosure if disclosing them “would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.” The OOR has held that “[b]elief alone without more, even if reasonable, does not meet this heightened standard.” *Zachariah v. Pa. Dep’t of Corr.*, OOR Dkt. AP 2009-0481; *see also 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). But, as explained above, correctional facilities need not cite to specific examples of past harm in order to meet this burden.

The Commonwealth Court has found that “personal security concerns are of particular concern in a prison setting.” *Carey*, 61 A.3d at 374. Further, “given the heightened risk associated with prisons, representations regarding perceived threats to individual [corrections] personnel posed by inmates are persuasive.” *Id.* *Carey* considered a request for the identities of Dept. of Corrections (“DOC”) staff who authorized transfers of certain prisoners. After invoking the personal security exemption, the DOC asserted that if inmates knew the names of DOC officials who authorized transfers, they may retaliate against the officials. *See id.* The court ruled that this explanation was enough to show a reasonable likelihood of a substantial and demonstrable risk of physical harm. *See id.*

An instructive OOR decision is *Benzing v. Churchill Borough*, OOR Dkt. AP-2018-1518, which concerned a request for the Churchill Police Department's use of force policies. The Borough objected to producing several sections of its policy manual, asserting that those sections

were covered by the personal security and public safety exemptions. The Borough submitted an affidavit from a police officer summarizing the content of the withheld policies, and explaining that:

The release of the information in Sections 1.2 through 1.5 of Chapter XII – Use of Force – would allow subjects to anticipate the weapons used by officers. Advanced knowledge of the information in Sections 1.2 through 1.5 would allow subjects to counteract officer actions, disobey officer directives or flee prior to an officer’s use of force. As a result, the release of this information would endanger the safety of police officers and civilians.

The OOR held that the Borough’s Affidavit met its burden to show that the personal security and public safety exemptions applied.

In this case, Warden Harper’s Affidavit contains the same type of information that Churchill Borough submitted to the OOR. Warden Harper describes the content of Policy No. 208 and explains how inmates could use the redacted information to harm ACJ staff or other inmates. Since, as discussed above, the threat of physical harm to an individual in a correctional setting need not be supported by specific examples of prior harm, Warden Harper’s Affidavit satisfies the County’s burden of proof that the personal security exemption applies.

**C. ACJ Policy No. 208 is Exempt Under the Public Safety Exemption to the RTKL.**

The second RTKL exemption that applies to Policy No. 208 is Section 708(b)(2), which exempts “[a] record maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity or a record that is designated classified by an appropriate Federal or State military authority.” To establish this exemption, an agency must show “(1) that the record at issue related 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*, 61 A.3d at 374. Courts interpret “reasonably likely” to require more than speculation. *See id.* At 374-375.

Warden Harper’s Affidavit states that Policy No. 208 is related to a law enforcement or public safety activity “because [the ACJ’s] policies are necessary to maintain the institutional security of the ACJ and the safety of inmates, employees and contractors who live and work in the Jail.” (*See Exhibit E ¶4.*)

The OOR has consistently held that records from correctional institutions are related to a law enforcement or public safety activity. *See e.g. Gentilquore v. Pa. Dept. of Corr.*, OOR Dkt. AP 2020-0721 (records about the provision of health care services to inmates are related to public protection activity); *Simpson v. Pa. Dept. of Corr.*, OOR Dkt. AP 2018-2084 (the contents of an inmate’s file are “maintained by the department in connection with law enforcement activity”); *Brown v. Pa. Dept. of Corr.*, OOR Dkt. AP 2015-0427 (records about inmate misconduct “clearly relate to a law enforcement activity”). The ACJ policy at issue in this case are no exception.

Precedent from the OOR and the reviewing courts supports the County’s position that Policy No. 208 is covered by the public safety exemption. In *Fennell v. Pa. Dept. of Corr.*, 2016 WL 1221838 (Pa. Cmmw. Ct. 2016), the court considered an inmate’s request for records, including training manuals, regarding physical restraint of inmates and report writing. The court first stated, “this Court’s decisions support protection of manuals and training materials under the public safety exemption when the agency shows a nexus between the disclosure of the information at issue and the alleged harm.”

