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OFFICE OF OPEN RECORDS

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

YORK COUNTY	:	Mon, Nov 4, 2019 12:44 PM
Petitioner	:	2019-SU-003343
v.	:	
JOHN COYLE	:	
Respondent	:	

OFFICE OF PROTHONOTARY
 2019 NOV -4 PM 12:45
 JUDICIAL CENTER
 YORK, PA

**BRIEF OF THE COUNTY OF YORK IN SUPPORT OF
PETITION FOR DE NOVO REVIEW OF THE FINAL DETERMINATION
OF THE PENNSYLVANIA OFFICE OF OPEN RECORDS
DATED OCTOBER 7, 2019**

I. Statement of Facts and Procedural History

On June 13, 2019, Respondent filed a request for records from York County, as follows:

1. The contracts and/or agreements for any organization which provided healthcare services in York County Prison in 2018.
2. The contract agreement of sale, and purchase receipt for electronic control weapons in use by York County Prison corrections officers in 2018.
3. Any training materials provided to York County by the supplier of electronic control weapons in use at York County Prison in 2018
4. All written policies governing the provision of healthcare to inmates at York County Prison in effect as of April, 2018.

5. All written policies governing the provision of mental health services to inmates at York County Prison in effect as of April 1, 2018.
6. All written policies governing the use of force by corrections officers at York County Prison in effect as of April 1, 2018.
7. All written policies governing confrontations of mentally unstable individuals at York County Prison in effect of April 1, 2018.
8. All written policies governing the intake of new inmates at York County Prison in effect as of April 1, 2018.
9. All written policies governing the performance of autopsies by the York County Coroner in effect as of April 1, 2018.
10. The contract and/or agreement for any organization which provided pathology, toxicology, or autopsy services for York County in 2018.

On June 14, 2019, the County of York invoked an additional thirty (30) days to respond to the inquiry.

On June 18, 2019, the County of York partially granted the Respondent's request, but denied Items 2-10, indicating that Items 9 and 10 were really better answered by the York County Coroner rather than the County of York.

On July 24, 2019, Respondent John J. Coyle appealed the County of York's refusal. The appeal included the following:

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.

In the appeal, the Respondent demanded the following:

1. The contract, agreement of sale, and purchase receipt for electronic control weapons in use by York County Prison corrections officers in 2018.
2. Any training materials provided to York County by the supplier of electronic control weapons in use at York County Prison in 2018.
3. All written policies governing the provision of healthcare to inmates at York County Prison in effect as of April 1, 2018.
4. All written policies governing the provision of mental health services to inmates at York County Prison in effect as of April 1, 2018.
5. All written policies governing the use of force by corrections officers at York County Prison in effect as of April 1, 2018.

6. All written policies governing confrontations of mentally unstable individuals at York County Prison in effect as of April 1, 2018.
7. All written policies governing the intake of new inmates at York County Prison in effect as of April 1, 2018.

On October 7, 2019, Kelly Isenberg, Esquire, the Right-To-Know Appeals Officer granted the appeal because the County of York failed to provide sufficient proof of the right to exemptions because of inadequate evidence that disclosure of the records created endangerment to personal safety and/or public safety.

The County of York has filed a Petition for De Novo Review of the Final Determination of the Pennsylvania Office of Open Records. This Brief and the attached Affidavits of Warden Clair Doll and Deputy Warden Valerie Conway are filed in support of the Petition for De Novo Review and request the Court to deny the release of the requested information under the RTKL.

II. Questions for Review

- A. Are the Requests for Information Not Public Records and Exempt from Disclosure Under 65 P.S. §§ 67.708(b)(1)(ii), 67.708(2), 67.708(b)(11), and 67.708(b)(16)(iv)?**

III. Argument

A. The Requests for Information Are Not Public Records and Are Exempt from Disclosure Under 65 P.S. §§ 67.708(b)(1)(ii), 67.708(2), 67.708(b)(11), and 67.708(b)(16)(iv).

The County of York is a local agency subject to the RTKL that is required to disclose public records 65 P.S. § 67.302. Records in possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by privilege, judicial order, or decree. See 65 P.S. § 67.305.

65 P.S. § 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In part, 65 P.S. § 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 preponderance of the evidence. 65 P.S. § 67.708(a).

Preponderance of the evidence has been defined as such proof as leads the fact finder... to find the existence of a contested fact is more probable than its non-existence. Pa. State Troopers Ass'n v. Scolforo, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011).

