

IN THE BUCKS COUNTY COURT OF COMMON PLEAS  
CIVIL ACTION

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County of Bucks	:	
55 East Court Street	:	
Doylestown, PA	:	NO.: 2020-05950
	:	
Petitioner,	:	
v.	:	
	:	
BRETT SHOLTIS	:	
4801 Lindle Road	:	
Harrisburg, PA 17111	:	
	:	
Respondent.	:	

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COUNTY OF BUCKS CLOSING BRIEF

BY:

BUCKS COUNTY LAW DEPARTMENT  
Administration Building  
55 East Court Street, 5th floor  
Doylestown, PA 18901  
(215) 348-6464

Robbie L. Cain, Esquire  
Assistant County Solicitor  
Identification No. 326846

Attorney for the County of Bucks

## I. INTRODUCTION

The Bucks County Office of Open Records (“County”) filed a Petition for Review with this Honorable Court after the Pennsylvania Office of Open Records (“OOR”) granted access to Mr. Brett Sholtis’ (“Respondent”) to a Use of Force (“UOF”) video recording from the Bucks County Department of Corrections (“DOC”). The UOF video recording shows a planned UOF event between correction officers and Inmate Kimberly Stringer.

The OOR improperly determined that the UOF video was a public record under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* The UOF video is exempt from public access as it constitutes a record relating to a criminal investigation,<sup>1</sup> a record relating to a noncriminal investigation,<sup>2</sup> investigative information under the Criminal History Record Information Act (“CHRIA”),<sup>3</sup> a record that jeopardizes public safety, physical security, and personal security, and a record that would violate the Constitutional Right to Privacy of those in the video. Alternatively, the OOR did not have jurisdiction over this request because it is a law enforcement recording and Act 22 of 2017 applies.

The County respectfully requests that this Honorable Court reverse the OOR’s decision by finding that the video is exempt from public access under the RTKL. In the alternative, the County respectfully requests that this Honorable Court vacate the OOR’s decision because the video is a recording made by a law enforcement agency and Act 22 applies, not the RTKL.

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<sup>1</sup> § 67.708(b)(16)

<sup>2</sup> § 67.708(b)(17)

<sup>3</sup> 18 Pa.C.S. § 9106(c)(4)

## II. PROCEDURAL HISTORY

On July 17, 2020, the County received Respondent's request<sup>4</sup> which sought video footage of an inmate being detained by correctional officers in the Bucks County Correctional Facility ("BCCF").

On July 23, 2020, the County denied Respondent's request. In its denial, the County cited to Section 708 of the RTKL and Section 9106(c)(4) of CHRIA.

On August 6, 2020, Respondent appealed to the OOR and challenged the County's denial and its grounds for disclosure. The OOR invited both parties to supplement the record.

On August 14, 2020, the County submitted a position statement restating its grounds for denial. In support of its position, the County submitted the affidavit of Matthew Weintraub, Esquire, the District Attorney of Bucks County. See Exhibit A.

On October 16, 2020, the OOR issued its Final Determination which granted Respondent's appeal and required that the County provide the video within thirty days of the date of the determination. The OOR determined that the County failed to establish that the requested video footage related to a criminal investigation. See Exhibit B, Sholtis and WITF v. Bucks County, OOR Dkt. AP2020-1317 (2020).

On November 13, 2020, the County filed a Petition for Review of the OOR's Final Determination with this Honorable Court. In support of its appeal, the County submitted the affidavit of David Kratz, Director of the Bucks County Correctional Facility. See Exhibit C.

On December 21, 2020, Respondent replied to the County's Petition for Review.

On July 21, 2021, the Honorable Denise M. Bowman ordered that an evidentiary hearing take place on October 25, 2021.

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<sup>4</sup> The request was submitted by Respondent on a form labeled "Law Enforcement Recording Request Form – Act 22 of 2017."

On October 22, 2021, the Court granted the County's continuance request and the evidentiary hearing was rescheduled for December 16, 2021.

On December 16, 2021, the evidentiary hearing was held. David Kratz, the Director of Corrections, testified. The parties were directed to brief their closing arguments.

### III. ARGUMENT

#### a. *Standard of Review*

In the instant matter, this Honorable Court functions as fact finder and exercises a standard of review akin to de novo review. See Bowling v. Office of Open Records, 990 A.2d 813, 818 (Pa. Commw. Ct. 2010). This Honorable Court "may substitute its own findings of fact for that of the [OOR]." Id. This Honorable Court, when reviewing an appeal from the OOR, is "entitled to the broadest scope of review." Bowling, 990 A.2d at 820. The broadest scope of review includes an *in camera* review of the record and supplementing the record through a hearing or even a remand of this matter to the OOR, if the Court so decides. Id.

The County, in the matter before the OOR, proved by a preponderance of the evidence that the UOF video was exempt from public access and the OOR erred in its determination. Further, in the instant matter before this Honorable Court, the County provided additional support why the UOF video is exempt from public access.

#### b. *The UOF video qualifies as criminal investigative material and is therefore exempt from the RTKL.*

The RTKL exempts the following records that relate to a criminal investigation from public disclosure:

(ii) Investigative materials, notes, correspondence, videos and reports.

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(iv) a record that includes information made confidential by law or court order

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(vi) A record that, if disclosed, would do any of the following:

- (A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.
- (B) Deprive a person of the right to a fair trial or an impartial adjudication.

§ 708(b)(16). As noted in Cal. Borough v. Rothey, 185 A.3d 456 (Pa. Commw. Ct. 2018), the RTKL does not define “criminal investigation” but our Supreme Court has stated that it “clearly and obviously refers to an official inquiry into a possible crime.” A.3d at 465 (quoting Pa. State Police v. Grove (Grove II), 161 A.3d 877, 893 (Pa. 2017)).

In its final determination, the OOR wrote:

The Request was originally submitted to the Bucks County Correctional Facility and was then sent to the County’s Office of Open Records, who responded to the Request. The Request seeks records in the possession of the County, not records in the possession of the District Attorney’s office. At no point did the Requester submit a request to the District Attorney’s Office. The County has its own Open Records Officer, distinct from the District Attorney’s Office. Nothing in the record before the OOR reflects that the County, including the correctional facility—the agency to whom the Request was submitted—has conducted any investigation relating to these records.

OOR Fin. Determ., p. 7. The OOR held that the video was not exempt because “[t]o hold that a record sought from an agency is exempt merely because it was reviewed at some point during an investigation conducted by a different agency [the District Attorney’s office], would significantly expand the criminal investigative exemption beyond our existing precedent.” Id.

The above analysis does not consider the partnership between the Bucks County District Attorney’s Office and the BCCF. N.T., 12/16/21, p. 12 (“Exhibit D”); Memorandum of Understanding (“Exhibit E”). The video was provided to the Bucks County District Attorney’s Office to conduct a criminal investigation surrounding a UOF event. In the affidavit of Matthew Weintraub, Esquire, the District Attorney of Bucks County, he explains the criminal investigation that took place because of allegations that an inmate was being mistreated by correctional officers at the jail. Because of these allegations, a Bucks County Detective was assigned to investigate

whether any corrections officer had engaged in criminal conduct with respect to their treatment of the above-mentioned inmate, and/or engaged in illegal retaliatory conduct toward the inmate “whistleblowers.”

A criminal investigation took place and Mr. Weintraub reviewed the UOF video during the criminal investigation. The OOR incorrectly held that the District Attorney’s office is separate and apart from BCCF. These two entities are interconnected and as such the UOF video is investigative material that is exempt from the RTKL. To circumvent the criminal investigation exception under the RTKL, all a requester would have to do is simply request a law enforcement video used in an investigation from the prison and not the district attorney. This exception would swallow the rule.

- c. *The noncriminal investigative power inherent in the investigators are a part of their official duties and the UOF video is a noncriminal investigative record that is exempt from the RTKL.*

Section 708(b)(17)(ii) exempts from disclosure “[a] record of an agency relating to a noncriminal investigation, including ... (ii) Investigative materials, notes, correspondence and reports . . . (iv) A record that includes information made confidential by law.” 65 P.S. § 67.708(b)(17)(ii), (iv). A “noncriminal” investigation is one not intended to consider prosecution and, in this context, “investigation” means “a systematic or searching inquiry, a detailed examination, or an official probe.” Department of Health v. Office of Open Records, 4 A.3d 803, 811 (Pa. Cmwlth. 2010). The inquiry, examination, or probe must be conducted as “part of the agency’s official duties.” Id. at 814.

Mr. Kratz testified that there are two investigators within the DOC. They investigate internal affair issues and criminal behavior. Additionally, they review any UOF events to make sure they are compliant with the policies and procedures of the DOC. N.T. 12/16/22, p. 11. Mr. Kratz testified that this authority stems from Title 37. N.T. 12/16/2021, p. 13. Section 37 95.220b

of the Pa. Code designates the County Prisons to set the requirements deemed essential to the safety and security of the county prison, prison staff, inmates and the public. Specifically, section 95.241 sets out the minimum requirements that the written local policy of a county prison must contain regarding UOF events. The UOF video constitutes investigative materials used for a non-criminal investigation because the video was created by the BCCF to document and review UOF events for purposes of training and other noncriminal investigations. Mr. Kratz states:

In a planned use of force, we do record with a hand-held camera. We record for the safety of the offender and the safety of the staff. It's always good to have a record of what occurred and why. It's for the protection of everybody. It's also used as an investigative and training tool that we can look at those films and we can learn from them and improve upon our policies and procedures and, again, to make sure we follow our policies and procedures.

N.T. 12/16/21, pp. 9-10. Creating a safe environment for inmates and correctional officers is squarely within the BCCF's official duties and having the ability to investigate for compliance with its internal policies is a necessary function of safety and security within the prison.

- d. *CHRIA exempts the UOF video from the RTKL as CHRIA prohibits disseminating investigative information to entities that are not criminal justice agencies.*

The UOF video is exempt from public disclosure because it is a record protected under CHRIA, 18 Pa.C.S. § 9106(c)(4). Section 3101.1 of the RTKL provides that, “[i]f the provisions of this act regarding access to records conflict with any other federal or state law, the provisions of this act shall not apply.” 65 P.S. § 67.3101.1. To further bolster the RTKL's deference to other law, Section 708 reiterates that a record is exempt from disclosure if it “includes information made confidential by law or court order.” 65 P.S. §§ 67.708(b)(16)(iv), 67.708(b)(17)(iv).

CHRIA prohibits disseminating “investigative information” to any persons or entities other than criminal justice agents and agencies. 18 Pa.C.S. §9106(c)(4). Specifically, Section 9106(c)(4) states:

Investigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties, and the request is based upon a name, fingerprints, modus operandi, genetic typing, voice print or other identifying characteristic.

18 Pa.C.S. §9106(c)(4). “Investigative information” is defined under CHRIA as “[i]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing” 18 Pa.C.S. §9102. The operative word in the above definition is “assembled,” which means to “bring or gather together into a group or whole.” Pennsylvania State Police v. Kim, 150 A.3d 155, 160 (Pa. Cmwlth. 2016) (citing Am. Heritage Dictionary 134 (2nd Coll. ed. 1985)).

In his testimony, Mr. Kratz explained that the DOC is responsible for CHRIA protected information such as rap sheets, fingerprints, and arrest photos. N.T. 12/16/22, pp. 22-23. Simply having an inmate identified in a correctional facility is protected. Id. at 24. Criminal Justice Agencies include police departments, sheriff offices, other correctional facilities, and probation and parole departments. Id. at 25. Respondent is not a Criminal Justice Agency. Id. at 25-26. In the case at hand, the video constitutes investigative information because it is assembled routinely to review inmate and correctional officer behavior and whether it amounts to criminal and noncriminal behavior. The video shows a UOF incident that was recorded by BCCF and reviewed by investigators of both the BCCF and the DA’s office. Respondent does not qualify as a criminal justice agency and therefore his access to this video would be improper and illegal under CHRIA.

- e. *Release of the UOF video to the public would jeopardize or threaten public safety or preparedness or public protection activity.*

Section 708(b)(1)(ii) of the RTKL exempts from public disclosure:

A record, the disclosure of which:

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(ii) 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). To apply this exemption, the County must show “by a preponderance of the evidence, “(1) a ‘reasonable likelihood’ of (2) a ‘substantial and demonstrable risk’ to a person’s personal security.” Rothey, 185 A.3d at 468 (citing Delaware County v. Schaefer ex rel. Philadelphia Inquirer, 45 A.3d 1149, 1156 (Pa. Cmwlth. 2012)). Section 708(b)(2) exempts from disclosure:

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.

§ 67.708(b)(2). To raise this exemption, the County must show “by a preponderance of the evidence, that (1) the record at issue relates 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.” Rothey, 185 A.3d at 468 (citing Carey v. Department of Corrections, 61 A.3d 367, 374-75 (Pa. Cmwlth. 2013)). Section 708(b)(3) exempts from disclosure: “[a] record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system.” § 67.708(b)(3).

Mr. Kratz testified that the beginning of the UOF video takes place in the Special Response Team (“SRT”) ready room, a secure location. N.T., 12/16/21, p. 15. In the SRT ready room, the correctional officers suit up in protective gear. Id. at 15. Additionally in the SRT room, the correctional officers review the processes and procedures of UOF events and the team is briefed about the UOF situation they are about to handle. Id. at 16. Specifically, which correctional officers are responding to the event and what the inmate has done to necessitate a UOF event. Mr. Kratz

explained that it is not good for policies and procedures to get out to the general public as it would create an unsafe environment. Id. Knowing how correctional officers prepare and handle UOF events, have historically been used to create diversions which can aid in escapes. Id. at 18. In fact, Mr. Kratz recalled offenders refusing a cell extraction to cause correctional officers to prepare a SRT team and start a Use of Force event. Id. at 21.

The UOF video shows access points and it shows entry into areas that are not otherwise accessible to inmates Id. Throughout the video, correctional officers and what type of gear they wear and use is seen. Other inmates are shown in the video. During the walk to the cell, an entire common area is shown and a viewer can see the layout of the H-module.

Mr. Kratz testified that it's important to keep building plans, layouts, and egresses confidential. Id. at 20. Throughout the video you hear the calls between the correctional officers and the calls to Ms. Stringer. Mr. Kratz states it best when he says this video allows any person who watches it to know "if this situation is X, we respond with X." Id. at 53. In the context of a correctional institution setting, an agency need not demonstrate specific prior examples of physical harm to personal security or public safety to meet the agency's burden of proof. See Wool v. Pa. Dep't of Corr., OOR Dkt. AP 2018-0447, 2018 PA O.O.R.D. LEXIS 496. The OOR should not substitute its judgment for that of those with far more familiarity with the issues involving personal security. See Ocasio v. Pa. Dept of Corr., 183 A.3d 506 (Pa. Commw Ct. 2018) ("This 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**"); *see also* Carey v. Pa. Dep't of Corr., 61 A.3d 367, 374-75 (Pa. Commw. Ct. 2013). ("Personal security issues are of particular concern in a prison setting") (emphasis added).

When an inmate is committed to the BCCF, the prison is responsible for their “care, custody, and control” of that inmate. N.T. 12/16/21, p. 12. However, there are interactions between correctional officers and inmates, such as use of force events that are done for the safety and control of the inmate, that may cause inmates to want to retaliate against correctional officers. See Carey, 61 A.3d at 374 (citing Stein v. Office of Open Records, 2010 Pa. Commw. Unpub. LEXIS 313 (May 19, 2010) (unreported) (corrections officers’ first names protected for personal security reasons)). If corrections officers’ names are protected under the RTKL for personal security, then it should follow that their physical appearance and ability to be recognized is also protected to deter any retaliation.

The County has more than substantiated that there are serious security concerns if this video were released. See Dylan Segelbaum v. York County, OOR Dkt. AP 2021-0958, 2021 PA O.O.R.D. LEXIS 1587 (September 3, 2021).<sup>5</sup>

f. *The Constitutional Right to privacy is not outweighed by any public interest.*

Section 708(b)(6) of the RTKL expressly exempts from disclosure:

The following personal identification information: (A) A record containing all or part of a person’s Social Security number, driver’s license number, personal financial information, home, cellular or personal telephone numbers, personal e-mail addresses, employee number or other confidential personal identification number. (B) A spouse’s name, marital status or beneficiary or dependent information. (C) The home address of a law enforcement officer or judge. (ii) Nothing in this paragraph shall preclude the release of the name, position, salary, actual compensation or other payments or expenses, employment contract, employment-related contract or agreement and length of service of a public official or an agency employee. (iii) An agency may redact the name or other identifying information relating to an individual performing an undercover or covert law enforcement activity from a record.

§ 67.708(b)(6)(i)-(iii). However, when a record implicates personal information not expressly exempt from disclosure, the Pennsylvania Supreme Court has held that an individual possesses a

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<sup>5</sup> The undersigned prepared to hand up this case to the bench. However, since the parties agreed to brief their closings this case is attached as Exhibit F.

constitutional right to privacy in certain types of personal information. Pa. State Educ. Ass'n v. Commonwealth, 148 A.3d 142 (Pa. 2016). Further, the Supreme Court has held that that certain types of information, such as home addresses, by their very nature, implicate privacy concerns and require balancing. Id. at 156-57. In order to evaluate this right to privacy, the OOR conducts a balancing test which weighs “the individual’s interest in informational privacy with the public’s interest in disclosure and may release the personal information only when the public benefit outweighs the privacy interest.” Id.

Certain factors are constant when evaluating a privacy interest:

One is an individual’s reasonable expectation that the information is of a personal nature.... When information is public as a matter of statute, it is unreasonable for a person to expect that it is of a personal nature.... Another factor is how the agency obtained the information; when an individual voluntarily submits information, it may be disclosed...; whereas, information obtained by an agency premised on statutory confidentiality is protected.... Also, the context holds additional significance, as does whether the information is an essential component of a public record.