Next, the court examined several previous cases regarding law enforcement manuals and training materials and scrutinized the level of detail required for an affidavit to demonstrate that



the public safety exemption applies. *Fennell* held that the DOC's affidavit was sufficiently detailed regarding the Restraint Manuals because:

[t]he Affidavit is specific as to the potential for harm to public safety should DOC be required to disclose its methods for restraining inmates. [The Affiant] attests to the connection between the information at issue regarding restraint techniques and the danger to staff and inmates should inmates have the playbook to defend against restraints. We are persuaded that information contained in the Restraint Manuals could be manipulated by inmates in their interaction with corrections officers to reduce [the restraints'] effectiveness.

*Fennell* also found that the DOC's affidavit was sufficiently detailed regarding the Report Writing Manuals because the affidavit explained how knowledge of report writing techniques could be used by inmates to manipulate and counteract the DOC investigation process.

*Reeves v. Pa. Bd. of Probation and Parole*, 2015 WL 5453077 (Commw. Ct. 2015), is another decision that supports the County's position that Policy No. 208 is exempt under the public safety exemption. In that case, an inmate requested the policies and procedures for officials to follow when a parolee changes his or her address. The agency identified a manual that contained the information sought but asserted that the manual was covered by the public safety exemption. The Board submitted an affidavit asserting that

if an offender specifically knew the circumstance of how and when information from other agencies was shared with the Board, the offender could possibly manipulate the information provided. Further...if the Manual were disclosed, it would reveal the capabilities and scope of the Board's offender management procedures and policies, and offenders could use the information to circumvent existing parole supervisions procedures and practices, thereby jeopardizing the Board's public protection activity in monitoring and supervising offenders.

*Id.* at \*1. This explanation was enough for the court, which held that releasing the manual "could threaten safety and impair the Board's ability to supervise offenders." *Id.* at \*3.

Warden Harper's affidavit is analogous to the DOC's affidavits in *Fennell* and *Reeves* because he explains how an inmate could use knowledge of Policy No. 208 to endanger others. He

states that the Restraint Chair Policy provides guidance on when an inmate should be placed in the restraint chair, includes step-by-step instructions for using the restraint chair, and the different roles that corrections officers play in the process. (*See* Exhibit E ¶¶9-11.) He also states that if an inmate understood the techniques used to secure someone in the restraint chair, that inmate could “overcome the techniques or instruments,” and “disruption of the process would threaten personal safety.” (*See* Exhibit E ¶13.) Finally, the Affidavit explains that the restraint chair provides safety for those inside the Jail, and disruption of the restraint chair process could lead to unsafe conditions, including a riot. (*See* Exhibit E ¶14.)

### **III. CONCLUSION**

Precedent from the OOR and the Commonwealth Court supports the County’s position in this case. Safety and security concerns in a correctional setting are extremely important. Warden Harper’s Affidavit competently explains how the disclosure of this policy would threaten the personal security of individuals and threaten public safety and public protection activity taking place inside the Jail. Therefore, the County asks that Ms. Rihl’s appeal be denied.

Respectfully submitted:

---

Maggie Shiels  
Assistant County Solicitor  
Pa Bar ID: 321614

Allegheny County Law Dept.  
445 Fort Pitt Blvd., Suite 300  
(412) 350-1120  
Attorneys for Respondent –  
Allegheny County

## Standard Right-to-Know Law Request Form

SUBMITTED TO AGENCY NAME: Allegheny County Jail (Attn: AORO)

Date of Request: 9/25/2020 Submitted via: ☒ Email ☐ U.S. Mail ☐ Fax ☐ In Person

### PERSON MAKING REQUEST:

Name: Juliette Rihl Company (if applicable): PublicSource

Mailing Address: 1936 Fifth Avenue, Pittsburgh, PA 15219

Email: [juliette@publicsource.org](mailto:juliette@publicsource.org)

Telephone: 267-306-0570

How do you prefer to be contacted if the agency has questions? ☒ Telephone ☒ Email ☐ U.S. Mail

### RECORDS REQUESTED:

Under the Pennsylvania Right to Know Law, 65 P.S. §67.101, et seq., I am requesting **access to all policies involving the use of a restraint chair at the Allegheny County Jail.**

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request to be filled electronically, by e-mail attachment if available or by mail if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 5 business days, as the statute requires.