65 P.S. § 67.708(b)(1)(ii) of the RTKL exempts from disclosure the records “the disclosure of which... would be reasonably likely to result in a substantial and demonstrable risk of physical harm to the personal security of an individual.” 65 P.S. § 67.708(b)(2) exempts records maintained by an agency in connection with law enforcement or public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or public protection activity.

The Office of Open Records have traditionally found credible the professional opinion of individuals assessing prison security and risks and do not substitute its judgment for that of those more familiar with issues involving prison security. See Mele v. Monroe County, OOR Dkt. 2011-1230, 2011 Pa. O.O.R.D., Lexis 1358.

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 Township School District, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011). In the absence of any evidence that the County has acted in bad faith, “the averments in the Affidavit should be accepted as true.” McGowan v. Pa. Department of Env’tl. Prot., 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014).

The Affidavit of Clair Doll, Warden of the York County Prison, establishes the exemptions that prevent the release of the information requested by the Respondent in this appeal.

The Warden's Affidavit clearly establishes that request No. 1 and 2, which requires disclosure of the contract, agreement of sale, purchase receipt for electronic control weapons in the York County Prison used by correction officers in 2018, and any training materials provided to York County by the supplier of electronic control weapons in use at the York County Prison in 2018.

The Affidavit of Warden Clair Doll provides the following information justifying an exemption of the documents included in request No. 1 and 2:

Request No. 1 and 2 would make public the amount and limitations concerning effectiveness of our electronic control weaponry. This knowledge would threaten the safety of the staff by compromising its effective use. Inmates would understand the amount of electronic control weaponry available and be able to calculate a prisoner response to counteract the available electronic control techniques, thus endangering prison staff and other inmates.

Specifically, the release of this information will provide a prisoner the direct knowledge of how many electronic stun devices are available and the specific model numbers of each device. Access to this knowledge informs the prisoner of how many prisoners are needed to overwhelm and overcome the number of devices that

could be used simultaneously to quell a disturbance. For example, if the prison has a total of 5 electronic stun devices, then the prisoners understand that only 5 prisoners could be affected and total of 6 or more are needed to overwhelm security staff.

Additionally, by obtaining the make and mode of the devices, the prisoners can have family or friends research weaknesses for the model. For example, if a prisoner understands how far a Taser can launch projectiles or the layer of clothing needed to prevent the barbs from penetrating the skin, they can undermine the effectiveness of the tool. The ability to negate and make the tools to maintain order directly undermines the security of the prison and the safety staff.

These records are exempt under Section 708 Exceptions for public records:

(1)(ii) Would reasonably likely to result in a substantial and demonstrable risk of physical harm to our the personal security of an individual;

(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 or a record that is designated classified by an appropriate Federal or State military authority.

It is submitted, therefore, that the exemption provided by 65 P.S. § 67.708(b)(2) that concerns law enforcement and public protection activity that would be reasonably likely to have public safety impaired would be present with this disclosure.

In addition, under 65 P.S. § 67.708(b)(1)(ii), the disclosure would be reasonably likely to result in substantial and demonstrable risk of physical harm to anyone involved in resisting the application of the stun gun devices while incarcerated in the York County Prison.

The Warden provides the following in his Affidavit concerning request No. 2:

Request No. 2 deals with disclosing the training materials which also, could easily compromise the effectiveness and proper use of the electronic devices. In short, providing this information to the public and to the prisoners who made be subject to the use of these instruments would threaten their effectiveness and the safety of perhaps both the user and the inmate upon which the weaponry is intended for use. Specifically, the release of this information will provide a prisoner the direct knowledge of how staff utilizes the stun devices and how to make the devices ineffective. For example, if a prisoner understands how far a Taser can launch projectiles or the layer of clothing needed to prevent the barbs from penetrating the skin they can undermine the effectiveness of the tool. The knowledge and ability to counter the Taser directly undermines the security of the prison and the safety of staff.

This record is exempt under Section 708 Exceptions for public records:

(1)(ii) Would reasonably likely to result in a substantial and demonstrable risk of physical harm to our the personal security of an individual;

(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 or a record that is designated classified by an appropriate Federal or State military authority.

In addition, the York County Prison Board's lawful policies classify the information as confidential and exempt from disclosure, as outlined in Paragraph 11 above.

Warden Clair Doll also specifically responded to request No. 3 through No. 7, as follows:

Request 3 through 7 are, likewise, part of the security policies and procedures of the York County Prison. They are not provided to the public as a release of this information creates a reasonable likelihood of endangering the safety of both staff and inmates and/or compromises the physical security of the facility. PrimeCare Medical Inc. was notified of this appeal on September 30, 2019.

