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OFFICE OF OPEN RECORDS

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

York County : 2019-SU-003343
Petitioner :
vs. : Civil
John Coyle :
Respondent :

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Appearances:

For Petitioner: Donald L. Reihart, Esq.
For Respondent: *pro se*

ORDER DENYING, IN PART, PETITION FOR REVIEW

AND NOW, this 28th day of January, 2020, upon consideration of the County's Petition for Review and the response thereto, we DENY, in part, the request to overturn the decision of the Office of Open Records. County is directed to take further action consistent with this ORDER.

Relevant Factual and Procedural Background:

John Coyle, Esq. ("Requester") submitted a request ("Request") to York County ("County") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*, seeking records relating to various County Prison policies and procedures. The County partially denied the Request, arguing that disclosure of the records would likely jeopardize personal security and threaten public safety. The Requester appealed to the Office of Open Records ("OOR").

On June 13, 2019, the Request was filed, seeking:

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 1, 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 as 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. . . .¹

Following a thirty-day extension to respond to the Request, 65 P.S. § 67.902(b), on July 18, 2019, the County partially denied the Request by providing certain records and arguing that disclosure of the requested policies would threaten personal security and public safety, 65 P.S. §§ 67.708(b)(1)(ii)-(2), and that Item 4 is insufficiently specific, 65 P.S. § 67.703.

As noted by the OOR, additional requests were submitted but only these are the subject of the appeal. Their numbering here corresponds to the numbering in the original request. See Final Determination, p. 2, n.1

On July 23, 2019, the Requester appealed to the OOR, challenging the partial 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 August 13, 2019, the County submitted a position statement reiterating its grounds for denial and also asserting that the medical policies requested contain the confidential, proprietary information of PrimeCare Health, the Prison's healthcare and mental health services contractor. See 65 P.S. § 67.708(b)(11). In support of its position, the County submitted the affidavits of Clair Doll, Warden for the York County Prison, and Valerie Conway, Deputy Warden-Centralized Services for the York County Prison.

On October 1, 2019, in response to the OOR's request for clarification, the County submitted a letter indicating that, in response to the OOR's September 30, 2019 inquiry, it forwarded the appeal packet for PrimeCare Health and had a discussion with PrimeCare's counsel regarding the ability to submit a request to participate in the appeal pursuant to Section 1101(c) of the RTKL, 65 P.S. § 67.110(c). As of the date of the Final Determination, the OOR had not received a submission from PrimeCare Health. PrimeCare Health has not submitted anything to the Court. The requester did not submit anything additional on appeal to the OOR.

On October 7, 2019, the OOR issued its Final Determination in which it granted Requestor's appeal and directed the County to comply.

On November 4, 2019, County filed its Petition for Review. Argument was held on December 10, 2019. We note that since the date of the OOR's Final Determination and our argument, County submitted additional materials for

consideration, which OOR did not have, consisting of "Exhibit A" to its Petition. That document is an additional affidavit dated November 1, 2019, submitted by Clair Doll, Warden of the York County Prison, which elaborates on the reasons why the request should not be granted.²

Requestor objects to the procedure used by the County in taking the appeal. Otherwise, Requestor has not submitted anything additional for our consideration.

ISSUES:

Preliminary Issues:

In our scheduling order, we noted that the County failed to list the matter for consideration in motions court, as provided by local rule. Y.R.J.A. 509.1 (c), and YCCiv. 208.3(a). County did, however, list the matter for "one-judge" disposition, which was also improper. However, these missteps only served to delay the court's involvement in deciding the matter, it did not impair the timeliness of the County's appeal. Accordingly, we overrule Requestor's objection to the manner in which County took its appeal

As we previously noted, County submitted an additional affidavit for us to consider, which was not available to the OOR. Requestor objects to this late submission. The law of the Commonwealth appears to be that parties are free to submit additional matters for consideration by the Court during the appeal *de*

We note that Requestor objected at the time of argument to the late addition of this Exhibit to the case record.

novo. Levy v. Senate of Pa., 619 Pa. 586, 65 A.3d 361 (2013). That said, however, we have noticed a disturbing trend in recent cases involving the County that the County submits additional materials to this Court for consideration during the review *de novo* process which it did not make available to the OOR. The Commonwealth Court recently commented on this practice, noting that "[j]ack of evidence, when the parties and participants had a full opportunity to submit evidence to the fact-finder, is not a valid reason for supplementing the record." *Mission Pa., LLC. v. McKelvey*, 212 A.3d 119, (Pa. 2019). The reason for this observation is that:

Moreover, allowing additional evidence at the judicial review stage has implications beyond the present matter. To ensure the RTKL offers an expedient means of access to public records, parties withholding information must be held to their burden of proof. Accepting additional evidence without cause essentially allows agencies to withhold records without legal grounds until reaching a Chapter 13 court, undermining the presumption of openness that forms the foundation of the current RTKL.

Id. Indeed, one might conclude that the County was "sandbagging" the OOR appeal process since no explanation was given for the recent submission of the Warden's affidavit, and the Warden, in his affidavit, indicated that he was aware of the appeal to the OOR, (Exhibit A, paragraph 12), and in fact, submitted an affidavit to OOR. We are not prepared at this time to draw that conclusion in the context of this case, since the additional affidavit offers little to our evaluation of this case, except in one instance which we will discuss below.

Specific Requests:

We have examined the County's responses to the requests, the Final Determination of the OOR, and the County's additional submissions. We adopt the findings reasoning, extensive discussion of the issues and conclusions by the OOR appeals officer, with the following exceptions and elaborations.

Request #2 asks for documents concerning the purchase of electronic control weapons in use by the corrections officers in 2018. The County responds that such information might reveal the number and types of weapons available to corrections officers. That might be true of weapons in use in 2018, but not necessarily now, nearly two years after the time period referred to in the request. We conclude that the County has not proven, beyond mere speculation, that providing the requested information would be "reasonably likely" to threaten public safety or personal security of an individual.

Request # 3 asks for training materials provided by the supplier of electronic control weapons in 2018. In this regard, the OOR reached the correct conclusion based on the evidence it had available to it. Significantly, however, the County's latest submission elaborates on the justification for refusing this request by noting potential limitations of

electronic control weapons that are available in the training materials. The County elaborates on how this information would be of value to someone attempting to defeat the effectiveness of a particular weapon. (See Exhibit A, paragraph 16). Accordingly, we find that the explanation adequately supports the conclusion that these materials are exempt under 65 P.S. §67.708(b)(2).

In all other respects, we decline to upset the decision of the OOR.

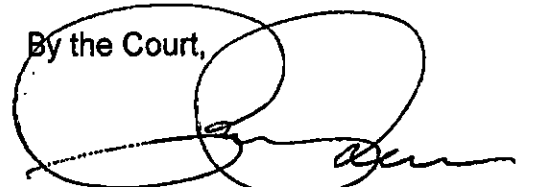
Conclusion:

We conclude that the County need not produce training materials provided to York County by the supplier of electronic control weapons in use at York County Prison in 2018 as referenced in request #3. In all other respects, we DENY the petition for review.

The County is directed to comply with the requests within 30 days of this date.

Copies of this order shall be sent to counsel for the County and to the Requestor, and a courtesy copy to the OOR Appeals Officer, Kelly C. Isenberg, Esq.

By the Court,

A handwritten signature in black ink, appearing to read 'Richard K. Renn', is written over a horizontal line. The signature is somewhat stylized and overlaps the line.

Richard K. Renn, Judge