DO YOU WANT COPIES? ☒ Yes, electronic copies preferred if available

☐ Yes, printed copies preferred

☐ No, in-person inspection of records preferred (*may request copies later*)

Do you want certified copies? ☐ Yes (*may be subject to additional costs*) ☒ No

*RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.*

Please notify me if fees associated with this request will be more than ☐ \$100 (or) ☒ \$25.00.

COUNTY OF



ALLEGHENY

October 1, 2020

Juliette Rihl  
PublicSource  
1936 Fifth Avenue  
Pittsburgh, PA 15219

Re: RTK – Initial Response - #6287 - #6295

Dear Ms. Rihl:

This is in response to your attached requests for records made pursuant the Pennsylvania Right-to-Know Law (RTKL), identified in the County's tracking system as RTKL #6287 - #6295. This Office received your requests on September 25, 2020.

Please be advised that the County is invoking its right under Section 902 of the RTKL for an extension of time to complete a review of your requests and to issue a final response for the following reason:

Section 902 (a) (3) – A timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations. Limited staff requires the need for additional time.

By law, the Office of Open Records has thirty days to issue a final determination regarding this request. A response is expected to be provided within thirty days of the date of this letter.

Sincerely,



Jerry Tyskiewicz, Director  
County of Allegheny Open Records Officer



October 27, 2020

Juliette Rihl  
PublicSource  
1936 Fifth Avenue  
Pittsburgh, PA 15214

Re: RTK – Final Response - #6288

Dear Ms. Rihl:

This is in response to your attached request for records made pursuant the Pennsylvania Right-to-Know Law (RTKL). This Office received your request on September 25, 2020 and notified you on October 1, 2020 that an extension of time to respond to your request was necessary due to bona fide staffing limitations.

You requested the following:

*Access to all policies involving the use of a restraint chair at the Allegheny County Jail.*

Your request is granted in part and denied in part for the reasons set forth below.

A document responsive to your request is being provided and attached in electronic format. However, portions of this record required redactions to remove information exempt from disclosure upon the following provisions of the RTKL: 1) information that would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual, exempt from disclosure under Section 708 (b) (1) (ii) of the RTKL; and 2) a record maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity, exempt from disclosure under Section 708 (b) (2) of the RTKL.

Pursuant to Section 1101 of the RTKL, a party denied access to a requested record may file a written appeal of the denial with the Pennsylvania Office of Open Records ("OOR") within fifteen (15) business days of the mailing date of the local agency's response. The OOR's address is:

Pennsylvania Office of Open Records  
333 Market Street - 16th Floor  
Harrisburg, PA 17126-0333


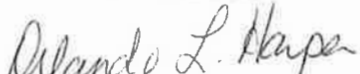
October 27, 2020

Page Two

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Tyskiewicz". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

Jerry Tyskiewicz, Director  
County of Allegheny Open Records Officer

 <p style="text-align: center;"><b>ALLEGHENY COUNTY BUREAU OF CORRECTIONS</b></p>	<b>APPLICABILITY: All Authorized Personnel</b>	
	<b>POLICY NUMBER: #208</b>	<b>EFFECTIVE: 5/28/08 REVISED: 4/28/20</b>
	<b>TITLE: Emergency Restraint Chair</b>	
	<b>AUTHORIZED BY: ORLANDO L. HARPER</b>	
	<b>SIGNATURE:</b>	

**POLICY**

It is the policy of the Allegheny County Bureau of Corrections to provide an efficient, safe and humane environment for employees and inmates during the admission process and at all times. [REDACTED]

## PURPOSE

## PROCEDURAL GUIDELINES





[illegible]



**IN THE PENNSYLVANIA OFFICE OF OPEN RECORDS**

**IN THE MATTER OF:**

Juliette Rihl,  
Complainant,  
vs.

Docket No.: 2020-2250

Allegheny County,  
Respondent.

**AFFIDAVIT OF WARDEN ORLANDO HARPER**

I, Orlando Harper, hereby declare under the penalty of perjury, pursuant to 18 Pa. C. S. A. § 4904, that the following statements are true and correct based upon my personal knowledge, information and belief:

**A. Introduction**

1. My name is Orlando Harper. I am the Warden of the Allegheny County Jail ("ACJ" or "Jail"). I was appointed as Warden on October 15, 2012. As the Warden of the ACJ, I am responsible for all aspects of the ACJ. I am responsible for the safety and security of inmates and employees as well as non-employee personnel visiting the Jail.