These records are exempt under Section 708 Exceptions for public records:

(1)(ii) Would reasonably likely to result in a substantial and demonstrable risk of physical harm to the personal security of an individual.

(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 or a record that is designated classified by an appropriate Federal or State military authority.

- Healthcare Policies

York County Prison contracts with the PrimeCare Medical Inc. to provide physical and mental healthcare to the prisoner population. PrimeCare Medical Inc. is a for profit company. These records are a primary method for PrimeCare Medical Inc. to operate their business and the records are their sole property. Additionally, the release of such records undermines the effectiveness of the screening and assessment process by providing prisoners the knowledge and understanding of when a prisoner may be transferred to an outside care provider, such as a hospital. A transport outside the secure prison represents a higher risk situation for staff and the public as the all the controls and tools provide by the secure prison are no longer available. For example, a prisoner who understands symptoms to feign that will result in an emergency transport could arrange for family or friends to meet him or her at the hospital in attempt to escape or provide the prisoner contraband.

- Mental Healthcare Policies and Suicide Prevention Policy

Inmates with serious mental illness are a growing segment with in Corrections. Prisons are becoming the new mental health facilities. A primary risk for individuals with serious mental illness is suicide. The release of mental healthcare policies and procedures along with the suicide prevention policy would decrease the effectiveness of the mental health and suicide prevention programs. Specifically, a prisoner would learn how suicide risk assessment tools determine if a person is at risk for suicide or not. They would also learn the behaviors and expectations to avoid placement on suicide precautions in order to successfully carryout their suicidal ideations/plan.

- Policies and Procedures Involving Force, Restraints and Cell Extractions

Policies and procedures that involve, instruct, or explain how staff uses techniques and tools to deescalate or restrain prisoners are critical documents to maintaining the orderly operation of the prison and the safety of the public. Providing prisoners information on when force is necessary, how it is applied and all the steps to do so provides prisoners an inherent advantage over staff members who attempt to apply these tactics and measures.

For example, a prisoner could counter the control technique staff is attempting to apply as the prisoner understands the specific target areas and motions the staff is making.

An Affidavit made under penalty of perjury is competent evidence to sustain an agency's burden of proof. See Sherry v. Radnor Township School District, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011).

The York County Prison's policy and procedure manual has been classified by the York County Board as "confidential information which may not be released to the public."

The Affidavit of Clair Doll, Warden of the York County Prison provides the following relevant information:

2.

It is important to understand the legal duties and responsibilities that have been established for the operation of the York County Prison in Pennsylvania.

3.

The agency that actually controls and governs the operation of the York County Prison is not the County of York.

4.

The obligation of the County of York is to pay the expenses involved in the operation of the York County Prison as requested and approved by the York County Prison Board.

5.

The agency that governs and controls the operation of the York County Prison is the Board of Inspectors of the York County Prison, more commonly referred to, as the York County Prison Board. 61 Pa.C.S.A. §1731(a)(i)(ii)(iii)(iv)(v).

6.

The York County Prison Board is a governmental agency that, by law, provides for the safekeeping, discipline, employment of inmates and the government and management of the York County Prison.

7.

My responsibilities as a Warden of the York County Prison includes maintaining the confinement (by preventing escape) of persons (inmates) legally confined at the York County Prison. These responsibilities also require ensuring the safety and wellbeing of the inmates confined at the York County Prison as well as the safety of the prison staff

including the contracted medical staff, volunteers, visitors at the prison, and the public at large.

8.

Prison security and prison safety requires constant vigilance that recognizes the dangers and risks generated by all aspects of confinement activity. Many inmates are sophisticated enough that even the disclosure of seemingly innocuous information would be used by the inmate populations to the detriment of security and safety. My responsibilities require me to make reasonable efforts to rehabilitate the inmates and deter them from future unlawful conduct. This, in my opinion, is the greatest method for protecting the public as most inmates will be released and return to the community.

9.

The policies, procedures and training curriculums of York County Prison, including the procedures from the contracted medical and mental health services provider, are not provided to the public, as the release of this information creates a reasonable likelihood of endangering the safety of both staff and inmates or compromises the physical security of the facility. Policies and procedures direct staff in the operation of the Prison and contain instructions as to the methods, techniques, and timeframes for carrying out assigned duties and activities. Each policy and procedure is interconnected in providing for the secure and orderly operation of the facility. The release of such information, in whole or in part, would compromise and seriously affect security operations and would allow individuals an opportunity to devise plans to counter staff responses or allow the inmates to circumvent the collection of certain information that would result in their improper classification, treatment

and security status thus presenting a danger to them as well as other inmates, staff and the public at large.