The public interest that Respondent cites to does not outweigh the privacy interest in this UOF video. In the UOF video, Ms. Stringer is having a mental episode. Ms. Stringer is not fully dressed. The UOF video shows the correctional officers using force to stop her from hurting herself. The UOF video also shows the cleansing after OC spray is used in the shower. Medical also conducts a medical exam to check her physical condition. N.T. 12/16/21, pp. 37, 40. Ms. Stringer has a reasonable expectation of privacy to not have the UOF video recording of this distressful incident exposed to the public. While there is some limitation on individual constitutional rights while incarcerated, this limitation should not be transferred to her right to privacy. Increasing Respondent’s number of awards and accolades from news associations should not be the public interest that outweighs Ms. Stringer’s privacy interest.

g. *Act 22*

Act 22 applies to any audio or video recording made by a law enforcement agency, not the RTKL. Act 22 of 2017, 42 Pa.C.S. § 67A02(a). Further, neither Act 22 nor the RTKL establishes “a right to production of an audio recording or video recording made inside a facility owned or operated by a law enforcement agency.” Act 22 of 2017, 42 Pa.C.S. § 67A02(b). A law enforcement agency is a “district attorney’s office or an agency that employs a law enforcement officer.” Act 22 of 2017, 42 Pa.C.S. § 67A02(a). A law enforcement officer is “an officer of . . . the Commonwealth or a political subdivision thereof who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in [Title 18 Crimes and Offenses] . . . and any attorney authorized by law to prosecute or participate in the prosecution of the offense.” Act 22 of 2017, 42 Pa.C.S. § 67A02(a). The Department of Corrections is a law enforcement agency. The investigators are able to make arrests for escape which is enumerated in Title 18. Additionally, they have a MOU with the District Attorney’s office. As a law enforcement agency, any request for video should have been reviewed under Act 22, not RTKL. In its final determination, the appeals officer wrote that “the OOR has repeatedly held that correctional facility videos are subject to the RTKL.” OOR Fin. Determ., pp. 4-5. However, the case the OOR cited to support that statement does not stand for that proposition and instead states whether a correctional facility is subject to RTKL or Act 22 is factual determination. See Gaikwad v. Clearfield County, OOR Dkt. AP 2020-0407, 2020 PA O.O.R.D. LEXIS 2215, footnote 1. The OOR did not make the proper factual determination and subsequently ruled on a matter over which it does not have jurisdiction.

h. *Redaction in inappropriate, the whole record is exempt.*

The entire video is exempt from public disclosure and is therefore not a public record. Because it is not a public record, it should not be redacted in accordance with section 706 of the RTKL. Dep't of Corr. v. Amanda St. Hilaire, 128 A.3d 859, 865 (Pa. Commw. Ct. 2015).

IV. CONCLUSION

For all the foregoing reasons, the County respectfully requests that this Honorable Court reverse the OOR's decision by finding that the video is exempt from public access under the RTKL. In the alternative, the County respectfully requests that this Honorable Court vacate the OOR's decision because the video is a recording made by a law enforcement agency and Act 22 applies, not the RTKL.

Respectfully submitted,

JOSEPH J. KHAN

County Solicitor

Date: January 13, 2022

*Robbie L. Cain*

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Robbie L. Cain, Esquire  
Assistant County Solicitor  
Identification No. 326846

Attorney for the County of Bucks

# Exhibit A

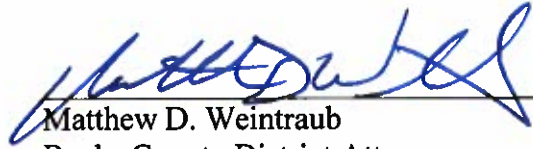
**AFFIDAVIT OF THE HONORABLE MATTHEW D. WEINTRAUB**

I, Matthew D. Weintraub, District Attorney of Bucks County, pursuant to 18 Pa. C.S. §4904, declare and verify as follows:

1. I am the elected District Attorney of Bucks County and have been serving as District Attorney since 2016. I have served as a prosecutor since 1993 in Bucks County, Lehigh County, and Cape May County, New Jersey.
2. In June, 2020, the District Attorney's Office (DAO) became aware of allegations that a female inmate of the Bucks County Correctional Facility (BCCF), Kimberly Stringer, was being mistreated by correctional officers at the jail. Ms. Stringer was in BCCF as a result of bail that had been set on her pending criminal case, in which it is alleged that she assaulted a female neighbor and threatened to assault and kill another neighbor. That criminal matter is still pending.
3. When the Assistant District Attorney (ADA) assigned to Ms. Stringer's criminal case, Colin Jenei, first became aware of the allegations of mistreatment of Ms. Stringer, he brought those allegations to my attention. Thereafter, a Bucks County Detective was assigned to investigate those allegations, which had originally been made by three fellow inmates at BCCF. The primary goal of that investigation was to determine whether any corrections officer had engaged in criminal conduct with respect to their treatment of Ms. Stringer, and/or engaged in illegal retaliatory conduct toward the inmate "whistle-blowers," and thus whether criminal charges against any such officer was warranted.
4. As part of this criminal investigation, my office obtained video from BCCF which captured two incidents that occurred in May 2020, during which corrections officers used pepper spray against Ms. Stringer in order to gain her compliance after she engaged in self-destructive behavior and repeatedly refused to comply with directions. I reviewed this video, along with other materials obtained during our criminal investigation, in order to determine whether criminal charges were appropriate. I understand that these two videos are the subject of the current Right to Know appeal.



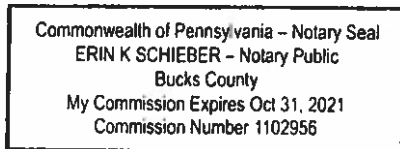
5. Although I ultimately determined that criminal charges were not warranted in this case against any BCCF corrections officer, it is my belief that such videos in the possession of the DAO constitutes investigative information for purposes both of the Right to Know law, 65 P.S. §67.708(b)(16), and for purposes of the Criminal History Record Information Act (CHRIA), 18 Pa. C.S. §9106(a)(4). Specifically, the DAO only obtained and possessed the relevant videos as part of its investigation into whether criminal charges should be filed in this matter, and, accordingly, the videos were part of the information and materials the DAO assembled as part of our inquiry into an allegation of criminal wrongdoing. 18 Pa. C.S. §9102 (defining “investigative information” under CHRIA).

  
Matthew D. Weintraub  
Bucks County District Attorney  
Bucks County, PA

Date: August 14, 2020

State of Pennsylvania  
County of Bucks  
Signed and sworn to before me on 14 day of August, 2020  
By Matthew D. Weintraub

  
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# Exhibit B



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

IN THE MATTER OF

:

BRETT SHOLTIS AND WITF,  
Requester

:

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:

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v.

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Docket No.: AP 2020-1317

:

:

BUCKS COUNTY,  
Respondent

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:

### INTRODUCTION

Brett Sholtis and WITF (collectively, the “Requester”) submitted a request (“Request”) to Bucks County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking jail video recordings. The County denied the Request, arguing, among other things, that the records relate to a criminal investigation. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted**, and the County is required to take additional action as directed.

### FACTUAL BACKGROUND

On July 17, 2020 the Request was filed, seeking videos<sup>1</sup> showing:

Inmate Kimberly Stringer was ‘hit with pepper spray by correction officers’ according to Bucks County District Attorney Matt Weintraub, who can confirm details and existence of this video, including the exact time of the event.

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<sup>1</sup> The Request was filed on an agency form, the use of which is specifically reserved for requesting video recordings.

On July 23, 2020, the County denied the Request, arguing that the responsive videos were exempt as relating to a criminal investigation (*see* 65 P.S. § 67.708(b)(16)), a noncriminal investigation (*see* 65 P.S. § 67.708(b)(17)), and that the records were otherwise exempt under the Criminal History Record Information Act (“CHRIA”) (*see* 18 Pa.C.S. § 9106(c)(4)).

On August 6, 2020, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure.<sup>2</sup> 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 14, 2020, the County submitted a position statement reiterating its grounds for denial. In support of its position, the County submitted the affidavit of Matthew Weintraub, Esq., the District Attorney of Bucks County.

### **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

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<sup>2</sup> On appeal, the Requester granted the OOR an additional thirty days to issue a Final Determination in these appeals. *See* 65 P.S. § 67.1101(b)(1).

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 parties did not request a hearing; however, the OOR has the necessary information and evidence before it to properly adjudicate the matter.

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)).

**1. The County is permitted to interpret a request as an RTKL Request, regardless of form**

As a threshold issue, the Requester submitted his RTKL Request on a form labeled “Law Enforcement Recording Request Form – Act 22 of 2017.” Although neither party raised the issue before the OOR, the OOR does not have jurisdiction over requests which fall under the provisions of Act 22. *See* 42 Pa.C.S. § 67A03. In fact, on the form used by the Requester, there is an informational paragraph which states:

This form can be used to request law enforcement recordings (“any audio recording or video recording made by a law enforcement agency”) under Act 22 of 2017. Note that the Right-to-Know Law does not apply to such recordings. Any denials must be appealed to the appropriate Court of Common Pleas, **not** the Office of Open Records.

Notwithstanding the use of this Act 22 form, the County responded to the Requester by stating, “The following request, pursuant to the Pennsylvania Right-to-Know Law, was received by the Bucks County Office of Open Records on July 17, 2020....” The County then proceeded to deny the Request on the basis of several RTKL exemptions. It is clear, therefore, that regardless of the form upon which the Request was made, the County received and interpreted the Request as a RTKL Request. *See, e.g., Epstein v. Central Dauphin School District*, OOR Dkt. AP 2020-1110, 2020 PA O.O.R.D. LEXIS 2529, \*6-7 (explaining that an agency is not prohibited from interpreting an inquiry in any form as a request for records under the RTKL); *see also* 65 P.S. § 67.702 (“Agencies may fulfill verbal, written or anonymous verbal or written requests for access to records under this act.”).

As to the substance of the Request, the County does not argue or provide evidence establishing that these videos were created by a law enforcement agency. Moreover, the OOR has repeatedly held that correctional facility videos are subject to the RTKL. *See, e.g., Gaikwad v. Clearfield County*, OOR Dkt. AP 2020-0407, 2020 PA O.O.R.D. LEXIS 2215, footnote 1 (explaining that a County correctional facility does not automatically qualify as a “law

enforcement agency” under Act 22 of 2017). Accordingly, we hold that the form used by the Requester is not fatal to the substance of the Request, especially in this instance, when interpreted as a RTKL Request by the County.

**2. The County has not established that the responsive records relate to a criminal investigation**

The County argues that the requested records are exempt from disclosure pursuant to Section 708(b)(16) of the RTKL, and Section 9106(c)(4) of CHRIA. Section 708(b)(16) exempts from disclosure “[a] record of an agency relating to or resulting in a criminal investigation” (*see* 65 P.S. § 67.708(b)(16)) and CHRIA prevents the disclosure of “investigative information” to the public. 18 Pa.C.S. § 9106(c)(4). CHRIA defines “investigative information” as: “Information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information.” 18 Pa.C.S. § 9102.

Section 503(d)(2) of the RTKL states that the appeals officer designated by the district attorney of a county shall hear appeals “relating to access to criminal investigative records” in the possession of a local agency in that county. 65 P.S. § 67.503(d)(2). Section 503(d)(2) adds that “[t]he appeals officer ... shall determine if the record requested is a criminal investigative record.” *Id.* As a result, the OOR ordinarily lacks jurisdiction over appeals involving criminal investigative records in the possession of a local agency.

In *Silver v. City of Pittsburgh*, however, the OOR found that it had jurisdiction over records alleged to be exempt under Section 708(b)(16) that were held by the City of Pittsburgh:

Because the City alleges that the records are criminal investigative records, and the Appeals Officer for the Allegheny County District Attorney’s Office has held that the records are criminal investigative records, it appears that the OOR lacks jurisdiction over the present appeal. However, it strains credulity to imagine that the requested records -- overtime report forms and correspondence regarding how

said forms should be completed are criminal investigative records and thus exempt under Section 708(b)(16) of the RTKL. The withheld records are related to a criminal investigation only in the sense that they have been obtained by the FBI as evidence during their investigation. The fact that a record becomes evidence in a criminal investigation -- especially a nominally public record dealing with the expenditure of public funds -- does not transform that record into one exempt from disclosure pursuant to Section 708(b)(16). The investigation at issue is not being conducted by the City, and as such, the records at issue were not created or compiled by the City in relation to a criminal investigation. *See Hayes v. Pennsylvania Department of Public Welfare*, OOR Dkt. AP 2012-0415, 2012 PA O.O.R.D. LEXIS 530 (“[A] review of case law interpreting the RTKL and its predecessor statute indicates that the investigative exemption has only been extended to protect the records of the agency carrying out an investigation”). Further, it cannot be said that these records resulted in a criminal investigation.

OOR Dkt. AP 2013-1395, 2013 PA O.O.R.D. LEXIS 886; *see also Hockheimer v. City of Harrisburg*, OOR Dkt. AP 2015-1793, 2015 PA O.O.R.D. LEXIS 1588.

Here, the District Attorney responds to this appeal and attests that he reviewed the videos as part of a criminal investigation, after their creation. Attorney Weintraub attests, in part:

As part of this criminal investigation, my office obtained video from BCCF which captured two incident that occurred in May 2020, during which corrections officers used pepper spray against Ms. Stringer in order to gain her compliance after she engaged in self-destructive behavior and repeatedly refused to comply with directions. I reviewed this video, along with other materials obtained during our criminal investigation, in order to determine whether criminal charges were appropriate. I understand that these two videos are the subject of a current Right to Know appeal.

Although I ultimately determined that criminal charges were not warranted in this case against any BCCF corrections officer, it is my belief that such videos **in the possession of the DAO** constitutes investigative information.... (emphasis added).

Under the RTKL, an affidavit made under the penalty of perjury may serve as sufficient evidentiary support of the nonexistence of records. *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).

The Requester rebuts the District Attorney’s evidence as follows:



As stated on my [R]equest sent on July 14 (included in my appeal)[,] I requested the video from the Bucks County Correctional Facility -- not from the district attorney's office.

I understand that the district attorney obtained the video as part of an investigation, which as he noted, has concluded with no criminal proceedings.

However, as I lay forth in my appeal letter, the video itself was not created as part of an investigation. The prison possessed the video for about a month before the D.A. began his inquiry. The video exists because it is administratively required - not as part of an investigation. The fact that the D.A. used the record for purposes separate and distinct from the prison is not relevant. Public records of from the prison do not become non-public simply because they are swept up as part of a different agency's investigation—a circumstance which, in my estimation, would carve out a significant hole in the RTKL.

The Request was originally submitted to the Bucks County Correctional Facility and was then sent to the County's Office of Open Records, who responded to the Request. The Request seeks records in the possession of the County, not records in the possession of the District Attorney's office. At no point did the Requester submit a request to the District Attorney's Office. The County has its own Open Records Officer, distinct from the District Attorney's Office. Nothing in the record before the OOR reflects that the County, including the correctional facility—the agency to whom the Request was submitted—has conducted any investigation relating to these records. *See Hayes v. Pa. Dep't of Pub. Welf.*, OOR Dkt. AP 2012-0415, 2012 PA O.O.R.D. LEXIS 530 (“[A] review of case law interpreting the RTKL and its predecessor statute indicates that the investigative exemption has only been extended to protect the records of the agency carrying out an investigation”).

To hold that a record sought from an agency is exempt merely because it was reviewed at some point during an investigation conducted by a different agency, would significantly expand the criminal investigative exemption beyond our existing precedent. *See Pa. State Police v. Grove*, 161 A.3d 877, 992 (Pa. 2017) (“Consistent with the RTKL's goal of promoting government

transparency and its remedial nature, the exceptions to disclosure of public records must be narrowly construed”) (citing *Office of Governor v. Davis*, 122 A.3d 1185, 1191 (Pa. Commw. Ct. 2015)). Accordingly, the County has not established that these records are exempt under the criminal investigative exemption.

### CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is required to provide responsive records within thirty days. 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 Bucks 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>3</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: October 16, 2020**

*/s/ Joy Ramsingh*

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APPEALS OFFICER  
JOY RAMSINGH

Sent to: Brett Sholtis (via email only);  
Matthew Weintraub, Esq. (via email only);  
Janet Simon (via email only)

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

# Exhibit C

### AFFIDAVIT OF DAVID KRATZ

1. I serve as the Deputy Director of the Bucks County Department of Corrections.
2. I have seventeen years of experience with the Bucks County Department of Corrections and in corrections in general.
3. The Bucks County Correctional Facility is a part of the Department of Corrections.
4. I am aware of a Right-to-Know request submitted to Bucks County by Brett Sholtis on July 17, 2020, seeking surveillance footage from the Bucks County Correctional Facility. Therein, Requester specifically sought surveillance footage from May 20, 2020, of “Inmate Kimberly Stringer” being “hit with pepper spray by Correction Officers.”
5. The Bucks County Correctional Facility and its staff are sometimes required to physically respond with force due to the actions and/or behaviors of an offender. These interactions are referred to as “use of force” events.
6. For events involving “use of force,” such as the deployment of “pepper spray,” prison staff utilize handheld recording devices to document the events. Specifically, a member of prison staff is equipped with the recording device to create documentary evidence of the interaction in the event that the recording is needed as part of an investigation.
7. The video footage from handheld recording devices is created and maintained by the Bucks County Correctional Facility solely for the purpose of documenting “use of force” events, such as the use of “pepper spray” against offenders. This documentary evidence is used only as an evidentiary record in conjunction with investigations – whether they are noncriminal or criminal in nature. The footage is maintained and catalogued by prison staff.
8. I am familiar with the requested security footage here, which amounts to footage from a “use of force” event involving the deployment of “pepper spray” against an offender. As

mentioned above, the footage was taken from a handheld recording device operated by prison staff while participating in the event.

9. In this instance, the footage was requested by and provided to the Bucks County District Attorney's Office to conduct a criminal investigation surrounding the event in question.

10. The Bucks County Correctional Facility would not create and maintain the footage absent the need to preserve a documentary record to be used in a possible investigation.

11. The filmed areas covered by the footage are not open to the public.

12. In addition to relating to an investigation, in my opinion, the disclosure of the footage in this request would create an undue and improper risk to the personal security of staff, providers, and offenders at the Bucks County Department of Corrections and would threaten the safety and security of the Bucks County Correctional Facility.

13. My opinion is based upon my knowledge and experience resulting from my position as Deputy Director of the Bucks County Department of Corrections and from my years of experience working in corrections in general.

14. Importantly, disclosure of the footage would also reveal how prison staff responds to certain incidents and the attendant procedures and protocols accompanying those responses. This is particularly the case in situations where "pepper spray" is used by prison staff against offenders. The footage would reveal to offenders the protocols, procedures, and actions utilized by prison staff in responding to such situations.

15. Because of security issues that would likely arise, offenders are not allowed access to footage at issue here. This is particularly so when footage reveals staff and offender interactions and how staff responds to certain situations, such as "pepper spray" deployment.