2. I have been a correctional professional for 32 years. I began my career with the DC Department of Corrections, where I rose from the rank of correctional officer to Deputy Warden for Operations. As the Deputy Warden at the DC Department of Corrections, I was responsible for all operational aspects of the jail.

3. Among my duties at the ACJ is to edit, draft, update, review, and approve policies related to the operation of the facility which are constantly being reviewed and revised to keep consistent with corrections standards as well as state and federal law. The ACJ policies are maintained in a software program called Power DMS.

4. These policies are related to a law enforcement or public safety activity because they are necessary to maintain the institutional security of the ACJ and the safety of inmates, employees and contractors who live and work in the Jail.

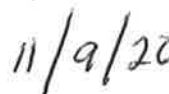
5. In September of 2020 I received notice of a Right to Know Law ("RTKL") request from Juliette Rihl seeking "access to all policies involving the use of a restraint chair at the Allegheny County Jail." I redacted the information in that policy that I considered exempt under the RTKL. The redactions were based on RTKL Section 708(b)(1)(ii), the personal security exemption and Section 708(b)(2), the public safety exemption. I sent the redacted policies to the Allegheny County Department of Administrative Services.

208

6. The policy is called No. ~~2058~~ – Emergency Restraint Chair. It is exempt from disclosure under both the personal security and public safety exemptions to the RTKL.
7. Policy No. 208 outlines the plan to provide an efficient, safe and humane environment for employees and inmates during the admission process and at all times. An Emergency Restraint Chair (“ERC”) is available at appropriate times to accomplish these goals.
8. Policy No. 208 provides guidelines for employing the ERC at the Jail. The ERC is utilized to protect the safety and security of the inmate being placed in it, and the other inmates and employees in the facility.
9. This policy has been redacted for several reasons. First, this policy provides guidance as to how supervisors at the facility determine when an inmate will be placed in an ERC. Specific reasons are outlined in the policy.
10. Secondly, this policy establishes step-by-step instructions as to how inmates are placed and secured in an ERC.
11. This policy also addresses the number of correctional officers necessary to complete the process of securing an inmate in an ERC, as well as the different roles correctional officers serve in the process.
12. Finally, this policy delves into the length of an inmate’s stay in an ERC, as well as monitoring and developing the plan for release from the ERC.
13. If this policy were to be made public, the public would gain key information about these techniques, which could be used by inmates to overcome the techniques or instruments used to secure an inmate in an ERC. Since the ERC is used to ensure the safety of everyone involved in the intake process, a disruption of the process would threaten personal security.
14. Additionally, the policy lays out the reasoning and steps as to why restraint is being employed on a certain inmate. If the information was to be made public, it would eliminate a technique that provides safety measures for inmates and employees inside the facility. Making this policy public would therefore endanger employees, other inmates and negatively affect the running of the jail. It could also lead to a potential riot in different locations across the facility, which would endanger the public protection activities occurring in the Jail.



---

Orlando Harper

---

Date

Thank you for your time.



**Ryan W. Liggitt, Esquire**  
Appeals Officer  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234  
[\(717\) 346-9903](tel:(717)346-9903) | [rliggitt@pa.gov](mailto:rliggitt@pa.gov)  
<https://openrecords.pa.gov> | [@OpenRecordsPA](https://twitter.com/OpenRecordsPA)

---

**From:** Shiels, Maggie <[Maggie.Shiels@AlleghenyCounty.US](mailto:Maggie.Shiels@AlleghenyCounty.US)>  
**Sent:** Wednesday, November 18, 2020 8:59 AM  
**To:** Liggitt, Ryan <[rliggitt@pa.gov](mailto:rliggitt@pa.gov)>; Juliette Rihl <[juliette@publicsource.org](mailto:juliette@publicsource.org)>  
**Cc:** Colosimo, Kathy A. <[Kathy.Colosimo@AlleghenyCounty.US](mailto:Kathy.Colosimo@AlleghenyCounty.US)>  
**Subject:** AP 2020-2250

Allegheny County's brief in AP 2020-2250 is attached.

