



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
RAYMOND SMOLSKY,	:	
Complainant	:	
	:	Docket No.: AP 2010-0585
v.	:	
	:	
PENNSYLVANIA DEPARTMENT OF	:	
CORRECTIONS,	:	
Respondent	:	

INTRODUCTION

Raymond Smolsky, (the “Requester”) submitted a request (the “Request”) to the Pennsylvania Department of Corrections (“DOC”) seeking information related to a Pennsylvania Additive Classification Tool (“PACT”) policy pursuant to the Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.*, (“RTKL”). DOC denied the request, citing various statutory exemptions and stating that no records exist. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied in part and dismissed as moot in part** and DOC is not required to take any further action.

FACTUAL BACKGROUND

On June 2, 2010, the Request was filed seeking “P.A.C.T. Policy Number 11.3.1,” “P.A.C.T. Policy Number 11.3.1 ... Classification ‘Form,’” and “The Name and Address for the ‘Local Franchise Authority’ for SCI-Mahanoy.” Within five business days of receipt, DOC responded and denied access to the policy and form, citing Section 708(b)(1)(ii) (“personal security”); Section 708(b)(2) (“public safety”) and Section 708(b)(17) (“noncriminal investigation”). DOC states that no information related to the local franchise authority exists. Requester timely appealed, stating that

There is NO demonstrable reasonable likelihood of substantial risk of physical harm or personal security of this [Requester] or any other particular individual ... having access to and reading the [PACT] ... Policy Number 11.3.1 and the “form” used for simply calculating the criminal record history score and behavior record score of [Requester] for his housing/residency/classification.

Requester further made a number of public policy arguments related to the release of the requested records, and noted that no ongoing “noncriminal investigation” is being conducted relative to the specific records sought. Requester, however, did not appeal the denial of information related to the local franchise authority.

The OOR invited both parties to supplement the record. On July 2, 2010, Requester submitted additional information clarifying that he is not seeking the PACT Manual as part of his request. By letter dated July 9, 2010, DOC revisited its response to the Request, and provided Requester with a copy of the relevant policy statement. DOC, however, maintains that the applicable form was properly withheld under the exemptions cited and further provided a declaration from its Chief of the Assessment and Classification Division of the Bureau of Treatment Services in support.

LEGAL ANALYSIS

The purpose of the RTKL is to allow for transparency in government decision-making. *See Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010). The OOR is statutorily empowered to hear appeals regarding RTKL requests involving all Commonwealth and local agencies. *See* 65 P.S. § 67.503; 65 P.S. § 67.1101. DOC is a “Commonwealth agency” as defined by 65 P.S. § 67.102, and, accordingly, is subject to the RTKL. *See* 65 P.S. § 67.301. As a result, the OOR has jurisdiction over the present appeal. Under the RTKL, all “[i]nformation ... that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency” qualifies as a “record.” 65 P.S. § 67.102. A record of an agency is presumed public unless (1) exempt under section 708; (2) exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or (3) protected by a privilege. 65 P.S. § 67.102. In the event that no exemption or privilege applies, a rebuttable presumption exists that all such records are “public records” and must be provided upon request. 65 P.S. §§ 67.301; 65 P.S. § 67.305. Agencies bear the burden of proving the applicability of any exemptions, section 708(a).

Lastly, under the RTKL, an appeals officer is required “to review all information filed relating to the request.” 65 P.S. § 67.1102(a)(2). An appeals officer *may* conduct a hearing to resolve an appeal. The decision to hold a hearing or not hold a hearing is discretionary and non-appealable. 65 P.S. § 67.1102(a)(2). 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. 65

P.S. § 67.1102(a)(2). Here, the facts are undisputed — neither party requested a hearing, and the OOR has the necessary, requisite information and evidence before it, presented through sworn, written testimony, to properly adjudicate the matter.

1. The appeal is moot as to the policy statement

During the course of this appeal, DOC provided Requester with a copy of the policy sought. Because responsive public records were provided, this aspect of the appeal is moot.

2. The Classification Form was properly withheld under the ‘Personal Security’ exemption

The RTKL provides an exemption from public access for records that “would be reasonably likely to result in substantial and demonstrable risk of physical harm to or the personal security of an individual.” *See* 65 P.S. § 67.708(b)(1)(ii). Based on the underlying purpose of the RTKL, however, “exemptions from disclosure must be narrowly construed.” *Bowling*, 990 A.2d at 824.

As noted by DOC, the Request seeks a Classification Form, comprising two attachments to the existing PACT Manual. According to the Declaration by DOC’s Chief of Assessment and Classification Divisions, the attachments to the PACT Manual “are considered ... part of the Manual itself; they contain forms and references used with the PACT Manual for the assessment of inmate security custody needs.” Further, the Declaration states under penalty of perjury that the release of the PACT Manual or its forms will result in inappropriate housing and security decisions based on the ability to manipulate the results of the form. Additionally, the DOC points out that the Commonwealth Court, while interpreting the prior RTKL, specifically held that the

PACT Manual is exempt based on the prior law's equivalent to the "personal security" exemption:

The PACT Manual is an assessment tool used by treatment staff; it tells how they are to do their investigation on the most critical decision regarding a prisoner – what level of custody is appropriate regarding an assessment of the individual, including the level of danger posed by or to the inmate or the prison staff. As the Department points out, once an inmate knows of the criteria that went into making that determination, the inmate could manipulate the decision.

Weaver v. Department of Corrections, 702 A.2d 370, 372-73 (Pa. Commw. Ct. 1997).

Based on the evidence presented and the reasoning of the Commonwealth Court that inmates could manipulate housing and security decisions if the PACT Manual and/or its attachments were released, the OOR finds that DOC properly withheld responsive records constituting classification forms under 65 P.S. § 67.708(b)(1)(ii).

CONCLUSION

For the foregoing reasons, Requester's appeal is **denied in part and dismissed as moot in part** and DOC is not required to take further action. This Final Determination is binding on all parties. Within thirty (30) days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301. 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 as per Section 1303 of the RTKL. This Final Determination shall be placed on the OOR website at: <http://openrecords.state.pa.us>.

FINAL DETERMINATION ISSUED AND MAILED: July 26, 2010

A handwritten signature in black ink, appearing to read 'J. Schnee', with a long horizontal flourish extending to the right.

APPEALS OFFICER
J. CHADWICK SCHNEE, ESQ.

Sent to: Raymond Smolsky; Theron Perez, Esq.