16. Knowledge of expected prison staff and/or third-party provider behavior in specific situations can be exploited by offenders and jeopardize the safety of individuals within the prison facility, as well as compromise the security of the facility itself.

17. Offenders could exploit such information to create a risk to the personal security of individual staff members and third-party providers that could endanger their life and physical well-being.

18. Offenders could also exploit the information to create a risk to public safety, the protection of the Bucks County Correctional Facility and its staff, providers, and offenders, and the security of the Bucks County Correctional Facility.

19. The requested security footage would reveal measures (a) regarding the custody and control of offenders, (b) regarding the protection of prison staff, offenders, third-party providers, and the public, and (c) designed to maintain the security of the Bucks County Correctional Facility and protect those within the facility.

20. Revealing the particulars of security protocols or procedures – including those related to movements and interactions between staff, providers, and offenders in the context of “pepper spray” deployment – poses a threat to staff, offenders, third-party providers, and the general public.

21. Knowledge by an offender of the particulars of prison staff responses enables an offender to develop countermeasures to subvert the objectives of prison staff or providers regarding the custody and control of offenders, the security of the correctional facility, and the protection of the public, staff, third-party providers, and offenders.

22. Ultimately, information obtained from the requested footage could easily be used by offenders to facilitate security breaches, including attacks upon other offenders, staff, providers,

**VERIFICATION**

I verify that the statements made in this Affidavit are true and correct to the best of my knowledge, information and belief and understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: November 13, 2020

  
\_\_\_\_\_  
David Kratz

# Exhibit D





INDEX TO WITNESSES

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
DAVID KRATZ	6	27	64	76

INDEX TO EXHIBITS

<u>EXHIBIT NUMBER:</u>	<u>MARKED</u>	<u>ADMITTED</u>
P-1. Memorandum of Understanding	66	67

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1 (December 16, 2021 at 1:31 p.m.)

2 THE COURT: We are here in the matter of the  
3 County of Bucks versus Brett Sholtis. What I am normally  
4 doing when I have just one matter in the courtroom and we  
5 are all nice and spread out is to tell everyone that if you  
6 are vaccinated you can take off your mask. And I am not  
7 going to ask anybody's vaccination status. You are always  
8 welcome to keep it on.

9 So I think what I am going to do at this point is  
10 why don't we have some of the individuals in the back that  
11 are all sitting together move to the other side of the  
12 courtroom and spread out. And I think for at least the  
13 attorneys who are going to be speaking, if you are  
14 vaccinated and you want to take off your mask, again, I am  
15 not going to ask you your status. You can do that.

16 Since I am going to be speaking, I am going to  
17 take off mine as long as everybody in the room is  
18 comfortable with that. Anybody not comfortable with that?  
19 All right. Very good. Let's have counsel enter their  
20 appearance, please.

21 MS. CAIN: Your Honor, Robbie Cain on behalf of  
22 the County of Bucks.

23 MR. DAVY: Jim Davy on behalf of Mr. Sholtis.

24 THE COURT: All right. So as I understand it, we  
25 are here today for the testimony of Mr. Kratz.

1 MS. CAIN: Correct.

2 THE COURT: That was by agreement of the parties;  
3 correct?

4 MS. CAIN: Correct.

5 THE COURT: All right. Before we get started on  
6 that, I did want to just very briefly conference with  
7 counsel. It will take about 2 to 3 minutes, and then we  
8 will get started right away. So I just told you that you  
9 can take your mask off. Put your mask on, and we will chat  
10 for a moment. Thank you.

11 (A discussion was held off the record.)

12 THE COURT: So we covered a few issues in the  
13 conference that we are going to put on the record after the  
14 testimony is over today. So can I have Mr. Kratz come on  
15 up? And we will get you sworn in, Mr. Kratz.

16 DAVID KRATZ, called and sworn.

17 THE COURT: I don't have any particular  
18 preference. You are welcome to sit and question the  
19 witness. You are welcome to stand at the podium. I just  
20 ask that you speak directly into the microphone, whatever  
21 makes you more comfortable.

22 One of the things we discussed in conference was  
23 how we are going to proceed here as far as questioning  
24 because this is an unusual situation where you have both  
25 sides have agreed that this witness would testify live and

1 that would be the only supplementation of the record. So  
2 he's not really one party's witness or another party's  
3 witness.

4 So the parties have agreed -- counsel has agreed  
5 that Ms. Cain will question this witness first on direct.  
6 Mr. Davy will then cross-examine this witness. And if  
7 Mr. Davy wants to get into areas that were not already  
8 covered, then he can question this witness on direct. And  
9 Ms. Cain, if she thinks appropriate, can cross-examine at  
10 that point. You agree, Ms. Cain?

11 MS. CAIN: Yes, Your Honor.

12 THE COURT: Mr. Davy?

13 MR. DAVY: I agree, Your Honor.

14 THE COURT: All right. Just a couple of  
15 instructions to Mr. Kratz. So as you know, we have a court  
16 reporter taking down everything that we are saying today.  
17 It's very important that she be able to hear you. And she  
18 can only take down one person at a time. So I will ask that  
19 you speak right into the microphone. Keep your voice up.  
20 If for some reason you are asked to read something, just be  
21 cognizant that we tend to speak a little bit more quickly  
22 when we are reading something.

23 Let the whole question come out from whichever  
24 attorney is asking the question before you start to answer,  
25 even if you think you know where the attorney is going and

1 you think you might be helping move things along by  
2 interrupting. It's just going to make it more difficult for  
3 Ms. Shanfelder. So I will ask that the whole question come  
4 out before you start to answer. And then the lawyers know  
5 that they need to let the whole answer come out before they  
6 move to the next question.

7 And if you happen to hear the word objection,  
8 Mr. Kratz, if you could stop, even if you are in mid  
9 sentence. I obviously have to deal with that before we can  
10 go any further.

11 THE WITNESS: Thank you.

12 THE COURT: Go ahead, Ms. Cain.

13 MS. CAIN: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MS. CAIN:

16 Q Mr. Kratz, could you please introduce  
17 yourself for everybody?

18 A I am David Kratz, the director of  
19 corrections for Bucks County.

20 Q How long have you been the director of the  
21 Bucks County Correctional Facility?

22 A Recently appointed in August to the  
23 director's position.

24 Q What did you do before August?

25 A Deputy director prior to that. Prior to

1 that, I was captain of administration slash associate  
2 director. Prior to that, lieutenant, sergeant. And as all  
3 things happen in the correctional facility, I started as an  
4 officer.

5 Q How long have you been with the correctional  
6 facility?

7 A Coming up on 18 years.

8 Q And in your role as a director, what roles  
9 and duties do you have?

10 A Complete oversight of the department.  
11 Financial, training, security. Two superintendents from our  
12 community corrections center and the superintendent from the  
13 jail report to me directly. So those two facilities report  
14 up, but I have general complete oversight over the facility.

15 Q Does that oversight include overseeing  
16 correctional officers?

17 A Indirectly, yes.

18 Q And then does it involve any use-of-force  
19 events?

20 A At the end of the day, they often can land  
21 on my desk, yes.

22 Q I am going to bring you to why we are all  
23 here today. Do you recall a use-of-force event involving  
24 Ms. Stringer on May 20 of 2020?

25 A I do.

1 Q Could you describe what a use-of-force event  
2 is?

3 A So use-of-force in a jail or prison is  
4 something that occurs when something is not going the way it  
5 should be. It could be for any reasons. It could be for a  
6 violent outburst. It could be for noncompliance with an  
7 order. It could be to prevent someone from harming  
8 themselves. In those particular cases, beyond direct verbal  
9 orders, sometimes force needs to be used for protection and  
10 to gain compliance.

11 Q So you said a couple things in there. Let's  
12 start at the beginning. So what causes the use-of-force  
13 again?

14 A Could you repeat that?

15 Q What causes a use-of-force event to begin?

16 A Again, there's various things that could  
17 happen. It could be noncompliance. It could be somebody  
18 harming someone. It could be a violent outburst against  
19 staff or another offender.

20 Q And what occurs during the use-of-force  
21 event?

22 A So there's two types of use-of-force.  
23 There's what's called a planned use-of-force and then  
24 there's a spontaneous use-of-force. So obviously if an  
25 offender attacks an officer, that would be a spontaneous



1 use-of-force when the staff responds. And there are other  
2 times where we are able to suit up teams in protective gear  
3 to exact a safer outcome, and that would be a planned  
4 use-of-force.

5 Q And then what typically happens after a  
6 use-of-force is ending?

7 A So after a use-of-force, there's always a  
8 bunch of documentation and paperwork. And there's also  
9 medical exams to make sure the staff and the offenders  
10 aren't injured in any way, shape, or form. Reclassification  
11 will happen from the case management team. If there's  
12 mental health issues, that would get referred to mental  
13 health if they are not already under their service.

14 Q Could you expand upon reclassification, what  
15 that means?

16 A So once the situation is safe and everybody  
17 regains composure, that person would again be seen and  
18 reclassified. For instance, if it's a minimum custody  
19 offender, custody level may increase a little bit after a  
20 use-of-force incident depending upon what it is.

21 Q Are these use-of-force events recorded?

22 A They are.

23 Q Why is it recorded?

24 A So in a planned use-of-force, we do record  
25 with a hand-held camera. We record for the safety of the

1 offender and the safety of the staff. It's always good to  
2 have a record of what occurred and why. It's for the  
3 protection of everybody. It's also used as an investigative  
4 and training tool that we can look at those films and we can  
5 learn from them and improve upon our policies and procedures  
6 and, again, to make sure we follow our policies and  
7 procedures.

8 Q Are you familiar with the subsequent  
9 right-to-know request for the recording filed by the  
10 Defendant by Mr. Sholtis?

11 A I am.

12 Q And then generally, as a director, are you  
13 familiar with the standard operating procedures and  
14 guidelines of the prison?

15 A I am.

16 Q In addition to correctional officers, are  
17 there any other staff that respond to use-of-force events?

18 A Anybody can --

19 MR. DAVY: Your Honor --

20 THE COURT: Hold on a second. We might have an  
21 objection.

22 MR. DAVY: I don't have an objection. I just  
23 don't quite understand that question.

24 MS. CAIN: I will rephrase, Your Honor.

25 THE COURT: Go ahead.

1 BY MS. CAIN:

2 Q who responds? what staff responds to  
3 use-of-force events?

4 A So in a spontaneous use-of-force, any staff  
5 in the area could respond. I mean, it could be a drug and  
6 alcohol counselor that would be there. You are looking at  
7 an imminent situation. On a planned use-of-force, we would  
8 assemble a team of officers, a supervisor, and we always try  
9 to have a medical person there as well.

10 Q Do you have any investigators within the  
11 Department of Corrections?

12 A We do. We have two investigators and a  
13 chief investigator.

14 Q what are the duties of an investigator?

15 A So our investigators, again, the title  
16 pretty much speaks for itself. They do investigations for  
17 us internally. They will investigate any internal affairs  
18 issues. They will investigate criminal behavior. If there  
19 are drugs brought into the facility, for instance, they  
20 would do that investigation. They would also take a look at  
21 any use-of-forces to make sure we are in compliance and not  
22 going outside of our policies and procedures. In addition  
23 to that, the investigators will file Criminal Complaints for  
24 escapes and crimes that are committed inside the  
25 institution.

1 Q where does an investigator file a Criminal  
2 Complaint?

3 A With the District Courts.

4 Q Is there a liaison between -- do you have a  
5 relationship with the District Attorney of Bucks County?

6 A We do. We sort of partner with the county  
7 detectives, and we have a Memorandum of Understanding in  
8 2009 that we signed with them. It's one of our best  
9 practices to have the county detectives on board with  
10 things. It's an independent set of eyes in case there's any  
11 criminal activity. We also have the ability to use their  
12 investigator tools and resources which are far superior to  
13 what the Department of Corrections has in-house.

14 Q Aside from offenses filed with the District  
15 Attorney, does the prison have any law enforcement authority  
16 in its own right?

17 A So yeah. When an offender is committed to  
18 your facility, you have care, custody, and control of that  
19 offender. Correctional officers in general have authority  
20 over that person to prevent escapes and things like that.  
21 Our three investigators have the investigatory power and  
22 also have the ability to file the charges and request the  
23 arrest warrant.

24 Q Where do these investigatory powers stem  
25 from?

1           A     They extend from some statutes through Title  
2 37. There are, I am sure, some other areas where they  
3 receive that kind of authority. And again, as an extra  
4 layer, we partner with the District Attorney's Office and  
5 the county detectives with our Memorandum of Understanding.

6           Q     Speaking of the District Attorney, was this  
7 video that's the subject matter of this hearing ever turned  
8 over to the District Attorney?

9           A     Yes, it was.

10          Q     why?

11          A     There was some inquiries made on this  
12 particular case. After review, we decided that it would be  
13 best to have, again, an independent set of eyes looking at  
14 this to make sure that our policies and procedures were  
15 followed; there was no negligence or criminal activity that  
16 went along with that. So we did, out of caution, forward  
17 that to the District Attorney's Office to have that  
18 reviewed.

19          Q     Were there charges or anything, if anything,  
20 came out of this video?

21          A     There were no charges filed against the  
22 officers or the offender. And I believe the District  
23 Attorney stated that our policies and procedures were  
24 followed and that he did not see any criminal activity.

25          Q     In addition to the investigation done by the

1 District Attorney, were there any other investigations?

2 A We did our own internal due diligence in  
3 investigation. Our investigators looked into the incident.  
4 When a use-of-force incident happens, we do have our  
5 documentation. And that documentation goes through a review  
6 process. And it oftentimes will end with the investigators  
7 as the final set of eyes on that.

8 Q Are use-of-force videos always -- do they  
9 always lead to an investigation?

10 A Most of the time, they will go to  
11 investigation. Again, if your use-of-force is -- I will  
12 give an example. That we suit up a team and then we gain  
13 compliance. Let's say having a person removed from their  
14 cell. Should they decide they make the right decision, put  
15 on the handcuffs and walk out of the cell, that's not always  
16 going to be reviewed by the investigators. The ones that  
17 end in usually a team having to go in will end up on the  
18 investigator's desk. The chief investigator will be the  
19 last person in our department that signs off on that and  
20 also make the referral to the District Attorney.

21 Q You keep referring -- you say suit up. What  
22 do you mean by suit up?

23 A Again, for planned use-of-force, you put  
24 protective gear on your officers. This is for the  
25 protection of the officers and the protection of the

1 offenders. So again, planned use-of-force we have the  
2 luxury of some time. It's not an instant event where  
3 somebody is being attacked where we have to jump in. We are  
4 trying to assist somebody. We are trying to stop them from  
5 hurting themselves. We are trying to move them from a cell  
6 or gain compliance. We will suit up a team in protective  
7 gear and go through our process to try to gain compliance.

8 Q What does this protective gear involve?

9 A So helmets, face shields, shoulder pads,  
10 knee pads. Pretty much you look like an NFL football player  
11 in pads and gear.

12 Q In this particular case, where do the events  
13 of the video take place?

14 A I believe on H-module in the cell. For the  
15 event specific, we start the process with the use-of-force  
16 starts in the SRT ready room and evolved into the cell where  
17 Ms. Stringer was.

18 Q You said SRT ready room?

19 A Special response team. Again, they receive  
20 some training. All correctional officers are trained in  
21 cell extractions and use-of-force. We have an area where we  
22 dress them in the protective gear prior to going to the area  
23 that's affected. And there's processes and procedures that  
24 we follow in that room to prepare for the use-of-force with  
25 the briefing and a few other things that happen before that

1 team would be deployed to the area.

2 Q After in the SRT room, you mentioned a --  
3 sorry. In the SRT room, do they receive direction?

4 A They do.

5 Q What does this direction involve?

6 A I just want to glance on that a little bit.  
7 I don't want to go into too much detail. Again, these are  
8 some of these policies and procedures are security  
9 sensitive. It's not good for a lot of these things to get  
10 out to the general public. We don't want -- it could create  
11 a very unsafe environment. Essentially, in general, they  
12 are briefed on the person, what's going on, and what the  
13 goal is. And then they are given their assignments as to  
14 which role they are going to play during the cell extraction  
15 or the planned use-of-force.

16 Q The location, the SRT room, is it a secure  
17 location?

18 A It is. It's in the back of the jail.

19 Q And do they -- is it the whole -- how would  
20 you describe the other locations that the SRT team goes  
21 into?

22 A As far as?

23 Q Physical description.

24 A You mean when they move into a module?

25 Q Exactly.



1           A     It could be anywhere in the facility. It  
2 could be in a module, chapel, shower, booking and intake.  
3 could be in a work detail. It really could be anywhere.

4           Q     Are all these locations secure?

5           A     They are.

6           Q     Are the standard operating procedures and  
7 guidelines, do these direct how a CO should handle cell  
8 extractions?

9           A     They do.

10          Q     And could you repeat or if you haven't  
11 already why these procedures are in place?

12          A     Again, you want uniformity. You want best  
13 practices. You want to make sure that the staff and the  
14 offender are not injured if at all possible. And again, you  
15 want to create a record of what you are doing. And having  
16 that videotape, again, provides investigative material for  
17 us to look at later to learn from and to see if there's  
18 anything that we need to be pushed forward to the District  
19 Attorney's Office or the county detectives.

20          Q     What would happen if the general public had  
21 access to the procedures as demonstrated in this video?

22          A     Some of our procedures are pretty benign in  
23 our public facing. We have a mail procedure, for example,  
24 that is public facing. No problem with the public looking  
25 at our mail procedure and what's expected.

1           You get into things in corrections that are  
2 security sensitive. These are the types of policies and  
3 procedures that dictate what our responses are to an  
4 incident. And we try not to -- you don't want that  
5 information out. It can be used. It has been used  
6 historically in corrections to create diversions in aiding  
7 in escapes and things like that.

8           If the public has it, the offenders would have it.  
9 That is not something that creates a very safe environment  
10 for the staff and the offenders as well. It could lead to  
11 escape and other things. If an offender were to know X  
12 number of people were doing this and responding to this  
13 location and following these things, they would know what  
14 our procedures are. And that could, theoretically, create a  
15 diversion.