Maggie Shiels  
Assistant County Solicitor  
Allegheny County Law Department  
445 Fort Pitt Blvd.  
3<sup>rd</sup> Floor  
Pittsburgh, PA 15219  
(412) 350-1159

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Juliette Rihl  
reporter, [PublicSource](https://www.publicsource.org)  
pronouns: she/her/hers  
(267) 306-0570  
[@JulietteRihl](https://twitter.com/JulietteRihl)

OOR Exhibit 4

**From:** [Liggitt, Ryan](#)  
**To:** [Juliette Rihl](#)  
**Cc:** [Colosimo, Kathy A.](#); [Shiels, Maggie](#)  
**Subject:** RE: [External] Re: AP 2020-2250  
**Date:** Wednesday, December 2, 2020 3:06:00 PM  
**Attachments:** [image001.jpg](#)

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Thank you for your prompt response.



**Ryan W. Liggitt, Esquire**  
Appeals Officer  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234  
[\(717\) 346-9903](tel:(717)346-9903) | [rliggitt@pa.gov](mailto:rliggitt@pa.gov)  
<https://openrecords.pa.gov> | [@OpenRecordsPA](#)

---

**From:** Juliette Rihl <[juliette@publicsource.org](mailto:juliette@publicsource.org)>  
**Sent:** Wednesday, December 2, 2020 2:46 PM  
**To:** Liggitt, Ryan <[rliggitt@pa.gov](mailto:rliggitt@pa.gov)>  
**Cc:** Colosimo, Kathy A. <[Kathy.Colosimo@alleghenycounty.us](mailto:Kathy.Colosimo@alleghenycounty.us)>; Shiels, Maggie <[Maggie.Shiels@alleghenycounty.us](mailto:Maggie.Shiels@alleghenycounty.us)>  
**Subject:** [External] Re: AP 2020-2250

**ATTENTION:** *This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to [CWOPA\\_SPAM@pa.gov](mailto:CWOPA_SPAM@pa.gov).*

Yes, that's fine. I appreciate you letting me know.

Juliette

On Wed, Dec 2, 2020 at 2:44 PM Liggitt, Ryan <[rliggitt@pa.gov](mailto:rliggitt@pa.gov)> wrote:

Good Afternoon Ms. Rihl,

I am writing to ask for a brief extension to issue the Final Determination in this matter. The reason for the extension request is current staffing limitations along with my increased caseload. I will make every effort to issue the Final Determination earlier if possible.

Please respond, letting me know whether or not you will grant me an extension from December 7, 2020, to December 10, 2020.

Thank you for your time.



**Ryan W. Liggitt, Esquire**  
Appeals Officer  
Office of Open Records  
333 Market Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101-2234  
[\(717\) 346-9903](tel:(717)346-9903) | [rliggitt@pa.gov](mailto:rliggitt@pa.gov)  
<https://openrecords.pa.gov> | [@OpenRecordsPA](#)

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**Sent:** Wednesday, November 18, 2020 8:59 AM  
**To:** Liggitt, Ryan <[rliggitt@pa.gov](mailto:rliggitt@pa.gov)>; Juliette Rihl <[juliette@publicsource.org](mailto:juliette@publicsource.org)>  
**Cc:** Colosimo, Kathy A. <[Kathy.Colosimo@AlleghenyCounty.US](mailto:Kathy.Colosimo@AlleghenyCounty.US)>  
**Subject:** AP 2020-2250

Allegheny County's brief in AP 2020-2250 is attached.

Maggie Shiels  
Assistant County Solicitor  
Allegheny County Law Department  
445 Fort Pitt Blvd.  
3<sup>rd</sup> Floor  
Pittsburgh, PA 15219  
(412) 350-1159

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--

Juliette Rihl  
reporter, [PublicSource](#)  
pronouns: she/her/hers  
(267) 306-0570  
[@JulietteRihl](#)



OOR Exhibit 5



**FINAL DETERMINATION**

**IN THE MATTER OF**

**JULIETTE RIHL,  
Requester**

**v.**

**ALLEGHENY COUNTY,  
Respondent**

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**Docket No: AP 2020-2250**

**INTRODUCTION**

Juliette Rihl (“Requester”) submitted a request (“Request”) to Allegheny County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking copies of policies related to the use of a restraint chair at the Allegheny County Jail. The County partially granted the Request, providing a responsive record but redacting most of the information and arguing that the disclosure of the redacted information would threaten 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 **granted in part** and **denied in part**, and the County is required to take further action as directed.

