



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**ALFONSO RIZZUTO,**  
**Complainant**

**v.**

**DEPARTMENT OF CORRECTIONS,**  
**Respondent**

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**Docket No. AP 2010-0261**

## **INTRODUCTION**

Alfonso Rizzuto (the “Requester”) submitted a request to the Department of Corrections (“DOC”) pursuant to the Right-to-Know Law, 65 P.S. §§67.101 *et seq.*, (“RTKL”), seeking various records, including his inmate file, medical file, and policies. DOC granted access to the policies but denied access to remaining records on several grounds including the security and investigative exceptions. The Requester timely 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 DOC is required to take further action as directed.

## **FACTUAL BACKGROUND**

On January 27, 2010, the Requester submitted right-to-know requests seeking

1. copy [of] e-mail sent to me by Carol Sweetra on 12/27/09;
2. policy/law directive states he must take violence prevention program;
3. copy Pa DOC employees’ rule/handbook that correctional staff must follow;
4. copy of TB policy/directive/law that I must take TB pills when my chest X-rays are clear;
5. inmate records legal files on me, SCI Camp Hill;

6. names of H-Block SCI Camp Hill security regulars in H-Block, full names, all shifts;
7. copy review SCI Camp Hill names/titles of all employees in roster;
8. review all grievance decisions in SCI Camp Hill for past 2 years, 2008-09;
9. review medical records;
10. review medical license of sick call nurse on 1/11/2010 who said she was a doctor;
11. copy of 12/7/09, 12/8/09, 12/9/09 inmate records Ms. Clarice at Camp Hill SCI sent certified mail to NYC for my IAD Interstate agreement on detainers, white stub/green card; and
12. review any and all federal court injunctions “or” agreements on SCI Camp Hill on how it is run

(the “Request”). Andrew Filkosky, Open Records Officer (ORO), granted access to Parts 2, 3 and 4 of the Request, partially granted Parts 5, 6 and 7 and advised of the per page charge for 169 pages, and postage (.25 per page plus actual cost for mailing). The Requester was also informed that he could have someone inspect the records for him. DOC denied access to Parts 1, 11 and 12 because responsive records do not exist; Part 5 (fingerprints and SID number in his inmate file) was partially granted and information redacted under the security and investigative exceptions, Part 8 (grievances ) was denied as part of a noncriminal investigation and as per DOC policy, DC ADM 804, and security concerns, and the medical records sought in Part 9 were denied under Section 708(b)(5); DOC asserted Part 10 was insufficiently specific to answer (the “Response”).

The Requester timely appealed the Response in that it partially denied access and challenged the fee stating “I also appeal the cost of the review/copies” (“Appeal”).

The OOR asked DOC to clarify and substantiate the exceptions claimed. DOC supplemented the record with a letter from Assistant Counsel Theron Perez, attestations of non-existence with regard to the records sought in Parts 1, 11 and 12, and a declaration of Timothy Riskus (“Riskus Declaration”) relating to the security of corrections officers’ names (Part 6 and 7), and of Dorina Varner (“Varner Declaration”) related to the grievances (Part 8). DOC also

provided a copy of its Inmate Grievance System Policy, DC-ADM 804. The Riskus Declaration explains that the duties of corrections officers are such that they are targets of inmates and knowledge of their first names poses an inherent risk under the personal security exception.

The Varner Declaration substantiated, with the Policy, that grievances are complaints which result in investigations, and would reveal the institution or progress of an investigation. *See* Varner Declaration ¶¶10-11. Ms. Varner attests that disclosure of grievance decisions sought in Part 8 of the Request would deprive inmates of impartial adjudications and would be reasonably likely to result in retaliation by inmates and staff. *Id.* ¶¶13-14. The knowledge of grievance decisions would thus impair the investigator's ability to obtain the relevant facts. *Id.* ¶15. Ms. Varner also noted the sensitive content of many grievances and expectation of privacy that inmates have in their contents. *Id.* ¶¶17-21. She attests that release of grievance records would pose a security risk as well. *Id.* ¶¶31-34.

Counsel explained that records sought in Parts 1 and 11 of the Request had previously been requested and addressed in *Rizzuto v. DOC*, OOR Dkt. AP 2010-0038 as non-existent. In addition, the records sought in Part 12 were shown to not exist with an attestation by the ORO. Counsel explained the legal grounds for the redactions, supported the asserted exceptions with the declarations. He also argued that Part 10 of the Request was insufficiently specific.

### **LEGAL ANALYSIS**

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. §67.503(a). DOC is a Commonwealth agency subject to the RTKL that is required to disclose public records. *See* 65 P.S. §67.301. A record in possession of a Commonwealth agency is presumed to be public unless it is exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. §67.305. However, an agency cannot be

required to disclose a record that does not exist. Here, DOC established that the records sought in Parts 1, 11 and 12 do not exist. An attestation of non-existence was provided for each record, as well as an earlier Final Determination finding the mail receipts and e-mail to not exist. Therefore, the OOR holds that DOC met its duties with regard to those records.

**1. Insufficiently specific request.**

With regard to Part 10 of the Request, DOC asserts that the request is “insufficiently specific” such that it cannot discern how to respond. Under Section 703, “a written request should identify or describe the records sought with sufficient specificity to enable the agency to discern which records are being requested...”. 65 P.S. §67.703. Part 10 seeks the “medical license” of an unidentified sick-call nurse, who was on duty on June 11, 2010, and who, according to the Requester, claimed to be a doctor.