16           Q     Does this video show access points?

17           A     It does.

18           Q     Does this video show correctional officers?

19           A     It does.

20           Q     Does this video show other inmates in the  
21 prison?

22           A     There are other offenders on the video, yes.

23           Q     Does it show entry into areas that are not  
24 otherwise accessible to inmates?

25           A     Yes.

1 Q Let's go back to internal investigations.  
2 So these reports. Could you explain the level, the  
3 hierarchy of the internal investigation?

4 A So are you speaking of the use-of-force  
5 report?

6 Q Exactly.

7 A Use-of-force report is compiled essentially  
8 the officers each write a detailed memo of what occurred,  
9 what their role is. There are memos gathered for the events  
10 leading up to that. That is reviewed by the shift sergeant  
11 for clerical errors, spelling, accuracy, grammar, things  
12 like that. And it is forwarded on to the shift lieutenant  
13 who reviews it.

14 The next business day, that goes on to the  
15 operations department. And the captain does a thorough  
16 review looking at it from a security standpoint. Then it  
17 goes to the warden slash superintendent who does a review,  
18 signs off on the use-of-force. Again, reviewing the memos,  
19 the documentation, and everything. And then finally in our  
20 system, that event would get closed out by the chief  
21 investigator.

22 Q Upon reviewing this video, does it show the  
23 location of other cameras in the facility?

24 A It does.

25 Q If the general public had access to these

1 internal structures, what would happen?

2 A Again, you want to keep your building plans,  
3 your layouts, your egresses somewhat confidential. I mean,  
4 it's not good that the general public or offenders know  
5 egress points to a facility. How many doors does it take to  
6 get to the outside? These are things you want to keep  
7 confidential. Again, very security sensitive type things.

8 Q Has there ever been an event where an inmate  
9 witnessed a previous use-of-force and then used that  
10 use-of-force to avoid another use-of-force event?

11 A In corrections nationwide, absolutely. It  
12 is one of the --

13 MR. DAVY: Your Honor, I would like to object  
14 given that because now he's sort of speculating about things  
15 that happen nationwide which is not relevant to this.

16 THE COURT: I am going to sustain the objection.  
17 I am going to let you ask a different question, Ms. Cain,  
18 and lay a foundation if you think that's appropriate. This  
19 witness can testify based upon his own personal knowledge,  
20 but he can't speculate. Okay?

21 MS. CAIN: Yes, Your Honor.

22 THE COURT: Thank you.

23 BY MS. CAIN:

24 Q Mr. Kratz, in your 18 years of experience  
25 with the correctional facility, have you experienced an

1 incident where a prisoner witnessed a use-of-force event and  
2 then used that information to avoid a use-of-force event, an  
3 upcoming use-of-force event?

4 A Oh, absolutely. Offenders, repeat offenders  
5 know through experience some of the things that will happen.  
6 So we have had offenders that were refusing a cell move or  
7 refusing a cell extraction. And they know we are going to  
8 suit up the team, and they know we are going to do video.  
9 We will send that team down. The offender generally is  
10 doing that just to force us to go that extra mile.

11 So yeah, we have had instances where codes have  
12 kicked off while medical emergencies are going on in the  
13 facility. You can't -- we have no direct tie to that, but  
14 it does happen. You have multiple events at one time. And  
15 you could say it's coincidental or you could say they chose  
16 to have that use-of-force happen at that particular time to  
17 create chaos. It's a commonly-used tool.

18 Q Now, Mr. Kratz, are you familiar with the  
19 Criminal History Record Information Act?

20 A I am.

21 Q Also known as CHRIA?

22 A Yes.

23 Q What is it?

24 MR. DAVY: Your Honor, I am going to object to  
25 this, too. I am curious as to his basis for knowing about

1 this and his particular expertise about this. I don't  
2 understand where this is going.

3 MS. CAIN: Your Honor, may I respond?

4 THE COURT: You may.

5 MS. CAIN: I believe I laid a foundation that he's  
6 the director of the Department of Corrections which is an  
7 agency that routinely enforces the law, a law enforcement  
8 agency. And CHRIA deals with criminal history information.

9 MR. DAVY: I mean, I'm making an objection only in  
10 the sense that that's his title and very attenuated about  
11 that particular law, applying that particular law.

12 MS. CAIN: Your Honor, I will lay a foundation.

13 THE COURT: Go ahead.

14 BY MS. CAIN:

15 Q Mr. Kratz, how are you familiar with CHRIA?

16 A So as the Department of Corrections and  
17 having the access to the state CLEAN system, CLEAN terminal,  
18 we accumulate a lot of criminal history protected  
19 information under the CHRIA Act. It's part of our jobs.  
20 It's trained down to corrections officers in the basic  
21 academy in a very general sense.

22 At the administrative level, we are much more keen  
23 to sensitive information, protected information,  
24 investigative information that is contained in the act.  
25 It's just part of our job.

1           We get criminal history information from many,  
2 many sources. A lot of it is protected. Rap sheets,  
3 fingerprints, arrest photos are protected. And we have to  
4 stay on top of the CHRIA Act to make sure we are in  
5 compliance.

6           Q       Can we go back to what are the terminals you  
7 say you receive information from?

8           A       Live Scan and CLEAN terminals when we book  
9 new offenders in. Offenders will get fingerprinted. That  
10 generates a rap sheet which is clearly CHRIA protected. We  
11 generate a booking photo which again depends on the caselaw  
12 that you look at whether that is protected or not. But we  
13 also have access to the arrest photos which are protected.

14           We have access to FBI numbers, things like that,  
15 that fall under CHRIA. And again, we have access to  
16 investigative materials dealing with security directives and  
17 things like that that are protected under CHRIA. And we are  
18 not permitted to disseminate that information. Falls back  
19 on our department as to disseminating information out to  
20 non-criminal justice agencies which is prohibited. So we  
21 have to be very sure that we are not disseminating protected  
22 CHRIA information out to people that are not identified in  
23 the act as criminal justice agencies.

24           MS. CAIN: Your Honor, is that sufficient for a  
25 foundation?

1 THE COURT: I didn't hear any objection to any of  
2 the questions that were just asked. You may continue.

3 MS. CAIN: Thank you.

4 BY MS. CAIN:

5 Q Mr. Kratz, you said a lot in that  
6 explanation of your knowledge of CHRIA. We are going to  
7 break that down. So you said a lot about investigative  
8 information. What is investigative information?

9 A The statute spells out quite a bit. The  
10 main one that comes to mind is security records that we do  
11 investigative information on validation. It's pretty broad.  
12 I mean, anything that we are gathering. Anything that we  
13 are looking for that has a link to the protected  
14 information.

15 I mean, just having an offender identified in a  
16 correctional facility is protected in the sense that if an  
17 expungement order comes down from the bench, we need to  
18 remove all that information, including the things I spoke  
19 of; the photographs, the record that's contained in our  
20 records management system.

21 And you can't put the toothpaste back in the tube.  
22 If you are disseminating this information out there and an  
23 expungement were to come down, you cannot recall that  
24 information once it's disseminated. And there's the  
25 reasoning behind only law enforcement agencies receive those



1 types of protections, pieces of information.

2 Q Would a video recording, could that be  
3 considered investigative information?

4 A I consider it as investigative information.  
5 It's been used in both a non-criminal and criminal way. We  
6 look at it. Again, we use that as part of our internal  
7 investigation. In this particular case, the District  
8 Attorney opened, I believe, I don't want to misspeak but I  
9 believe it was an official investigation into it in addition  
10 to the county detectives investigating it. So there was the  
11 potential for it to be criminally part of an investigative  
12 tool as well.

13 Q And what does CHRIA prohibit, if anything?

14 A For the most part, it's the dissemination of  
15 information to non-criminal justice agencies that are called  
16 out in the act.

17 Q And what is a criminal justice agency?

18 A The act pretty much specifies police,  
19 sheriffs, correctional facilities, probation and parole  
20 departments. It's again spelled out directly in the act who  
21 is named as a criminal justice agency.

22 Q And could you describe a non-criminal  
23 justice agency?

24 A The public. Defense attorneys. Anybody  
25 really that is not involved in the criminal justice

1 dealings.

2 Q Reporter be considered?

3 A The press. Concerned citizens.

4 Q How would an inmate go about getting a video  
5 of themselves, if any, if there is a way?

6 A They really can't. It would have to come  
7 from the bench. It would have to come, if there were a  
8 criminal or civil suit, through evidence that would be  
9 ordered, that we would turn that over. Our solicitor would  
10 assist us with that process, but it really is not something  
11 that happens.

12 MS. CAIN: Your Honor, one moment?

13 THE COURT: Sure.

14 BY MS. CAIN:

15 Q Mr. Kratz, would the inmates other than the  
16 inmate, Ms. Stringer, would that be CHRIA protected  
17 information?

18 A I would consider it strong CHRIA protected  
19 information, I think, to have other inmates on film. Their  
20 faces being recognized would be something that would  
21 definitely violate CHRIA to me. You don't know why those  
22 other people are in the prison. You don't know where their  
23 case is going, if it's going to end up being dismissed, if  
24 it's an expunged case. And that is really part of CHRIA is  
25 keeping that information in the criminal justice community.

1 And where it's come out recently has been with the  
2 expungement process.

3 MS. CAIN: Thank you, Mr. Kratz. That's all for  
4 me, Your Honor.

5 THE COURT: All right. Mr. Davy?

6 MR. DAVY: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. DAVY:

9 Q Mr. Kratz, first of all, thank you very much  
10 for coming today. We really appreciate it. I will just ask  
11 you some clarifying questions about some of the stuff you  
12 just testified about. The first, so you talked about  
13 use-of-force events at the jail. How often do use-of-force  
14 events even take place at the jail?

15 A I can't say with any accuracy. They happen.  
16 We report that monthly to the Prison Oversight Board. It is  
17 in there. You could say there could be 30 use-of-forces a  
18 month. There could be 20. Again, of those use-of-forces,  
19 compliance might be gained before any kind of physical force  
20 is used.

21 Q Sure. Certainly.

22 A But it's still something we report.

23 Q But so it's fair to say hundreds of times a  
24 year potentially, not tens of times a year?

25 A Correct.

1 Q And you take video as described every single  
2 time that happens?

3 A We take extra video, hand-held video when we  
4 do, again, a planned use-of-force, when we have the luxury  
5 of time to assemble a team. Video can also be had from  
6 stationary cameras throughout the institution and other  
7 cameras that are placed throughout the institution.

8 Q Actually ask you two questions about that.  
9 The first is that my colleague over there talked about the  
10 difference between planned and spontaneous. Should I  
11 understand your testimony to be that in spontaneous  
12 uses-of-force or spontaneous use-of-force events, you all do  
13 not take hand-held video?

14 A No, because we would not have the hand-held  
15 camera. In a spontaneous use-of-force, it's urgent.  
16 Somebody is -- an offender may be beating on another  
17 offender. They may be in a physical altercation. They may  
18 be attacking staff. You don't have the luxury of suiting up  
19 a team, grabbing a hand-held camera. You have to stop that  
20 disturbance immediately.

21 If a person is behind a cell door or in a safer  
22 area and you have the ability to suit up a team and take the  
23 time, grab the hand-held camera, the GoPro, and go through  
24 those procedures and everything, you take that time. It's  
25 the preferred way to do it, if you can.

1 Q Sure. In that case, to the extent we are  
2 talking about planned use-of-force events, my understanding  
3 of your testimony is that you take a video every single time  
4 as a matter of policy?

5 A If we can, yeah.

6 Q If you can. And you do that. You make that  
7 decision or rather you don't make that decision. It's just  
8 part of the policy. You take it every time without knowing  
9 what's going to happen during the course of the use-of-force  
10 events?

11 A You don't know that.

12 Q Right. And so you testified that you do it  
13 to check for compliance with policies; is that right?

14 A Yes.

15 Q I am assuming it's also true that if you all  
16 were ever sued for excessive force, you maintain those  
17 videos partly as potential evidence in a civil suit; is that  
18 right?

19 A Absolutely.

20 Q And so you don't pick and choose when to  
21 video a use-of-force event based upon what you think will  
22 happen. You do it regardless?

23 A If it's a planned use-of-force, we do, yes.  
24 I mean, again, spontaneous use-of-force when you have to  
25 intervene quickly, you don't have time to do protective

1 gear. You don't have time to grab that camera. You have to  
2 do what you have to do at that particular instance.

3 Q You testified that you, I mean, you  
4 testified about a number of people who review these videos  
5 after the fact. You testified that you sometimes review  
6 them; is that right?

7 A Not as a regular occurrence. Some will land  
8 on my desk.

9 Q But you have looked at some of these videos?

10 A Yes.

11 Q How often do you believe, when you are  
12 looking at one of these videos, that you witnessed criminal  
13 conduct?

14 MS. CAIN: Objection.

15 THE COURT: What's the objection?

16 MS. CAIN: Relevance.

17 MR. DAVY: We are talking about criminal and  
18 non-criminal investigations, and he testified at some length  
19 about what's in these videos.

20 MS. CAIN: Your Honor, in this case, at issue is  
21 the particular video here. I think that goes outside the  
22 scope of -- it's just limited to the video today. Goes  
23 outside the scope of all other videos. It's speculation.

24 THE COURT: Well, I am going to overrule that  
25 objection. I will allow the question to be asked and

1 answered.

2 MR. DAVY: Thank you, Your Honor.

3 BY MR. DAVY:

4 Q Just to --

5 A I was going to ask you to repeat it.

6 Q It might be helpful to have the reporter  
7 read back.

8 THE COURT: I am happy to do it. I have it in  
9 realtime. The question was, "How often do you believe, when  
10 you are looking at one of these videos, that you witnessed  
11 criminal conduct?" Is that accurate, Mr. Davy?

12 MR. DAVY: Yes, Your Honor.

13 THE WITNESS: I have not seen any criminal conduct  
14 on any videos that I reviewed.

15 BY MR. DAVY:

16 Q And so it's my understanding, based on your  
17 answer to that question, that you take these videos  
18 expecting that it won't contain any criminal conduct; is  
19 that right?

20 A Well, every day you hope there's no criminal  
21 conduct. I mean, during the performance of the correctional  
22 officer and supervisors' duties, there shouldn't be. But  
23 you take the video to preserve the evidence for us to look  
24 at to investigate the use-of-force incident and, again, to  
25 keep everybody safe.

1           Q     Have you ever referred an officer for  
2 investigation or prosecution by the Bucks County DA based on  
3 something you have seen in the video?

4           MS. CAIN:  Objection, relevance.  Limited.  This  
5 is outside the scope of the criminal material and  
6 non-criminal investigatory status of this video.  He's  
7 asking about the criminal history, the criminal matters that  
8 may have happened from other videos.

9           MR. DAVY:  Your Honor, we are talking about, first  
10 of all, he testified at length about partnering with the  
11 Bucks County DA to undertake criminal investigations, the  
12 nature of exactly what type of records these videos even  
13 are.  Depends on what they are using them for.  So I think  
14 this is a perfectly appropriate question.

15          THE COURT:  I am going to overrule the objection.  
16 I will allow this question, and we will see where we go from  
17 there.

18          THE WITNESS:  Can I get a read back again?  I'm  
19 sorry.

20          THE COURT:  "Have you ever referred an officer for  
21 investigation or prosecution by the Bucks County DA based on  
22 something you have seen in the video?"

23          THE WITNESS:  I have made referrals.  I have had  
24 referrals made through the investigations unit for criminal  
25 behavior.



1 BY MR. DAVY:

2 Q But you didn't just -- my understanding of  
3 your answers to the last two questions together is that you  
4 did not believe, whether there was a referral or not, that  
5 it was for conduct that had taken place that was criminal in  
6 nature?

7 A So I can tell you that we have had incidents  
8 in the facility where officers were bringing drugs into the  
9 facility. We have had video. We reviewed that. I have  
10 endorsed that going to the county detectives for further  
11 investigation.

12 Q Just to clarify. If an officer is bringing  
13 drugs into a facility, that has nothing to do with a  
14 use-of-force event?

15 A You didn't specify use-of-force.

16 Q No. But I am just saying.

17 A Correct. That would not link to a  
18 use-of-force event. To answer the question, am I referred,  
19 yes.

20 Q Actually obvious follow-up question is in  
21 the time that you have been warden at the facility, how many  
22 times have officers brought contraband into the facility?

23 A I couldn't tell you with any accuracy.

24 MS. CAIN: Objection if he continues down this  
25 line of questioning about contraband.

1 THE COURT: The question has been answered.

2 MS. CAIN: If the line of questioning continues.

3 THE COURT: Let's see where the next question go.

4 MR. DAVY: That was my last question on that.

5 BY MR. DAVY:

6 Q Is it your belief that an officer has ever  
7 engaged in criminal conduct during a use-of-force event?

8 MS. CAIN: Objection.

9 THE COURT: What's the objection?

10 MS. CAIN: Relevance.

11 THE COURT: Mr. Davy?

12 MR. DAVY: Again, I am just -- my understanding of  
13 their position here is that these videos are being used to  
14 investigate criminal conduct. And if he doesn't believe  
15 that there's ever criminal conduct that takes place, I think  
16 it's relevant to the question of exactly what they are  
17 taking the videos for.

18 MS. CAIN: May I respond?

19 THE COURT: Yes.

20 MS. CAIN: I think that's misconstruing our  
21 purpose right now. We are trying to lay the matter that  
22 there's a process for when these videos could show criminal  
23 or non-criminal matters. It's not because Mr. Kratz sees it  
24 in the video and he reports it. It's a process that's by  
25 statute and also a process, as Mr. Kratz testified to,

1 through the MOU of the District Attorney.

2 THE COURT: I am going to overrule the objection.  
3 I will give the answer the weight to which it's entitled  
4 based upon one of the most relevant issues in this case at  
5 this point in time. So I overrule the objection. Next  
6 question, Mr. Davy.

7 MR. DAVY: Do you want to read that back and have  
8 him answer that and we will move on from there?

9 THE COURT: "Is it your belief that an officer has  
10 ever engaged in criminal conduct during a use-of-force  
11 event?"

12 THE WITNESS: I can't speak to my belief. I can  
13 speak to the reviews of the use-of-force that have crossed  
14 my desk. And I have not seen a use-of-force at Bucks County  
15 rise to a criminal level, no.

16 BY MR. DAVY:

17 Q Thank you. Just to clarify, that would  
18 encompass the issue or the specific incident in this case  
19 that we are talking about today?

20 A Yeah. Again, I think that's one of the  
21 reasons we use the video. When people know that you are  
22 being watched, if somebody were thinking about doing  
23 something outside the scope of what they are supposed to be  
24 doing, that video keeps everybody in line and in check.