**FACTUAL BACKGROUND**

On September 25, 2020, the Request was filed, seeking “access to all policies involving the use of a restraint chair at the [County] Jail.” On October 1, 2020, the County invoked a thirty-day extension during which to respond. 65 P.S. § 67.902(b). On October 27, 2020, the County

partially granted the Request, providing the responsive record and redacting the majority of information within that record, arguing the redactions were necessary for personal security and public safety. 65 P.S. §§ 67.708(b)(1)(ii)-(2).

On November 6, 2020, 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 County to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On November 18, 2020, the County submitted a position statement and affidavit reiterating the County's argument that the redactions in the provided record are to protect personal security and public safety. The County provided the affidavit of Orlando Harper, the County Jail's Warden.

### **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).

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 Requester asks the OOR to conduct *in camera* review; however, the OOR has the necessary information and evidence before it to properly adjudicate the matter. Therefore, the request for *in camera* review is hereby denied.

The County is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local 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 County argues that the record provided to the Requester was properly redacted, and if disclosed in full, would likely threaten personal security or public safety. *See* 65 P.S. §§ 67.708(b)(1)(ii)-(2). 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). Under the RTKL, “reasonable likelihood” of “substantial and demonstrable risk” is necessary to trigger the personal security exception. *Del. County v. Schaefer*, 45 A.3d 1149 (Pa. Commw. Ct. 2012).

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). In order to withhold records under Section 708(b)(2) of the RTKL, the County must show: (1) the record at issue relates to 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). 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); *see also Ciavaglia and the Bucks County Courier Times v. Newtown Borough*, OOR Dkt. AP 2019-0866, 2019 PA O.O.R.D. LEXIS 698.

In support of its argument, the County provides the affidavit of Warden Harper, who attests as follows:

Among my duties at the [Allegheny County Jail (“ACJ” or “Jail”)] is to edit, draft, update, review, and approve policies related to the operation of the facility which are constantly being reviewed and revised to keep consistent with corrections standards as well as state and federal law. The ACJ policies are maintained in a software program called Power DMS.

These policies are related to a law enforcement or public safety activity because they are necessary to maintain the institutional security of the ACJ and the safety of inmates, employees and contractors who live and work in the Jail.

In September of 2020[, ] I received notice of a Right to Know Law (“RTKL”) [R]equest from [Requester] seeking “access to all policies involving the use of a restraint chair at the Allegheny County Jail.” I redacted the information in that policy that I considered exempt under the RTKL. The redactions were based on RTKL Section 708(b)(1)(ii), the personal security exemption and Section 708(b)(2), the public safety exemption. I sent the redacted policies to the Allegheny County Department of Administrative Services.

The policy is called No. [208] - Emergency Restraint Chair. It is exempt from disclosure under both the personal security and public safety exemptions to the RTKL.

Policy No. 208 outlines the plan to provide an efficient, safe and humane environment for employees and inmates during the admission process and at all times. An Emergency Restraint Chair (“ERC”) is available at appropriate times to accomplish these goals.

Policy No. 208 provides guidelines for employing the ERC at the Jail. The ERC is utilized to protect the safety and security of the inmate being placed in it, and the other inmates and employees in the facility.

This policy has been redacted for several reasons. First, this policy provides guidance as to how supervisors at the facility determine when an inmate will be placed in an ERC. Specific reasons are outlined in the policy.

Secondly, this policy establishes step-by-step instructions as to how inmates are placed and secured in an ERC.

This policy also addresses the number of correctional officers necessary to complete the process of securing an inmate in an ERC, as well as the different roles correctional officers serve in the process.

Finally, this policy delves into the length of an inmate's stay in an ERC, as well as monitoring and developing the plan for release from the ERC.

If this policy were to be made public, the public would gain key information about these techniques, which could be used by inmates to overcome the techniques or instruments used to secure an inmate in an ERC. Since the ERC is used to ensure the safety of everyone involved in the intake process, a disruption of the process would threaten personal security.