DOC asserts that insufficient description is provided because the nurse is not identified, and that the means of obtaining her identity requires review of the inmate’s medical record, which is exempt from disclosure. The OOR does not find this argument persuasive. Regardless of the non-disclosure of the medical records, DOC cannot maintain that it cannot access them to find the identity of the sick-call nurse at the time the Requester was treated. DOC presumably has records indicating which nurses were on-duty at sick-call on that day, at the time Requester was treated, and so can discern whose “medical license” is being sought. DOC did not assert that there was more than one nurse on duty on the date and time at issue.

The OOR does not find the request insufficiently specific because the nurse is unidentified. The date and time of her treatment is accessible to DOC so her identity can be ascertained by DOC. The record described is thus sufficiently described despite not naming the nurse who treated him. However, DOC cannot be expected to know which sick-call nurse told the Requester that she was a doctor, and this finding does not mean that the DOC can provide the

record requested. The record sought is a “medical license” of the sick-call nurse on duty on June 11<sup>th</sup>. The issue of whether a medical license for a nurse exists is not addressed by DOC. To the extent that responsive records exist, DOC is required to provide the record described to the Requester, as no exception was cited to preclude release of the record.

## **2. Exceptions to disclosure to existing responsive records.**

With regard to existing responsive records, DOC asserted a number of exceptions, including Section 708(b)(5) for the inmate’s medical file, (b)(17) for investigative records, (b)(6) for personal identifiers, and (b)(1)(ii) and (b)(2) for records implicating security. Under Section 708(a), DOC bears the burden of proving its asserted exceptions by a "preponderance of the evidence" meaning the "greater weight of the evidence." *Commonwealth v. Brown*, 567 Pa. 272, 786 A.2d 961 (2001). Each exception shall be addressed in turn.

### **a. DOC’s redactions from Parts 5, 6, and 7 of the Request were proper.**

DOC redacted the SID number of the inmate from his legal files because the identifier is protected by state law, 37 Pa. Code §58.1. The “SID” number is the State Identification Number, a unique identifier placed into the Central Repository for those who are finger-printed so they can be tracked in the future. The Denial noted that redactions were made under the “personal identification information” exception in (b)(6). As a unique identifier, the SID number qualifies for redaction, and was properly redacted here.

DOC redacted the first names of corrections officers based upon the “personal security exception” at Section 708(b)(1)(ii), which protects records that, if disclosed, are reasonably likely to result in a substantial and demonstrable risk of harm to personal security of an individual. The harm alleged here is to the corrections officers themselves. The OOR has already upheld the redaction of first names of corrections officers in *Stein v. DOC*, OOR Dkt. AP

2009-0414 and *Viney v. DOC*, OOR Dkt. AP 2009-0666, and the analysis from those decisions is incorporated as though fully set forth herein. The redaction of correction officers' first names from Parts 5, 6 and 7 are supported by the Riskus Declaration, which is the type of evidence previously accepted by the OOR for this type of information. Their redaction is upheld here.

**b. Inmate medical records are properly protected under Section 708(b)(5).**

The OOR has consistently held that medical records of an inmate are expressly protected by Section 708(b)(5), which protects medical records from disclosure. The analysis of *Caldwell v. DOC*, OOR Dkt. AP 2009-0399, *Davila v. DOC*, OOR Dkt. AP 2009-0656, is incorporated by reference and their holdings are followed. DOC properly withheld the Requester's medical record sought in Part 9 of the Request.

**c. Grievance records, including decisions, are properly protected from disclosure.**

The DOC policy on inmate grievances, DC-ADM 804, outlines the grievance process. The Varner Declaration shows that grievance records, including the decisions, relate to the investigations conducted of grievances. Grievances are complaints of inmates, and the investigation conducted as a result, and the result of that investigation, clearly implicates the noncriminal investigative exception at Section 708(b)(17). The Varner Declaration sufficiently substantiated that grievance decisions would reveal the institution, progress *or result* of an investigation, which are protected by (b)(17)(vi).

Based upon the Varner Declaration and the DC-ADM 804 policy, a grievance decision relates to an investigation. Thus, DOC met its burden of proof to show the exception applies.

**3. DOC's fee for copies and postage is proper.**

DOC sought to charge the Requester \$0.25 per page for copies and the actual cost of postage in the event he wanted copies. The quoted fees are in compliance with the fees

established by the OOR in its Fee Schedule. See OOR webpage regarding "Fees" at [http://openrecords.state.pa.us/portal/server.pt/community/open\\_records/4434/fees/481854](http://openrecords.state.pa.us/portal/server.pt/community/open_records/4434/fees/481854)

### CONCLUSION

For the foregoing reasons, the Requester's Appeal is **granted in part and denied in part**. DOC established its exceptions and substantiated that certain records do not exist. However, as Part 10 was sufficiently specific to enable a response, DOC is directed to disclose the record, if it exists, with redaction of nonpublic information, within thirty (30) days.

This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Final Determination, either party may appeal or petition for review to the Commonwealth Court. 65 P.S. §67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules. This Final Determination shall be placed on the website at: <http://openrecords.state.pa.us>.

**FINAL DETERMINATION ISSUED AND MAILED: April 26, 2010**



**LUCINDA GLINN, ESQ.**  
**APPEALS OFFICER**

Sent to: Alfonso Rizzuto; Maria Macus-Bryan, Esq. for DOC