25 Q So it's more -- it's almost prophylactic in

1 nature?

2 A It is. And I can tell you that I have  
3 personal knowledge of other facilities through conferences  
4 and meetings where things have happened. Criminal things  
5 have happened in plain use-of-forces. We at Bucks try to go  
6 with the best practice. And that right now is video and  
7 training and education and follow our policies and  
8 procedures.

9 Q So I want to move on a little bit to my  
10 colleague asked you about investigation which I am using  
11 advisably that took place with respect to the video in this  
12 particular case. You mentioned that, I mean, you sort of  
13 are talking about what happened after the use-of-force  
14 incident. When you talk about all the things that happened  
15 afterward when you are reviewing, did you or anyone  
16 connected to the jail interview Ms. Stringer about what  
17 happened?

18 MS. CAIN: Objection, relevance.

19 MR. DAVY: Again, we are talking about whether  
20 there was an investigation, criminal or non-criminal, that  
21 was undertaken. This is a very basic question, Your Honor.

22 THE COURT: Ms. Cain?

23 MS. CAIN: Your Honor, that is true. However, we  
24 are limited to the general purpose of these videos, not the  
25 actual subject matter of this video which is Ms. Stringer.

1 If this is Ms. Stringer or another inmate, the video, in our  
2 position, would be exempt because of what the video is, not  
3 to what's in the video.

4 THE COURT: Well, you have raised the issue of  
5 whether there's an investigation or not. Correct, Ms. Cain?

6 MS. CAIN: Yes, Your Honor.

7 THE COURT: I am going to overrule the objection.  
8 Go ahead.

9 BY MR. DAVY:

10 Q As a reminder, my question was whether you  
11 or anyone subsequently after the use-of-force event  
12 interviewed Ms. Stringer at all?

13 A I know medical would have interviewed her.  
14 And again, we look at it --

15 Q Sorry. Before you continue. Medical would  
16 have interviewed her like about her physical condition. It  
17 would not have been part of that's also something that would  
18 have happened --

19 MS. CAIN: Objection. Counsel is testifying. He  
20 doesn't know that would be. He can ask the question.

21 THE COURT: Hold on a second. I think he was  
22 formulating a question. So let's get the question out.

23 MR. DAVY: I would be happy to rephrase, Your  
24 Honor.

25 THE COURT: And before you answer, there may be an

1 objection. I predict there could be one. So before you  
2 answer, just pause. That way, Ms. Cain, if she wants to  
3 make an objection to the question, she can do that. Let's  
4 rephrase the question.

5 MR. DAVY: Certainly.

6 BY MR. DAVY:

7 Q Let me ask it this way. After use-of-force  
8 events, my understanding is that detainees, if there's been  
9 use-of-force, are interviewed by medical as a matter of  
10 policy; is that correct?

11 THE COURT: Any objection?

12 MS. CAIN: No objection.

13 THE WITNESS: Correct.

14 BY MR. DAVY:

15 Q And so when I asked you if anyone  
16 interviewed Ms. Stringer after the use-of-force in this case  
17 and you answered medical, what you are really talking about  
18 is the by policy --

19 MS. CAIN: Objection.

20 MR. DAVY: I haven't even gotten the question out.

21 THE COURT: Let's get the question out. Don't  
22 answer the question, sir, please. What's the question?

23 BY MR. DAVY:

24 Q I am just clarifying. When you say that  
25 Ms. Stringer -- when you answered my question, you said

1 Ms. Stringer was interviewed by medical. You were referring  
2 to the by policy interview that would have happened after  
3 any use-of-force event, any use-of-force event that happened  
4 in the facility; is that correct?

5 THE COURT: Is there an objection?

6 MS. CAIN: I don't know what the question is.

7 THE COURT: Do you understand the question,  
8 Mr. Kratz?

9 THE WITNESS: I think so.

10 THE COURT: All right. If you understand the  
11 question, then you can answer it. Ms. Cain, is there  
12 another objection?

13 MS. CAIN: No. If you don't understand the  
14 question, could counsel rephrase?

15 THE COURT: I only want this witness to answer  
16 questions that he understands. If you understand the  
17 question, you can answer it. If you don't understand the  
18 question, Mr. Kratz, please let us know.

19 THE WITNESS: Let's do a read back on that one  
20 real quick.

21 MR. DAVY: I will rephrase it.

22 BY MR. DAVY:

23 Q Previously you testified to two different  
24 things; one of them is that medical interviewed Ms. Stringer  
25 after the use-of-force in this case?

1           A     I said likely, yeah.

2           Q     So you --

3           A     Should be. I don't have the documentation  
4 in front of me but that would be part of the process, yes.

5           Q     And I also elicited testimony from you that  
6 that was done as a matter of policy because medical  
7 interviews any detainee after a use-of-force event?

8           A     Correct. Yes.

9           Q     And so I was merely putting those two things  
10 together to clarify that when you said that Ms. Stringer was  
11 interviewed after the use-of-force event, you were referring  
12 to the interview that happens as a matter of policy by  
13 medical after any use-of-force event. And that's all I am  
14 asking. That's correct?

15          A     Correct.

16          Q     She was not interviewed by any of the people  
17 that you talk about undertaking investigations that you  
18 testified to before?

19          A     Again, I don't have the investigations file  
20 in front of me. So I don't know. It went quickly to the  
21 county detectives and District Attorney's Office, and they  
22 don't produce a report to me.

23          Q     So it's certainly not your testimony -- it's  
24 not within your knowledge that she was interviewed by anyone  
25 other than the medical interview?



1 MS. CAIN: Objection, asked and answered. He said  
2 he didn't know.

3 THE COURT: I am going to sustain that objection.

4 BY MR. DAVY:

5 Q Did you interview -- again, so this is all  
6 happening in the context of talking about what happened  
7 after the use-of-force event. Did you or anyone else from  
8 the facility interview any other detainees who were also at  
9 the facility?

10 A Again, I don't have the investigative report  
11 in front of me. And I don't know who the county detectives  
12 and District Attorney spoke to.

13 Q Do you know if -- let me ask this. You  
14 talked about referring it out to the District Attorney; is  
15 that right?

16 A Yes.

17 Q And you previously testified about sort of  
18 partnership or relationship between your facility and the  
19 District Attorney. Do you recall that testimony?

20 A Yes, the Memorandum of Understanding we have  
21 with the county detectives, correct.

22 Q Is it correct that anyone who works at the  
23 facility does not report to the District Attorney or anyone  
24 in the District Attorney's Office? They are fully separate  
25 entities? There's no reporting structure that crosses

1 there?

2 A We do not report to them, no. We have an  
3 agreement with them.

4 Q And the District Attorney has no supervisory  
5 authority of the prison, of the jail staff, or about any  
6 policies that the jail implements?

7 A Correct.

8 Q You talked at some length when my colleague  
9 was examining you about the risk of turning the video over.  
10 And I want to ask you some questions about that, too. We  
11 have talked a little bit about the difference between  
12 hand-held video which is the kind that we are generally  
13 talking about. The video at issue in this case is a  
14 hand-held video?

15 THE COURT: I need a yes or no so we have a nice  
16 clean record.

17 THE WITNESS: Yes.

18 BY MR. DAVY:

19 Q Hand-held video is different than video from  
20 static cameras. Is that an uncontroversial proposition?

21 A Correct. It is different from static  
22 cameras or fixed cameras, yes.

23 Q And there are several ways that's true. My  
24 sense is -- one of them -- that the handheld does not have a  
25 consistent point of view. It moves around; is that right?

1           A     Yeah. Correct. Obviously if the operator  
2 is moving, you are going to get video, take video throughout  
3 several areas of the facility.

4           Q     And so a static camera, for example, if  
5 someone knew the video from a static camera, they might have  
6 knowledge about blind spots; is that right? If someone  
7 turned over video from a static camera?

8           MS. CAIN: Objection.

9           THE COURT: What's the objection?

10          MS. CAIN: Speculative. In this case, I asked  
11 questions in this video about what it shows. He's asking  
12 about a fictional hand-held camera, what it could show. I  
13 would -- that's my objection.

14          THE COURT: The question is, "And so a static  
15 camera, for example, if someone knew the video from a static  
16 camera, they might have knowledge about blind spots; is that  
17 right? If someone turned over video from a static camera?"

18          I am going to sustain the objection to that  
19 question on the grounds that it calls for speculation  
20 insofar as we are not talking about a particular static  
21 camera. It's a very -- and I am going to sustain the  
22 objection on the grounds on the form of the question as  
23 well. Okay? Why don't you rephrase, counsel, or ask a new  
24 question?

25          MR. DAVY: I am happy to do that.

1 BY MR. DAVY:

2 Q We were talking about risks if a video gets  
3 turned over. And I will start generally and working to the  
4 video in this particular case. You also testified that  
5 turning over the video, this video or videos generally,  
6 would allow people to formulate plans or something like that  
7 to disrupt institutional security; is that correct?

8 A Correct.

9 Q But you used as examples the idea that  
10 people would create diversions that required someone to come  
11 back with a use-of-force to then allow something else to  
12 happen. Is that my understanding of your testimony  
13 correctly?

14 A That's one possible scenario, and that is  
15 something that has happened in corrections. It's something  
16 we are all trained to be aware of.

17 Q Certainly. But what you are talking about  
18 there does not require -- that has nothing to do with the  
19 content of any video; is that right?

20 A The content of the video would certainly  
21 show locations of cameras. Some of our cameras are  
22 noticeable. Some of them aren't. You don't share your  
23 camera scheme and your camera layout with the general  
24 public. That's security sensitive information.

25 Q Let me ask a couple of --

1 MS. CAIN: Your Honor, could he let Mr. Kratz  
2 finish his answer?

3 THE COURT: Were you done, Mr. Kratz?

4 THE WITNESS: I would say that let's say two  
5 offenders were contemplating doing something illicit. If  
6 they know the layout of the cameras, that they are going to  
7 go to a place where maybe the camera doesn't have the best  
8 view or maybe has an obstructed view. Again, this is one of  
9 the reasons these are security sensitive things. Video from  
10 cameras would show the locations. They would show egresses.  
11 They would show things like that.

12 BY MR. DAVY:

13 Q In that case, I am going to ask a specific  
14 follow-up question which is, you have testified at some  
15 length about what this video which again I have not seen  
16 shows. My understanding based on your testimony is that it  
17 involves officers moving from the SRT room to a particular  
18 cell, videoing what happens in a cell, and everything that  
19 happens subsequent to that; is that correct?

20 A Can I ask a question back?

21 THE COURT: Well --

22 THE WITNESS: which camera are we talking about?  
23 Talking about the handheld or talking about the static  
24 camera?

25

1 BY MR. DAVY:

2 Q We are talking about the hand-held video  
3 that is at issue here.

4 THE COURT: Do you understand the question now?

5 THE WITNESS: I do. So the hand-held video, the  
6 issue with that is that clearly illustrates our policies and  
7 procedures for plain use-of-force from the start when that  
8 camera rolls to the end when it's finished. Clearly, policy  
9 and procedure is cited. There are things in our policy and  
10 procedure that are said, the actions that happened during  
11 that time when that hand-held camera starts to the end and  
12 the finish of that would follow our policies and procedures  
13 to the letter. And again, that would expose exactly what we  
14 do to the general public.

15 BY MR. DAVY:

16 Q Let me ask a couple of questions about that.  
17 The first is presumably the detainee, even if they have not  
18 read the policy in writing, if there are, as you testified  
19 earlier, hundreds of use-of-force incidents over the course  
20 of a year, presumably detainees have some sense of how the  
21 facility responds in use-of-force events?

22 A I can't speak to what they do know or don't  
23 know. I'm sure they are observing things.

24 Q So you also testified again you sort of  
25 testified that the whole purpose here is to keep everything

1 safe and things of that nature. In the event that a  
2 detainee were to watch a use-of-force event that happened in  
3 another cell, watch a use-of-force event that happens in a  
4 day room, in a module, anywhere in the facility, these don't  
5 take -- actually, let me ask this. Use-of-force events do  
6 not happen in privacy. Other detainees can see them; isn't  
7 that right?

8 A Well, depending on where the location is,  
9 yeah, it could happen in the middle of a day room full of 50  
10 or 60 offenders.

11 Q Right. Exactly.

12 A Could. It could happen in a supply closet.  
13 You don't know.

14 Q Certainly. But it is not -- it is the case  
15 that at least some use-of-force events of the hundreds that  
16 happen per year happen where other detainees can see them?

17 A That's correct.

18 Q And so when they are watching these, they  
19 are seeing the way that the SRT team or a planned  
20 use-of-force event, the team that does that, they can see  
21 that in realtime?

22 A They can see part of it. Again, they are  
23 not going to be seeing the video done in the SRT ready room  
24 when they are getting suited up. They are not going to see  
25 the instructions. They are not going to see those things.

1 Q Certainly. In that case, I have a very  
2 specific follow-up question which is that I am assuming the  
3 instructions that are given in the SRT ready room are at the  
4 very beginning of the video?

5 A Yeah, and throughout, yeah.

6 Q No. I am saying, the instructions that are  
7 given in the ready room are at the very beginning of the  
8 video?

9 A Generally, yes.

10 Q I guess a couple of other questions here.  
11 If a detainee experiences a use-of-force event, they  
12 certainly talk to other detainees about that experience.  
13 They are allowed to do that?

14 MS. CAIN: Objection.

15 THE COURT: What's the objection?

16 MS. CAIN: Relevance.

17 THE COURT: Mr. Davy, why is that relevant?

18 MR. DAVY: He testified that these are policies  
19 that no one in the facility could possibly know if they  
20 don't see the video.

21 MS. CAIN: Objection. That's mischaracterization  
22 of Mr. Kratz's testimony.

23 THE COURT: I am listening to the testimony so I  
24 can recall the testimony. Go ahead. Continue, Mr. Davy.

25 MR. DAVY: I was saying he's testifying about what



1 could be within a detainee's knowledge, speculating about  
2 what they might do with that knowledge. And I'm trying to  
3 establish whether or not there are other ways they could  
4 obtain that knowledge.

5 THE COURT: Ms. Cain?

6 MS. CAIN: I want to add on to my objections. One  
7 was relevance. Two was -- I forgot the second one. But now  
8 it's speculation. Mr. Kratz is the director, not an inmate.  
9 How is he to speak to what an inmate is thinking? The  
10 second one was mischaracterization, Your Honor.

11 THE COURT: All right. I have noted all of those.  
12 The question was, "If a detainee experiences a use-of-force  
13 event, they certainly talk to other detainees about that  
14 experience. They are allowed to do that?" So the question  
15 is, are they allowed to do that. Is that the question?

16 MR. DAVY: Yes.

17 THE COURT: So given that's the question, I am  
18 going to overrule the objections. Sir, can you answer,  
19 please?

20 THE WITNESS: Again, we have no restrictions on  
21 what one offender can speak about with another offender.

22 BY MR. DAVY:

23 Q Thank you. I am assuming that includes if a  
24 team uses OC spray or something, a detainee is allowed to  
25 say that OC spray was used?

1           A     Again, we can't restrict what an offender  
2 tells anyone really.

3           Q     Certainly. People or detainees in the  
4 facility are aware that, for example, OC spray may be used  
5 in a use-of-force event?

6           A     I can't speak to what they are aware of but  
7 it's prison. It's jail. I mean, there's OC on people's  
8 belts.

9           Q     Actually, just so I am clear, so you  
10 testified that people have it -- officers have it on their  
11 belts. Isn't it also true that at intake people are  
12 asked --

13           MS. CAIN: Objection.

14           THE COURT: I have to get the whole question. We  
15 are not going to laugh. Let's get the whole question out so  
16 that I can address the objection. What's the entire  
17 question, Mr. Davy?

18           MR. DAVY: The entire question is, isn't it true  
19 that at intake people are asked about allergies to OC spray  
20 because if they are allergic to any of the ingredients in it  
21 the officers are instructed not to use OC spray with those  
22 individuals; isn't that correct?

23           MS. CAIN: Objection.

24           THE COURT: What's the basis for the objection?

25           MS. CAIN: Relevance.

1 THE COURT: And, Mr. Davy, why is this question  
2 designed to elicit relevant evidence?

3 MR. DAVY: I am just establishing that prisoners,  
4 detainees and anyone at the facility likely know that OC  
5 spray may be used in a use-of-force event based on contact  
6 and we do not need to see a video to know that.

7 THE COURT: Anything else, Ms. Cain?

8 MS. CAIN: Yes, Your Honor. As I understood  
9 counsel's question, he was asking about intake and whether  
10 or not someone is allergic.

11 THE COURT: Specifically to the OC spray.

12 MS. CAIN: Exactly. So we are here today for a  
13 right-to-know request involving a video and not intake and  
14 any allergies involving OC spray.

15 THE COURT: I agree that the sources of other  
16 information, sources of what information may or may not be  
17 on this video beyond the video itself is relevant. So I am  
18 going to overrule the objection, and I will allow Mr. Kratz  
19 to answer that question.

20 THE WITNESS: So first I want to correct  
21 something. Officers in general do not carry OC spray. Our  
22 special response officers and our supervisors carry the OC  
23 spray. So not everybody does. And then moving to the  
24 allergy question, again, that is not something security  
25 asks. They get a medical screen when they come in. I don't

1 know of anybody that's ever had an allergy to OC spray. I  
2 don't know if it's even possible. So --

3 BY MR. DAVY:

4 Q You testified earlier that force is intended  
5 at least in part as a deterrent where for detainees to know  
6 that force will be used in some circumstances isn't intended  
7 to deter possible misconduct in the facility. Is that a  
8 fair characterization of what you testified earlier?

9 A I would say that it's not a deterrent. I  
10 never said that use-of-force is a deterrent. I said at  
11 times when a team is suited up, that show of force may  
12 result in a better outcome than actually having to go  
13 hands-on.

14 Q Certainly. And I appreciate that particular  
15 clarification. But the point is, is it fair to say that the  
16 knowing that force might be used in response to certain  
17 actions and knowing that it has been used in response to  
18 certain actions in the past is intended to deter that sort  
19 of conduct in the moment; is that right?

20 MS. CAIN: Objection.

21 THE COURT: What's the objection?

22 MS. CAIN: Relevance and also mischaracterization  
23 of Mr. Kratz's prior testimony.

24 THE COURT: I recall his testimony. Mr. Davy?  
25 why is this question relevant?

1           MR. DAVY: We are talking on his direct. He was  
2 sort of speculating about the particular risks of people  
3 seeing what happens on videos. And I am just sort of  
4 talking about exactly what the nature of those risks and  
5 whether there are other things that are going on here that  
6 would allow people to know regardless.