10.

Some inmates are ingenious at being able to find ways to hurt themselves and others and to compromise the policies and rules established for their safe confinement and rehabilitation. Other inmates are sophisticated enough to use information obtain from medical, security and mental health procedures in order to feign illnesses that by policy and procedure require outside medical appointments. Inmate transports outside the secure prison, for any reason, is inherently less secure than prison confinement and provides increased opportunities for inmates to coordinate escape with individuals in the public or obtain contraband to introduce into the secure prison.

11.

York County Prison Board has determined that the policies and procedures set forth in the York County Prison Policy Procedural Manual is considered confidential information and may not be released to members of the public. A copy of the Board's decision is set forth as Exhibit "A". I verify that the York County Prison Board formally adopted this legal restriction (Rule of Law), which applies to the request being made in this case and which was formally adopted and which was in full force on June 13, 2019, when John J. Coyle, the Right-To-Know requester, filed his request for the information outlined herein. On behalf of the Prison Board, I note, §708(b)(16)(iv) of the Right-To-Know Law exempts from disclosure:

**A Record That Includes Information
Made Confidential By Law...**

Under 65 P.S. § 67.708(b)(16)(iv), the RTKL exempts from disclosure “a record that includes information made confidential by law...”

The Act of 2009, August 11, P.L. 147, No. 33 § 7 et seq., specifically grants:

The Board and the Officers appointed by it shall provide for the safekeeping, discipline and employment of inmates and the government and management of the correctional institution. 61 Pa.C.S.A. § 1731(3).

The legislative action of the York County Prison Board classified the prison’s policy and procedure manual as **“Confidential Information That Is Not To Be Released To Members of the Public.”**

It is submitted, for the reasons outlined above in Warden Clair Doll’s Affidavit, that the confidentiality classification of the Prison Board constitutes a lawful exercise of the Board’s governmental power and provides the exemption arising from a record made confidential by law. 65 P.S. § 67.708(b)(16)(iv).

PrimeCare's Information

Finally, it is submitted that the request for PrimeCare's record identified as Items 3 through 7 are also exempt from disclosure under 65 P.S. § 67.708(b)(11) that exempts from disclosure trade secrets and confidential proprietary information. See Affidavit, Warden Clair Doll, Paragraph 17.

IV. Conclusion

The requests of Respondent for the records identified in this case are not public records. They are exempt as outlined above. The decision of the Right-To-Know Officer should be reversed and the request of the Respondent should be denied.

Respectfully submitted,

By: 

Donald L. Reihart, Esquire

Sup. Ct. I.D. #PA 07421

28 E. Market Street, 2nd Floor

York, PA 17401

Phone: (717)755-2799, (717)771-9745

Email: email@reihartlaw.com

dlreihart@yorkcountypa.gov

Assistant Solicitor for County of York,

Attorney for Petitioner York County

Date: 11/4/19

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

YORK COUNTY	:	
Petitioner	:	NO.
v.	:	
JOHN COYLE	:	
Respondent	:	

CERTIFICATE OF SERVICE

I, Donald L. Reihart, Esquire, certify that a true and correct copy of the foregoing Brief In Support of the County of York's Petition for De Novo Review of the Final Determination of the Pennsylvania Office of Open Records Dated October 7, 2019, was caused to be served on the date shown below by depositing same in the United States mail, first-class postage prepaid thereon, addressed as follows:

John J. Coyle
123 South Broad Street
Suite 2250
Philadelphia, PA 19109

Kelly Isenberg, Esquire
Appeals Officer
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

Respectfully submitted

By: 

Donald L. Reihart, Esquire

Sup. Ct. I.D. #PA 07421

28 E. Market Street, 2nd Floor

York, PA 17401

Phone: (717)755-2799, (717)771-9745

Email: email@reihartlaw.com

dlreihart@yorkcountypa.gov

Assistant Solicitor for County of York,

Attorney for Petitioner York County

Date: 11/4/19

IN THE COURT OF COMMON PLEAS
OF YORK COUNTY, PENNSYLVANIA

YORK COUNTY :
Petitioner : NO.
v. :
JOHN COYLE :
Respondent :

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.

Respectfully submitted,

By: 

Donald L. Reihart, Esquire

Sup. Ct. I.D. #PA 07421

28 E. Market Street, 2nd Floor

York, PA 17401

Phone: (717)755-2799, (717)771-9745

Email: email@reihartlaw.com

dlreihart@yorkcountypa.gov

Assistant Solicitor for County of York,

Attorney for Petitioner York County