Additionally, the policy lays out the reasoning and steps as to why restraint is being employed on a certain inmate. If the information was to be made public, it would eliminate a technique that provides safety measures for inmates and employees inside the facility. Making this policy public would therefore endanger employees, other inmates and negatively affect the running of the jail. It could also lead to a potential riot in different locations across the facility, which would endanger the public protection activities occurring in the Jail.

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. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any competent evidence that the County acted in bad faith, “the averments in [the affidavit] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

Here, the County has offered an adequate description of Policy 208 and established that this policy relates to a public protection activity – *i.e.* the restraint of an inmate in an emergency restraint chair. Further, the County has shown how disclosure of many of the details of this policy would threaten the safety of inmates, staff members, and potentially the public. For example, Warden Harper attests that releasing certain information would allow inmates to, among other things, overcome the techniques or instruments used when being restrained to an emergency restraint chair, which can endanger themselves or others. The OOR has found similar records to be exempt under Sections 708(b)(1) and (2) of the RTKL in the past. *See Georigi v. Pa. Dep’t of*

*Corr.*, OOR Dkt. AP 2014-1357, 2014 PA O.O.R.D. LEXIS 1065 (finding Department Policy 13.02.01, Access to Health Care Procedure Manual, Section 16 “QIP” exempt from disclosure under Section 708(b)(2) of the RTKL); *Maulsby v. Pa. Dep’t of Corr.*, OOR Dkt. AP 2014-1480, 2014 PA O.O.R.D. LEXIS 1268 (holding that portions of a contract relating to medical treatment of inmates and containing information about the procedures for responding to medical emergencies, as well as guidance to ... quality management activities including the development of consistent policies and procedures, credentialing, ...audit of clinical processes and outcomes, etc. were exempt under Section 708(b)(1)); *Gainer v. Pa. Dep’t of Corr.*, OOR Dkt. AP 2011-1112, 2011 PA O.O.R.D. LEXIS 786 (finding records responsive to a RTKL request for the Department’s emergency medical treatment protocol exempt under Section 708(b)(1) of the RTKL).

However, the affidavit also states that “this policy provides guidance as to how supervisors at the facility determine when an inmate will be placed in an ERC. Specific reasons are outlined in the policy.” Warden Harper’s affidavit is silent as to how the release of these particular provisions of the policy would threaten the safety of inmates, staff members, or the public. Although the OOR recognizes the unique concerns that exist in a correctional setting and allows appropriate deference to experts in such settings, it is not clear – and no evidence has been presented to explain – how inmates knowing which behaviors may result in being restrained in an ERC would be reasonably likely to jeopardize or threaten public safety.

Accordingly, the County has met its burden of proving that the information redacted from the responsive record – other than the provisions relating to how supervisors determine when to place an inmate in an ERC – is exempt from disclosure under Sections 708(b)(1)(ii) and (2) of the RTKL. 65 P.S. § 67.708(a)(1).



## CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the County is required to provide a redacted copy of the policy as set forth above. 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 Allegheny County Court of Common Pleas. 65 P.S. § 67.1302(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.<sup>1</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: December 10, 2020**

*/s/ Ryan W. Liggitt*

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RYAN W. LIGGITT, ESQ.  
APPEALS OFFICER

Sent to: Juliette Rihl (via email only);  
Kathy Colosimo, AORO (via email only);  
Maggie Shiels, Esq. (via email only)

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<sup>1</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

**From:** [Liggitt, Ryan](#)  
**To:** [Juliette Rihl](#); [Shiels, Maggie](#)  
**Cc:** [Colosimo, Kathy A.](#)  
**Subject:** Final Determination: Rihl v. Allegheny Co: AP 2020-2250  
**Date:** Thursday, December 10, 2020 12:20:00 PM  
**Attachments:** [2020-2250\\_Rihl-AlleghenyCounty\\_FD.pdf](#)  
[image001.jpg](#)

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Hello Parties,

I have attached the Final Determination in the above matter to this email. Any further questions or concerns regarding this appeal should be directed to [RA-OpenRecords@pa.gov](mailto:RA-OpenRecords@pa.gov).

Thank you for your time.



**Ryan W. Liggitt, Esquire**

Appeals Officer

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