7           THE COURT: I recall Mr. Kratz's testimony  
8 relating to certain things being what he identified as  
9 prophylactic in nature. So based upon that, I am going to  
10 overrule the objection, and I will allow him to answer the  
11 question. Go ahead.

12 BY MR. DAVY:

13           Q       Again, just to repeat the question. Knowing  
14 that force might be used in response to a detainee --  
15 knowing that force might be used in response to certain  
16 actions -- knowing that it has been used in response to  
17 certain actions in the past is intended to deter conduct in  
18 the moment; is that right?

19           A       Again, I can't speak to the intent. I can  
20 speak to the policy and procedure. Again, we follow our  
21 policies and procedures. If this situation is X, we respond  
22 with X. So again, is it a deterrent factor? I can't speak  
23 to what's going on in someone's head. I can't speculate as  
24 to what offenders may or may not be thinking. Is it a  
25 deterrent? Is it going to cure good behavior? I don't

1 know.

2 Q But to the extent it is serving some sort of  
3 prophylactic or deterrent effect, wouldn't you want  
4 detainees to know that force including, for example, OC  
5 spray might be used if they engage in certain behaviors?

6 A Again, there's consequences to behaviors.  
7 But what they do not need to know is our policies and  
8 procedures. If you are speeding, there are consequences to  
9 that. You may get pulled over. You may get a ticket. If  
10 you are in a jail and you are acting out, if you are  
11 assaulting someone, there's consequences to those actions.  
12 Those consequences are use-of-force. It's not, again, is it  
13 a deterrent? I don't know. I can't speak to that. I would  
14 think it is.

15 Q Sure. But when I speed, I know what the  
16 speed limit is and either choose to follow it or choose not  
17 to. To the extent there is a relationship between actions  
18 and consequences, isn't it true that it helps to know what  
19 the consequences of certain actions are?

20 MS. CAIN: Objection.

21 THE COURT: I am going to sustain that objection  
22 because now we are getting into other people's minds. Okay?

23 MR. DAVY: Certainly. I will withdraw that. Give  
24 me a couple of seconds.

25 THE COURT: Go ahead.

1 BY MR. DAVY:

2 Q So you were talking -- I want to come back  
3 and ask a couple of questions about the relationship of the  
4 facility with the DA's Office. You talked about, I believe  
5 you testified that officers are able to request warrants; is  
6 that correct? By virtue of referring out to the DA?

7 A So our chief investigator and our two  
8 investigators, they will file charges, yes. They have the  
9 ability and the authority to file charges.

10 Q When you say file charges?

11 A Go to the District Court and file charges.

12 Q And when you testified about requesting  
13 warrants, what exactly was that in reference to?

14 A Again, it's similar to police work. If a  
15 police officer is doing an investigation in drug use, they  
16 go to the Court. They file their charges. Either seek an  
17 arrest warrant and go through the criminal process. It's  
18 the same for us. Our investigators can file criminal  
19 charges for offenses that happened inside the facility.  
20 Escape, walk-away from community corrections center. Our  
21 investigator files those escape charges at the District  
22 Magistrate level, and then they see it all the way through  
23 the Court of Common Pleas.

24 Q Have these individuals filed any charges  
25 other than escape or walk-away?

1 A Yes.

2 Q How often does that happen?

3 A I don't have the statistics in front of me.  
4 I wouldn't be able to speak intelligently.

5 Q So you also talked about with the video that  
6 was at issue in this particular situation that it was  
7 reviewed internally. And then the quote that I wrote down  
8 was you determined it was best to have an independent set of  
9 eyes on it; is that right?

10 A Correct. And let me be clear. I was not  
11 the director at the time. I was the deputy director at the  
12 time this occurred, and I was involved in the discussion  
13 with the director. And again, we decided to expedite it  
14 because of the inquires over to the District Attorney's  
15 office as quickly as possible.

16 THE COURT: Can I just get a point of  
17 clarification based upon the testimony?

18 MR. DAVY: Yes.

19 THE COURT: Did you review the video personally?

20 THE WITNESS: I did.

21 THE COURT: Thank you.

22 MR. DAVY: Can I ask a clarifying question based  
23 on that?

24 THE COURT: It's your cross-examination. I just  
25 thought that's what he said. I just wanted to make sure



1 that I was clear on the testimony. Thank you.

2 BY MR. DAVY:

3 Q Sir, did you review that -- to the extent  
4 that you personally reviewed the video, did you review it  
5 before or after the right-to-know request made in this case?

6 A After. I don't review routinely  
7 use-of-force reports and issues. That's done and only  
8 brought to my attention if it's something that's rising to  
9 the level of going to the county detectives or criminal  
10 investigation or civil rights violations.

11 Q Do you consider a right-to-know request to  
12 be a civil rights violation?

13 MS. CAIN: Objection.

14 THE COURT: Counsel, what's the objection?

15 MS. CAIN: Relevance. And also he's asking  
16 Mr. Kratz to form a legal opinion.

17 MR. DAVY: We can read his answer back. I was  
18 just trying to understand to clarify his answer a little  
19 bit.

20 THE COURT: His answer was, "After. I don't  
21 review routinely use-of-force reports and issues. That's  
22 done and only brought to my attention if it's something  
23 that's rising to the level of going to the county detectives  
24 or criminal investigation or civil rights violations."

25 MR. DAVY: And he had testified that he reviewed

1 this after.

2 THE COURT: I understand. Why don't you rephrase  
3 your question, counsel?

4 BY MR. DAVY:

5 Q When you testified about situations in which  
6 you would have reviewed it, right-to-know is in that  
7 category of things that might prompt you to look at  
8 something?

9 A In this particular case, it did not. I  
10 reviewed it after because I wanted to speak intelligently  
11 today in court. Again, it's not something routinely that  
12 would rise to my level unless there was a criminal incident  
13 involved or civil rights violation. Then it would come to  
14 my desk.

15 Q Is it fair to say that if someone makes a  
16 right-to-know request for a video that someone from either  
17 your office or someone from the county will review the video  
18 if the video has not previously been reviewed?

19 A Yes. Somebody would review it in  
20 preparation for sending it over to the law department or the  
21 law department will make the decision on the open records.  
22 That's not done at my level. That's not done at the  
23 Department of Corrections.

24 Q I am going to come back to -- I am almost  
25 done. I am going to come back to the video at issue in this

1 particular case. You testified that it shows access points.  
2 Is that because you are talking about video that includes  
3 some use from static cameras and some from the handheld?

4 A So when we are talking about the handheld,  
5 again, you are seeing our policies and procedures come to  
6 life. And that's where the violation of the safety stuff  
7 comes into play. We talked about speeding, and you said you  
8 expect to get a ticket. Well, at that moment in time, you  
9 are getting your ticket. But you are not seeing the whole  
10 policies and procedures of the police department, the  
11 preparation that goes into what happened. So we, again, you  
12 are seeing secured areas in the facility. You are going  
13 through policies and procedures that are security sensitive.

14 Q Sir, I understand that. But I want to be  
15 very clear. My question was about access points. This  
16 question is about access points. And you testified that the  
17 video shows access points?

18 A It does.

19 Q When you talk about access points, first  
20 want to establish that you are talking about doors that go  
21 out of the facility?

22 A It's showing doors and sally ports and  
23 hallways and areas that are not part of the general housing  
24 unit, yes.

25 THE COURT: Did you say sally ports?

1 THE WITNESS: Yes.

2 BY MR. DAVY:

3 Q Just to be clear, that is because the video  
4 you are referring to the hand-held video just to be very  
5 clear?

6 A Correct.

7 Q And that is because the hand-held video is  
8 on while the officers are going from the SRT room to the  
9 cell; is that right?

10 A Correct.

11 Q And so if we were talking about the video,  
12 let's say, from when they get to the cell door, it is not  
13 showing any access points; is that right?

14 A When they get to the cell door, no.

15 Q And when they get to the cell door, the  
16 video is not showing any other detainees; isn't that right?

17 A Correct.

18 Q When they get to the cell door, it's not  
19 showing entry into accessible areas; isn't that right?

20 A Correct.

21 Q And when they get to the cell door, it's not  
22 showing the locations of any other cameras; isn't that all  
23 correct?

24 A Correct.

25 Q My last set of questions. You talked about

1 again you were sort of speculating about what other  
2 detainees might do if they were able to see these videos.  
3 And you talked about how again things that I wrote down.  
4 Repeat offenders know through experience. They know when  
5 they are going to suit up a team. They know they are going  
6 to use video. They could use that to try to create a  
7 diversion. They might --

8 MS. CAIN: Objection. Is there a question?

9 THE COURT: Well, I am going to let him finish.  
10 There might be an objection to the form. But let's let the  
11 question get out before we make the objection, in large part  
12 so that we have a nice clean record and my court reporter  
13 can take down one person at a time.

14 MS. CAIN: Yes, Your Honor. I apologize.

15 THE COURT: That's okay. Finish your question,  
16 counsel.

17 MR. DAVY: Thank you.

18 BY MR. DAVY:

19 Q I am just trying to clarify your testimony.  
20 And for the purposes of a clean record, I am going to start  
21 from the beginning again. You testified that repeat  
22 offenders know through experience about use-of-force. And  
23 you were speculating that if they know that someone is going  
24 to, you said, suit up a team or know when they are going to  
25 use a video, might allow them to create a diversion. And

1 you testified that they might attempt to create a diversion  
2 during, for example, a medical emergency. Is all of that  
3 correct?

4 MS. CAIN: Objection. Compound question and also  
5 calls for speculation.

6 THE COURT: He's asking this witness if he  
7 actually testified to that. So the witness is going to know  
8 and he asked if all of that was correct. So I am going to  
9 overrule the objection. You were just asked whether all  
10 those things that were set forth on the record are things  
11 that you testified to. Did you testify to all of those  
12 things, sir?

13 THE WITNESS: Can we read back what the specific  
14 things are? Sorry. I apologize.

15 THE COURT: You want to break it down, counsel?

16 MR. DAVY: Certainly. I will do it in pieces.

17 THE COURT: Thank you.

18 BY MR. DAVY:

19 Q First, is it true that you testified that,  
20 as you said, repeat offenders know through experience how to  
21 create diversions; is that correct?

22 A I would say they would have more knowledge.  
23 It's possible, yes.

24 Q You also testified that if they know when a  
25 team is going to be suited up or know that a team is going

1 to use video, that would potentially help them create a  
2 diversion. You testified to that?

3 A Correct. It's happened in the past. Yes.

4 Q And you also testified that people might  
5 create diversions during medical emergencies and that that  
6 maybe has happened in the past. You testified to that?

7 A That is absolutely one thing we are trained  
8 for as correctional professionals that people will use your  
9 policies, your procedures, the things they think they know  
10 to create diversions so escapes can happen. Things that you  
11 are drawing manpower from one area to another.

12 Q Certainly. And so I just want to ask. All  
13 of these things that you testified have happened, happened  
14 despite the fact that no videos were turned over previously  
15 and they didn't rely on seeing videos to do and know those  
16 things. Isn't that right?

17 A Again, we don't want to make it easy for  
18 anybody.

19 Q But I am just asking you a yes or no  
20 question.

21 A Can you rephrase that for me?

22 Q All of those things that we just talked  
23 about, people did and knew those things even without video  
24 being released previously. Isn't that correct?

25 A That's correct, yeah.

1 MR. DAVY: I have nothing further.

2 THE COURT: All right. Do we have redirect?

3 MS. CAIN: Yes.

4 THE COURT: Before I have you do redirect,  
5 Mr. Davy, are you going to have direct examination of this  
6 witness?

7 MR. DAVY: I have gotten what I want to get out.  
8 I think it's possible I may ask for recross depending on  
9 what comes out.

10 THE COURT: You may ask for recross after  
11 redirect.

12 MR. DAVY: Yes.

13 THE COURT: I am just trying to use our time  
14 wisely. You have all the time you want to make your record.  
15 I am not going to rush anybody. Ms. Cain, you have some  
16 redirect?

17 MS. CAIN: Yes, Your Honor.

18 THE COURT: Go ahead.

19 REDIRECT EXAMINATION

20 BY MS. CAIN:

21 Q Mr. Kratz, let's try to nail down county  
22 structure. Is the DA's Office separate from the DOC?

23 A Yes.

24 Q Is the District Attorney an elected  
25 official?



1 A Yes.

2 Q Is he in charge of the District Attorney's  
3 office?

4 A I assume so, yes.

5 Q Are you the director of the Department of  
6 Corrections?

7 A I am.

8 Q Do you oversee the Department of  
9 Corrections?

10 A I do.

11 Q Is the Department of Corrections under the  
12 authority of the Commissioners?

13 A I mean, I report to Margaret McKeivitt, the  
14 Chief Operating Officer of the County. That's my boss. The  
15 Commissioners have oversight and authority. The Prison  
16 Oversight Board has oversight and authority over some  
17 functions of the prison.

18 Q You were hired by the Commissioners -- were  
19 you hired by the Commissioners?

20 A I was hired by the Commissioners and  
21 approved by the Prison Oversight Board.

22 Q Is there a difference in this county between  
23 a row office and a department within the county?

24 A Yes.

25 Q If you know?

1 A To my knowledge, yes, yes.

2 Q Do you have independent investigatory power  
3 as a Department of Corrections?

4 A We do, yes.

5 Q Do you have independent law enforcement  
6 power as a Department of Corrections?

7 A We do.

8 Q Is there a Memorandum of Understanding  
9 between the Department of Corrections, the Bucks County  
10 District Attorney's Office that memorializes the  
11 relationship between the two offices?

12 A There is.

13 Q Are you familiar with this Memorandum of  
14 Understanding?

15 A I am.

16 Q If I were to show it to you right now, would  
17 you recognize it?

18 A I would, but I need my reading glasses which  
19 are sitting over on my papers. I apologize for that.

20 MS. CAIN: Your Honor, may I have this shown to  
21 the witness?

22 THE COURT: Let's mark it.

23 MR. DAVY: I would like a copy of that.

24 THE COURT: We will get you a copy. We will mark  
25 this as P-1.

1 MS. CAIN: Yes, Your Honor.

2 THE COURT: You want Mr. Kratz to look at P-1?

3 MS. CAIN: Yes.

4 THE COURT: We will give him P-1.

5 THE WITNESS: Yes. This is the Memorandum of  
6 Understanding.

7 BY MS. CAIN:

8 Q What agreement does this MOU memorialize?

9 A This MOU was created as what we feel was the  
10 best practice. Our investigators have the authority to file  
11 charges. I mean, it's plain and simple. They have a PG  
12 number, the ability to file charges. We feel it's the best  
13 practice to again have an external agency involved. It just  
14 keeps everybody honest. It keeps everybody clean. So with  
15 review and respect to that, the county detectives will  
16 assist us and cofile our complaints. It's not an uncommon  
17 practice for Criminal Complaints to be cosigned and cofiled.

18 MS. CAIN: Your Honor, I would like to move this  
19 into evidence, P-1.

20 MR. DAVY: No objection at all.

21 THE COURT: P-1 is admitted by agreement.

22 (Exhibit Number P-1 was admitted.)

23 BY MS. CAIN:

24 Q Mr. Kratz, you said PG number. What is a PG  
25 number?

1           A     It's similar to a MPOETC number that a  
2 police officer has. It's a prison investigatory number.

3           Q     What is a MPOETC number?

4           A     Again, I am not an expert in police work.  
5 But it's what allows a police officer to file charges. They  
6 put that on their Criminal Complaints. Our investigators  
7 have PG numbers. They use that to file.

8           Q     Where do they file them? The charges?

9           A     If something happens in Bucks County Prison,  
10 it gets filed in Magisterial District Justice Douple's  
11 office.

12          Q     Is a Magisterial District Court the same  
13 place a District Attorney would file charges?

14          A     I'm assuming so, yeah.

15          Q     Let's go back to this Memorandum of  
16 Understanding. Are you familiar with the Commissioners'  
17 agenda?

18          A     Yes.

19          Q     Let's clarify video versus videos. What is  
20 your -- in the Department of Corrections, what type of video  
21 do you have access to?

22          A     Me personally?

23          Q     Let me rephrase. What is a static view from  
24 a camera?

25          A     Static view from a camera would be a wall or

1 a ceiling or concealed mounted camera in the facility. That  
2 feeds to a DVR system. Part of our life safety system.  
3 Static camera could also mean a camera that has pan, tilt,  
4 and zoom capabilities that's mounted, hard mounted someplace  
5 in the facility.

6 Q And what is a hand-held camera?

7 A Essentially it's exactly what it sounds  
8 like. We use a GoPro, I believe, or some derivative of a  
9 GoPro when we need hand-held camera availability.

10 Q In a use-of-force event, what is used?  
11 Handheld or static camera?

12 A So again, the static cameras, they run  
13 constantly. The planned use-of-force, when we have the  
14 luxury and the time, we will pull that hand-held camera as  
15 well so you can have a complete record and the best record  
16 possible of the actions that were taken.

17 Q Before this in preparation for this hearing,  
18 did we review the video?

19 A We did.

20 Q What was the video?

21 A It was the cell extraction from start to  
22 finish.

23 Q Where did that video come from?

24 A The ones we looked at today were the GoPro  
25 videos, yes.

1 Q Are you aware of any static footage that was  
2 pulled in this use-of-force event?

3 A I am not.

4 Q Now, at the beginning of the use-of-force  
5 event, generally, what type of commands are issued?

6 A Again, I think you are getting into the  
7 policy and procedures a little tight. We give a briefing to  
8 the officers essentially about what to expect, why we are  
9 doing this, and, again, what their assignments are. When  
10 you are looking at a four- or five-man team, everybody needs  
11 to know what they are doing.

12 Q Is there an exit, an egress in the view of  
13 this video?

14 A There is.

15 Q What happens -- what do you see when they  
16 move from the SRT room generally?

17 A Generally, so again, I would have to look at  
18 this video a little more closely. Generally you try to  
19 maintain uninterrupted and you follow the team to the area  
20 down the hallway into the module and then you start your  
21 process.

22 Q In this, when we reviewed it, were there  
23 correctional officers on this video?

24 A Yes.

25 Q Did we see inmates in this part of the

1 video?

2 A In the movement we did, yes, when we moved  
3 in and when we went into the module, yes.

4 Q Did we see egresses?

5 A Yes.

6 Q Did we see blind spots that wouldn't be  
7 available --

8 MR. DAVY: Your Honor, I want to object to this.  
9 This is all asked and answered on both direct and cross.

10 THE COURT: I am going to overrule that objection.  
11 Go ahead.

12 BY MS. CAIN:

13 Q Do we see -- do you see blind spots that  
14 might not be typically known?

15 A Yes, you see spots that aren't covered by  
16 static cameras.

17 Q Do you see -- now when you finally get to  
18 the cell, do you see the layout of the cell?

19 A You see the layout of the module of the  
20 cells, yes.

21 Q Do you see how that cell relates to  
22 everything else in that vicinity?

23 A Yes.

24 Q And do you see the inmate on that?

25 A Yes.

1 Q Do you see other COs?

2 A Yes.

3 Q Do you see your COs following -- do you see  
4 COs following the SOP and the policies regarding  
5 use-of-force events?

6 A Yes.

7 MR. DAVY: Your Honor, my objection to that is  
8 solely because it presumes they were following policy. I  
9 just want to note that for the record.

10 THE COURT: With that, I am going to overrule the  
11 objection. I am going to allow him to answer the question.  
12 I understand the question to the extent it implies they  
13 were, in fact, following all the policies. That's not a  
14 determination I am making based upon the answer to this  
15 question. Go ahead. If you are asking that question, be  
16 very specific.

17 MS. CAIN: Yes, Your Honor.

18 THE COURT: Go ahead. You can answer the  
19 question.

20 THE WITNESS: Can you just repeat that for me,  
21 please?

22 BY MS. CAIN:

23 Q I will repeat it. I will try to rephrase it  
24 so I don't presume an answer. What, if anything, is -- what  
25 do you see -- what behavior do you observe of the COs while



1 they are in the cell?

2 A Again, carrying out policies and procedures.  
3 Doing what they have been assigned to do through the  
4 standard operating procedures and the policies and  
5 procedures that are in effect for cell extractions or cell  
6 entries.

7 Q Now, in a use-of-force event, are there --  
8 describe force. What is force? What could it be?

9 A I mean, force starts with officer presence.  
10 Just by having a uniformed officer in an area, you are using  
11 some type of force. There's a use-of-force continuum. And  
12 again, all law enforcement agencies have one. And it goes  
13 through the various levels of force starting with officer  
14 presence all the way up to lethal force.

15 Q Is touching or tapping an inmate considered  
16 force?

17 A It can be.

18 Q And punching an inmate is considered force?

19 A Well, we don't punch inmates.

20 Q Hit. Like you said, there's a continuum of  
21 force?

22 A Correct.

23 Q I apologize for this question. Is a video  
24 different than an eye witness account?

25 A Your video really only has one perspective.

1 A person who is holding the camera. You may not see what  
2 the other four people's vantage point and perspective are  
3 during use-of-force.

4 Q Can a video be viewed more than once? Like  
5 could you rewatch it?

6 A Yes.

7 Q As for the security of the building, what  
8 would happen if the public -- and that includes reformed  
9 inmates -- had access to a video they could rewatch?

10 MR. DAVY: Your Honor, that calls for just a ton  
11 of speculation.

12 THE COURT: I am going to sustain the objection to  
13 that particular question.

14 BY MS. CAIN:

15 Q In your experience as the director of  
16 corrections, would the release of a video threaten the  
17 physical security of a building, of your building?

18 MR. DAVY: Objection. Calls for the same -- it  
19 calls for the same speculation. I make the same objection.

20 THE COURT: I am going to sustain the objection to  
21 that particular question.

22 BY MS. CAIN:

23 Q Mr. Kratz, if somebody were to -- general  
24 public, inmate -- watch this video, could they see the  
25 egresses, the exits and the entrances of the SRT room?

1 A They could.

2 Q Could they hear and rewatch the commands  
3 that are taught based on the policy and procedure?

4 A They would.

5 Q Could a person, anybody, general public then  
6 see the cell in relation to other parts of the facilities?

7 A Yes.

8 Q Could somebody watch it in the general  
9 public, study, and then rewatch where blind spots are?

10 A Yes.

11 Q Could they see where static cameras are?

12 A Yes.

13 Q And they can hear the commands given?

14 A Yes.

15 Q And they can see all of the other inmates in  
16 that video?

17 A Yes.

18 Q They could see Ms. Stringer?

19 A Yes.

20 Q And they could see -- could they see other  
21 cos?

22 A Yes.

23 MS. CAIN: One moment, Your Honor. Your Honor,  
24 that is all.

25 THE COURT: Recross?

1           MR. DAVY: Three questions or three potentially  
2 with follow-up but three questions.

3 RE-CROSS-EXAMINATION

4 BY MR. DAVY:

5           Q       Mr. Kratz, I will be efficient. The first  
6 is you just testified that in response to questioning what  
7 they could see the layout of a cell in the video; is that  
8 right?

9           A       That's correct.

10          Q       It's true that anyone in the jail including  
11 anyone who is literally in the cells can see the layout of  
12 those cells; isn't that right?

13          A       Correct.

14          Q       The second thing is, I just want to ask a  
15 clarifying question which is you were talking about the  
16 videos. You were talking about what you reviewed in advance  
17 of the hearing today. And you referred, sounded like you  
18 said in plural, ones, videos, ones that were GoPro videos.  
19 Is there more than one GoPro video of the events in question  
20 in this case?

21          A       There should only be the one GoPro video,  
22 and I have not looked in the investigation file. We don't  
23 have two GoPros, so I would find it hard that we would have  
24 two hand-held videos.

25          Q       My last question is, do you still have that

1 Memorandum of Understanding in front of you?

2 A I do.

3 Q You testified about independent  
4 investigatory power and independent law enforcement power.  
5 Do you remember testifying about that?

6 A Yes.

7 Q Do you see in the second paragraph here -- I  
8 will read you a sentence. It says, upon review and approval  
9 of criminal charges by an attorney from the Office of the  
10 District Attorney, a Criminal Complaint may be filed using  
11 the ORI of the Bucks County Office of the District Attorney  
12 Detectives. Do you see that?

13 A I do.

14 Q Do you see the next sentence? The  
15 Department of Corrections shall have no independent  
16 authority or authorization to file a Criminal Complaint; is  
17 that right?

18 A Yeah, correct. I am reading what you are  
19 saying.

20 Q But that's --

21 MS. CAIN: Your Honor --

22 THE COURT: Hold on. Can't all talk at the same  
23 time. So the witness was in mid sentence. We will let him  
24 answer the question. Ms. Cain, was that the concern?

25 MS. CAIN: Yes, Your Honor.

1 THE COURT: Go ahead.

2 THE WITNESS: The review of the criminal charges  
3 by the attorney from the DA, that's law enforcement. My  
4 understanding is that police officer complaints have to be  
5 reviewed and approved by the DA. So anytime you are filing  
6 a criminal charge, that needs to be done.

7 The reason for the condensation of the ORI in  
8 using the District Attorney, again, this Memorandum was from  
9 2009. I was only a sergeant at the time, but I was involved  
10 in central booking. My recollection was that there was fees  
11 associated with these ORIs.

12 So by condensing that, because of the small number  
13 of charges the Department of Corrections filed, in addition  
14 to having that second set of independent eyes on it, we used  
15 their ORI which requires them just to cosign so we can use  
16 that to file the Criminal Complaints.

17 BY MR. DAVY:

18 Q I will ask an additional clarifying  
19 question. You said this is from 2009. Is this the active  
20 MOU?

21 A Yes. There was no expiration date when this  
22 was signed.

23 Q This is currently in force?

24 A Correct.

25 Q Even if it's from 2009, when you were a

1 sergeant, this has been the policy, the Memorandum of  
2 understanding, throughout all of your positions?

3 A Correct. But as a sergeant, I really didn't  
4 have as much interaction with this policy.

5 Q Certainly. I just want to focus on the one  
6 sentence. The Department of Corrections shall have no  
7 independent authority or authorization to file a Criminal  
8 Complaint. Do you see that sentence?

9 A I do.

10 MR. DAVY: I have nothing further.

11 MS. CAIN: Can I follow up on that last point?

12 THE COURT: Go ahead.

13 MS. CAIN: It will be brief.

14 BY MS. CAIN:

15 Q Mr. Kratz, does this Memorandum of  
16 understanding contain all of the investigatory power at the  
17 Department of Corrections disposal?

18 A It doesn't.

19 Q Is there --

20 A We theoretically could dissolve this and go  
21 back to -- revert back to using our own ORI. Going back to  
22 that sentence where it says the Department of Corrections  
23 has no independent authority or authorization to file a  
24 complaint, you hit the comma, and it says or use the ORI of  
25 the Bucks County District Attorney Detectives. The reason

1 that we team up with them when we file, again, is we are  
2 using that ORI. It's not because they have the inability to  
3 do it on their own. It's because we have condensed that ORI  
4 into one county ORI.

5 Q So you only use this Memorandum of  
6 Understanding -- well, do you only use this Memorandum of  
7 Understanding when you are cofiling charges with the  
8 District Attorney?

9 A Yes, yes. Because, again, we need that ORI  
10 to file the charges.

11 Q Does this Memorandum of Understanding only  
12 apply to the relationship between when there's a shared  
13 relationship or a shared matter between the Department of  
14 Corrections and the District Attorney?

15 A So, again, our investigating team decides  
16 that charges are going to be filed. They approach the  
17 District Attorney's Office. Get the District Attorney  
18 approval. And then we file the charges. And, again, we use  
19 their ORI, originating identifier number.

20 Q Outside of this agreement --

21 MS. CAIN: Your Honor, I am done.

22 THE COURT: Anything else, Mr. Davy?

23 MR. DAVY: No further questions.

24 THE COURT: Mr. Kratz, you may step down.

25 After our brief conference, I gave counsel an



1 opportunity to discuss if they had an agreement as to how  
2 they wished to proceed regarding submitting supplemental  
3 briefs and making argument today.

4 AS I said, if you want to make oral argument  
5 today, that's fine, and submit supplemental briefs, that's  
6 fine. And I may potentially need argument after the briefs  
7 are supplemented. I want to move this forward. Did the two  
8 of you have a conversation about what you wanted to do and  
9 what the time is you each needed to do that?

10 MR. DAVY: Yes, Your Honor.

11 THE COURT: And --

12 MR. DAVY: My understanding, again, correct me if  
13 I'm wrong, we are going to get the transcript from this  
14 hearing, at which point my colleague will have two weeks  
15 from getting the transcript to file a supplemental brief.  
16 We will take two weeks to respond. This will all happen  
17 extremely rapidly. I think our shared sense is that if it's  
18 likely, and it seems like it might be, that that will be one  
19 of their main arguments here, that it makes sense to have  
20 oral argument after all briefing before Your Honor so as not  
21 to waste anyone's time. So I think that's our sense.

22 THE COURT: Ms. Cain, are you in agreement with  
23 all of that?

24 MS. CAIN: Yes. And when we spoke earlier, we  
25 spoke in the abstract. If you would like us to put dates

1 together?

2 THE COURT: I think it would be helpful. After  
3 you get the transcript, submit a joint Proposed Order to  
4 chambers. Put the dates in, the two weeks and two weeks.  
5 And that way we can calendar it and nothing falls through  
6 the cracks.

7 MR. DAVY: The only other thing I think worth  
8 talking about today, you had mentioned when we were all  
9 talking earlier about an in-camera review.

10 THE COURT: You are reading my mind as to the next  
11 thing I want to raise.

12 MR. DAVY: In that case, I will leave that to you,  
13 Your Honor.

14 THE COURT: I had raised in conference whether  
15 counsel were in agreement as to the Court doing an in-camera  
16 review of this video. I believe Mr. Davy had no objection  
17 to that. Am I correct?

18 MR. DAVY: Not only do I have no objection, Your  
19 Honor, I would actively request that you do it if you had  
20 not independently thought about doing it.

21 THE COURT: And as far as the County of Bucks,  
22 Ms. Cain, what is your position on that?

23 MS. CAIN: Could we have 24 hours to review  
24 something before we give a response so that we can let  
25 chambers know in an email and CC counsel with our response?

1 THE COURT: I think that's a reasonable request.  
2 I don't have a problem with that. I understand Mr. Davy's  
3 position. I will ask the County to get back to chambers by  
4 Monday. By the end of business on Monday. Send the  
5 response. The position. I want this to be on the record.

6 I really don't like -- unless it's by agreement, I  
7 don't like things to come by email. So why don't you do it  
8 by letter? Obviously copy Mr. Davy on it. You can send the  
9 letter by email. Obviously he will be copied on the email.  
10 And we will go from there.

11 I may get you both on the phone with the court  
12 reporter just to get the position on the record. If there  
13 is going to be an objection, then I will give you an  
14 opportunity to make argument as to your differing positions  
15 on that before I make a decision.

16 I realize this is not something you may have  
17 expected to deal with today. All right? Let's see if we  
18 have an agreement. If we don't, I will give you an  
19 opportunity to address that as well. But we will keep it  
20 going. All right. Anything else from you, Mr. Davy?

21 MR. DAVY: No.

22 THE COURT: Anything else from you, Ms. Cain?

23 MS. CAIN: No, Your Honor.

24 THE COURT: Thank you all very much.

25 (The hearing concluded at 3:33 p.m.)

C E R T I F I C A T I O N

I hereby certify that the proceedings, evidence, and rulings are contained fully and accurately in the notes taken by me in the above cause, and that this copy is a true and correct transcript of the same.

\_\_\_\_\_  
Bobbie J. Shanfelder, RMR, CRR  
Official Court Reporter

DATED: \_\_\_\_\_

The foregoing transcript of the proceedings before me is hereby directed to be filed.

\_\_\_\_\_  
DENISE M. BOWMAN, JUDGE

DATED: \_\_\_\_\_

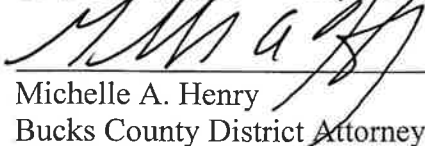
# Exhibit E

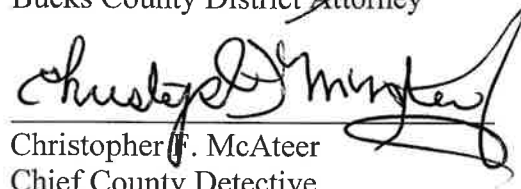
## MEMORANDUM OF UNDERSTANDING


AND NOW, this 20<sup>th</sup> day of November, 2009, it is the agreement and understanding of all parties to this Memorandum including the Bucks County Office of District Attorney and Bucks County Department of Corrections that the Originating Agency Identification Number (Hereinafter referred to as "ORI") of the Bucks County District Attorney's Office Detectives may be used for the submission of criminal complaints and/or arrest fingerprints submitted and filed by Bucks County Department of Corrections Investigators pursuant to the following procedure:

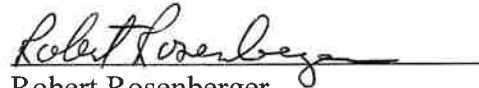
A Department of Corrections Investigator shall contact the Office of District Attorney for approval of all criminal complaints. Upon review and approval of criminal charges by an attorney from the Office of the District Attorney, a criminal complaint may be filed using the ORI of the Bucks County Office of District Attorney Detectives. The Department of Corrections shall have no independent authority or authorization to file a criminal complaint, or use the ORI of the Bucks County Office of District Attorney Detectives without prior review or approval by an attorney from the Office of District Attorney.

AND NOW, this \_\_\_\_\_ day of November the foregoing is approved and signed by the following:

  
Michelle A. Henry  
Bucks County District Attorney

  
Christopher F. McAteer  
Chief County Detective  
Bucks County Office of the District Attorney

  
Harris Gubernick  
Director of Corrections  
Bucks County Department of Corrections

  
Robert Rosenberger  
Chief Investigator  
Bucks County Department of Corrections

# Exhibit F

# 2021 PA O.O.R.D. LEXIS 1587

Commonwealth of Pennsylvania Office of Open Records

September 3, 2021

Docket No: AP 2021-0958 (Consolidated)

## *PA Office of Open Records Final Determinations*

### Reporter

2021 PA O.O.R.D. LEXIS 1587 \*

## **IN THE MATTER OF DYLAN SEGELBAUM AND THE YORK DAILY RECORD, Requester ; v. ; YORK COUNTY, Respondent**

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### **Core Terms**

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video, prison, footage, inmate, camera, disclosure, exempt, surveillance, staff, personal security, public safety, jeopardize, depict, clip, corrections officer, surveillance video, in camera, public protection, block, blind spot, vulnerability, borough, rison, surveillance system, local agency, train, gym

### **Syllabus**

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Requests sought surveillance and body camera footage of event at the County Prison on March 31, 2021. The agency proved that disclosure of the video is likely to threaten the personal security of an individual and/or public safety/protection activities. Denied

**Opinion By:** [\*1] Appeals Officer, Angela Edris, Esq.

### **Opinion**

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#### **INTRODUCTION**

Dylan Segelbaum, a reporter for the York Daily Record (collectively the "Requester") submitted two requests ("Requests") to York County ("County") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*, seeking body camera and surveillance video of an event recorded within the York County Prison ("Prison"). The County denied the Requests, arguing, among other things, that disclosure of the video would threaten personal security of prison staff and jeopardize the safety of the public. The Requester appealed to the Office of Open Records ("OOR"). For the reasons set forth in this Final Determination, the appeal is **denied**, and the County is not required to take any further action.

#### **FACTUAL BACKGROUND**

On April 30, 2021, the first Request was filed, seeking "[a] copy of all surveillance video depicting an operation that Senior Team Leader Joseph Garcia, of CSAU-1, Greenville, South Carolina, participated in at the Male Wing of [the Prison] on March 31, 2021." On May 7, 2021, the County denied the Request, arguing that disclosure of the video would threaten personal security of individuals and jeopardize public safety and protection activities of the County. 65 P.S. §§ 67.708(b)(1)(ii)-(2).



On May [\*2] 12, 2021, the second Request was filed, seeking, "all body-worn camera video from corrections officers and Senior Team Leader Joseph Garcia, of CSAU-1, Greenville, South Carolina, of an event during which prisoners were removed from their cells in the Male Wing of [the Prison] and taken to the gym for several hours on March 31, 2021." On May 19, 2021, the County denied the Request, once again citing to Sections 708(b)(1)(ii)-(2) of the RTKL and contending that disclosure of the video would jeopardize or threaten personal security and public safety. *Id.*

The Requester appealed the County's denial of his first and second Requests to the OOR on May 17, 2021 and May 20, 2021, respectively, challenging the denial and stating grounds for disclosure. In his appeals, the Requester explains that the County, on November 18, 2020, entered into a contract with CSAU-1 LLC, "a corrections special operations" contractor, based in South Carolina, to provide equipment and "confidential training" to corrections officers at the Prison. A copy of that contract was attached as an exhibit in the Requester's appeals. The Requests stem from the Requester's receipt of information from inmates at the Prison [\*3] who were allegedly involved in a "training exercise" on March 31, 2021 related to the contract.

<sup>1</sup>According to the information received by the Requester, the inmates allege that they were taken from their cells, in handcuffs, to the gym where they were made to face the wall for several hours. Reportedly, during the training, the senior team leader from C-SAU, Joseph Garcia, "directed the team to ready and aim their weapons." Allegedly, there was a dog present during the training. The Requester also attached a copy of a letter addressed to the Prison from the Pennsylvania Prison Society that raised concerns about the incident. The Requester argues that the video footage sought is subject to release because the County has disclosed information related to policies and procedures at the Prison in the past, that the OOR has previously found that video inside a corrections facility is subject to disclosure, and that video clips of the C-SAU training were posted by Mr. Garcia on his Facebook page, thus demonstrating the video footage does not create a security risk. As part of his appeal, the Requester included links to the Facebook posted video. In his appeal concerning the body [\*4] camera footage, the Requester sought *in camera* review of the responsive video.

The OOR invited both parties to supplement the record in each appeal and directed the County to notify any third parties of their ability to participate in the appeals. 65 P.S. § 67.1101(c). Because the appeals involve the same agency and requester, and pertain to similar records, the parties agreed to the consolidation of these matters. Accordingly, the appeals docketed to AP 2021-0958 and AP 2021-0992 are now consolidated into OOR Dkt. AP 2020-0958 for disposition.

On June 1, 2021, the County submitted a position statement reiterating the same grounds for denial as set forth in its responses to the Requests. 65 P.S. §§ 67.708(b)(1)(ii)-(2). The County also argues that the requested information is exempt under the RTKL's noncriminal investigation exemption, 65 P.S. § 67.708(b)(17), noting that "the matter which is the subject of the [R]equest is part of an ongoing internal investigation" by the Prison Board of Inspectors and that there are other ongoing internal investigations related to grievance proceedings filed in relation to the matter. In addition, the County contends that release of the video footage would potentially reveal the identities of inmates and subject the [\*5] County to penalties under the Criminal History Record Information Act ("CHRIA"), 18 P.S. §§ 9101 *et seq.* In support of its position, the County submitted the sworn affidavit of Adam Ogle, the County's Prison Warden. <sup>2</sup>

On July 16, 2021, the OOR sought additional information from the County. Specifically, the OOR requested additional evidence explaining, among other things, how the security related exemptions and CHRIA applied to the video footage at issue, what investigation occurred and how the responsive video related to that investigation or was otherwise investigative in nature. On July 22, 2021, the Requester renewed his request for *in camera* review, this time for both the surveillance and body camera footage, suggesting that it would be the most helpful evidence to the OOR in making its determination. The Requester

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<sup>1</sup> On appeal, the County denies that the events of March 31, 2021 were related to that contract.

<sup>2</sup> The County did not raise Act 22 of 2017 as a defense during this appeal. Act 22 of 2017 removed audio and video recordings made by law enforcement agencies from access under the RTKL and created a separate, exclusive means of access. 42 Pa.C.S. § 67A03. According to correspondence that was included in the appeal record, the Requester made a separate request for the video footage at issue here under Act 22 of 2017. The County, however, denied the Requester's Act 22 request on May 11, 2021, notifying him that Act 22 was not applicable to the recordings because the County's Prison is not a "law enforcement agency" as defined under that Act. The OOR has no evidence that Act 22 of 2017 should apply in this case, and therefore will not address it. *See, e.g., Gaikwad v. Clearfield County*, OOR Dkt. AP 2020-0407, 2020 PA O.O.R.D. LEXIS 2215, footnote 1 (explaining that a County correctional facility does not automatically qualify as a "law enforcement agency" under Act 22 of 2017).

also provided a copy of an email, retrieved through another RTKL request, which was addressed to "STL Garcia" from Warden Ogle pertaining to the promotional video containing short clips of the Prison that Mr. Garcia posted.

On July 27, 2021, the County submitted correspondence, objecting to an *in camera* review by the OOR of either the surveillance or body-camera video. The County indicated [\*6] that "the content of the video is not at issue" and that any directive to produce the recordings for *in camera* review would be appealed.

On the following day, July 28, 2021, in response to the OOR's inquiries, the County filed a supplemental response, verified under 18 Pa. C.S. § 4904, by Warden Ogle and Michèle Pokrifka, Esq., Solicitor for the County.

During the course of this appeal, this matter was reassigned to the undersigned appeals officer for disposition, and the Requester, on several occasions, provided additional time for the OOR to issue its Final Determination. 65 P.S. § 67.1101(b)(1).

## 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 [\*7] 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 decision to hold a hearing is discretionary and non-appealable. *Id.* Here, while neither party requested a hearing, the Requester, as noted previously, requested *in camera* review of the responsive video footage. However, because the evidence before us is sufficient for the OOR to issue this Final Determination, the OOR did not conduct an *in camera* review in this case. <sup>3</sup>

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 [\*8] 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 disclosure of the surveillance and body camera video footage to the public would threaten personal security, 65 P.S. § 67.708(b)(1)(ii), and/or public safety or protection activities, 65 P.S. § 67.708(b)(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"

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<sup>3</sup> Although the County objected to the OOR's *in camera* review of the video footage at issue, the Courts have been most clear that the OOR has authority to review the records at issue in a RTKL case *in camera*. *See County of Berks v. Office of Open Records*, 204 A.3d 534 (Pa. Commw. Ct. 2019); *Twp. of Worcester v. Office of Open Records*, 129 A.3d 44, 59 (Pa. Commw. Ct. 2016); *Commonwealth v. Center Twp.*, 95 A.3d 354, 369-70 (Pa. Commw. Ct. 2014).

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 ... [\*9] 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 OOR has previously determined that an agency's administration of its prison, including the surveillance of its prison population, is a public protection activity. *Segelbaum v. York County Prison*, AP 2021-1179, 2021 PA O.O.R.D. LEXIS 1413 citing *Carey*, 61 A.3d at 374-74.

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 the context of a correctional institution setting, an agency need not demonstrate specific prior examples of [\*10] physical harm to personal security or public safety to meet the agency's burden of proof. *See, e.g., Wool v. Pa. Dep't of Corr.*, OOR Dkt. AP 2018-0447, 2018 PA O.O.R.D. LEXIS 496. The OOR has found the professional opinion of individuals assessing the risks of security to be credible and will not substitute its judgment for that of those with far more familiarity with the issues involving personal security. *See Ocasio v. Pa. Dep't of Corr.*, 183 A.3d 506, 2018 Pa. Commw. LEXIS 18 (Pa. Commw. Ct. 2018) ("This 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"); *see also Carey*, 61 A.3d at 374 ("Personal security issues are of particular concern in a prison setting") (citations omitted). However, the OOR is not required to accept such opinions, especially if those opinions are not supported by an adequate factual basis in the record. *ACLU of Pa. v. PSP*, 232 A.3d 654, 666 (Pa. 2020) ("Courts certainly may grant some degree of deference to law enforcement agencies' opinions regarding how disclosure of a given document might have such an effect, just as they may attend carefully to the conclusions of credible and duly qualified experts in any case. But courts should not defer so utterly to those opinions that a law enforcement [\*11] agency's discretion to cabin its disclosure obligation is only as limited as its ability to fashion an affidavit that ticks off *Carey's* three boxes.").

In support of its argument that the video recordings are exempt under Sections 708(b)(1) and (2) of the RTKL, the County provides the affidavit of Warden Ogle, who attests as follows:

2. The [Prison] uses a surveillance system to maintain the safety and security for inmates and employees.
3. The surveillance video is taken from hidden or not easily identified cameras in many parts of the [P]rison, which are monitored by corrections officers from a central location shielded from view by tinted glass.
4. The [Prison] staff, particularly Corrections Officers, use body camera equipment while working in the [P]rison which depict the building, inmates and other staff, and such system is used to maintain the safety and security of inmates and employees as well as to enable staff to proactively respond to threats and emergencies.
5. The body cam equipment is also used to assist where surveillance cameras are unable to view locations or where the cameras have blind spots.
6. Disclosure of body cam video and surveillance video would [\*12] allow inmates and others, including staff, to determine the [P]rison's surveillance capabilities, making it vulnerable to breaches, such as attacks on inmates and staff.
7. If such vulnerabilities were known, it would be reasonably likely to allow inmates and staff to perform illicit activities outside of the scope or in those blind spots or out of the range of the surveillance cameras.
8. Such vulnerabilities can be exploited to plan and effect transfers of contraband, including drugs to inmates, by using these vulnerabilities to avoid the prison security processes.

9. [The Prison], like all other prisons in the Commonwealth, has issues keeping contraband out of the Prison, and the surveillance cameras, body camera equipment and other policies and processes have specifically enabled the Prison to significantly minimize the amount of contraband coming into the [the Prison].

10. The video surveillance cameras and body cam images of the investigation of March 31, 2021, does show access points to the location of the room where the inmates were temporarily detained during the searches.

11. The body worn camera footage is considered more sensitive than the stationary surveillance [\*13] camera footage, as the body worn cameras also depict the structures and provides an exacting layout of the secure facility, as well as have the potential to show identifiable inmates, and their location in the facility, as well as identifying staff.

12. Release of video events regarding security measures at the [P]rison would identify the inmates and staff involved in the event which place the inmate, staff as well as their families in the position of being subject to retaliation including threats and actions of physical harm from unknown others as a result of what they believe to be actions depicted in such video.

13. The video surveillance and body cam images of the investigation also show interior images of the Prison and would also disclose the security and search procedures taken by staff during an investigation, which is information not otherwise apparent to the housed inmates or to the public.

14. If the inmates and the public are made aware of how the [Prison] organizes and performs security procedures and conducts investigations of actual threats in the [P]rison, the inmates would be better able to engage in activities to thwart such investigations and to engage in [\*14] activities that threaten the health and safety of the staff, employees and other inmates.

15. The search and result of the search which took place on March 31, 2021 in the [Prison] are the subject of an internal non-criminal investigation called an Extraordinary Occurrence. ...

17. Based upon the above, it is my professional opinion that granting access to the requested video footage would make vulnerable the Prison's public protection activities in maintaining a safe and secure correctional institution, would undermine security measures in place at the Prison and would be reasonably likely to jeopardize or threaten personal security and public safety and protection activities of the County... .

In response to the OOR's request for additional evidence as to the content of the responsive video footage and how Sections 708(b)(1) and (2) apply, Warden Ogle attested as follows:

We can only speak to the videos that belong to the [Prison]. Of those videos, they depict many interior areas, corridors, cells, blocks and how to get from one cell block to another in the institution. It also depicts a significant portion of the interior of the South Block area, along with the video [\*15] of the transporting of inmates along the corridors of the South Block into and including the new gym area. The videos provide a complete view of the new gym area, the ingress and egress areas, as well as depicting other security camera locations in the institution. The video further depicts the investigation and how it was organized and implemented in the South Block, it further depicts how the CSAU Corrections Officers handle and process a "high risk security search."

Additionally, according to Warden Ogle, the event of March 31, 2021 related to "a high-risk security search [that] was undertaken in a particular cell block" which "was based upon information from a credible source that 'shanks' and weaponry were being made and hidden by inmates."

Under the RTKL, a statement made under the 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). An affidavit "must be detailed, nonconclusory, and submitted in good faith." *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013). In the absence of any evidence that the County has acted in bad faith, "the averments in [the statement] 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 *Scolforo* at 1103). Based upon the evidence provided, the County has demonstrated that the

responsive surveillance [\*16] and body camera footage contain details that, if disclosed, would reasonably be likely to threaten the personal safety of an individual or jeopardize public safety and/or protection activities.

The County's evidence shows that the responsive surveillance and body camera video contains details about the Prison's layout, particularly the South Block, new gym area and corridors in between, as well as other security camera locations, which may otherwise be hidden or not easily identified. According to Warden Ogle, the footage also shows how a "high risk security search" on the date in question was organized and implemented. While we are less persuaded that responsive body camera footage would result in the disclosure of blind spots within the Prison, given that the range of view with such cameras is inherently inexact and directionally dependent by the movement of the individual wearing the camera, it is certainly reasonable that such blind spots may be evident by viewing the video from the Prison's surveillance system. Regardless of that point, however, the County has substantiated that the video footage in question, whether from the surveillance system or body cameras, would disclose [\*17] the actual security and search procedures taken by corrections staff during the event that occurred. Such information, according to Warden Ogle, is not otherwise apparent to inmates or the public. The disclosure of that information, according to Warden Ogle, would allow inmates to engage in activities to thwart such searches and procedures in the future, thus hindering the Prison's public protection activities and/or jeopardizing the well-being and safety of corrections officers and/or inmates. Additionally, Warden Ogle confirms that disclosure of the video would allow inmates and others, including staff, to determine the [P]rison's surveillance capabilities, thereby making it vulnerable to breaches, such as attacks on inmates and staff.

Similar to the case at hand, the OOR has previously found prison surveillance video to be exempt under the cited security-related exemptions. For example, in *Hatch v. Pa. Dep't of Corrections*, OOR Dkt. AP 2019-2637, 2020 PA O.O.R.D. LEXIS 1682, the OOR found that prison surveillance video of an alleged staff assault was exempt under both Sections 708(b)(1) and (2) because "disclosure of the video would reveal critical details regarding the correctional [ ] facility including, [\*18] the correctional institution security system and processing, the layout of the identified prison block, along with other areas of the facility, and their relation to the cameras and the blind spots contained therein." *See also Gaikwad v. Clearfield County*, OOR Dkt. AP 2020-0407, 2020 PA O.O.R.D. LEXIS 2215 (finding that disclosure of video footage of a booking and detainment in the county jail is exempt under Section 708(b)(2) where the video would reveal layout details of the facility and certain security procedures, i.e., searches and security screens); *Toye v. Fayette County*, OOR Dkt. AP 2018-1414, 2018 PA O.O.R.D. LEXIS 1249, (finding that the requested prison surveillance video of an incident involving a corrections officer was reasonably likely to endanger personal security or public safety because release of the video was likely to provide inmates with information regarding the blind spots of the jail's surveillance system); *Ford v. Pa. Dep't of Corr.*, OOR Dkt. AP 2017-1110, PA O.O.R.D. LEXIS 967 (concluding that the disclosure of a correctional facility video depicting an alleged assault would be reasonably likely to jeopardize or threaten public safety); *Halpin v. Luzerne County*, OOR Dkt. AP 2016-1263, 2016 PA O.O.R.D. LEXIS 1323 (finding that surveillance footage of an incident [\*19] inside the correctional facility is exempt under Section 708(b)(2) of the RTKL); *Escalera v. Adams County*, OOR Dkt. AP 2015-0780, 2015 PA O.O.R.D. LEXIS 742; *Mihalik v. Columbia County Prison*, OOR Dkt. AP 2013-1381, 2013 PA O.O.R.D. LEXIS 785.

The Requester cites to *Halpin v. Luzerne County*, OOR Dkt. AP 2020-1714, 2020 PA O.O.R.D. LEXIS \_\_\_, for the proposition that the OOR has previously ruled that prison surveillance footage is subject to disclosure under the RTKL. *Halpin* involved a request for surveillance video footage relating to an incident which resulted in an inmate's death. Unlike in the instant matter, however, the appeal in *Halpin* was granted on the basis that the agency failed to prove that the responsive video related to either a noncriminal or criminal investigation. 65 P.S. §§ 67.708(b)(16) and (17). Our decision in this matter is based on the security-related exemptions asserted by the County, which were never raised by the agency in *Halpin*. As such, *Halpin* is distinguishable from this matter.

Given the heightened security concerns at play in a prison setting and the facts offered by County concerning the responsive video footage in this case, we conclude that the County has established, by a preponderance of the evidence, that the release of the surveillance and body-camera [\*20] footage would be reasonably likely to threaten personal security and jeopardize or threaten a public protection activity. *See* 65 P.S. § 67.708(a)(1).

The Requester contends that the County's assertion that the video footage is exempt from public access is undercut by the video clips that were publicly posted as part of "promotional videos" by Senior Team Leader Joseph Garcia, of CSAU-1, Greenville, South Carolina to his Facebook page. When asked about the postings during this appeal, the County indicated that

it could not "confirm or deny whether, what appears to be a 1.5 second video clip, is from the [Prison]." The County further explained:

We believe there was a montage video that STL Garcia posted. The County requested that any video he may have taken on the Prison grounds be removed from any montage he may have posted, whether it was identifiable to the Prison. We have not viewed and are not aware of the videos the C-SAU trainers may have otherwise posted. We also object to this question as being irrelevant to the RTKL request.

Admittedly, we find it disconcerting that the County, on the one hand, contends that the disclosure of the responsive video footage is likely to cause harm to individuals [\*21] or jeopardize public protection activities, yet, on the other hand, dismisses the public disclosure of that same information by a Prison contractor, however small, as irrelevant to this matter. See *Central Dauphin Sc. Dist. v. Hawkins*, 253 A.3d 820 (Pa. Commw. Ct. 2021) ("If, as the School District alleges, the student involved has already been publicly identified, both in a public hearing and in the press along with the adult involved, then withholding the video would not serve the purposes of protecting the privacy of the student under FERPA. It is thus a stretch on the part of the School District to argue that the video would be exempt from disclosure under FERPA for the reason that the identity of the student is already known."). Nevertheless, assuming that the video clips displayed by Mr. Garcia on his Facebook page, were responsive to the Requests, those clips were short in duration, i.e., 3-5 seconds in length and did not overtly identify the Prison as the location of the recording. The only visible identifying marks were a date (3/31/21) and time stamp for each video. Additionally, although the clips revealed what appeared to be the faces of one or two corrections officers, none of the inmates' identities were recognizable. The information before [\*22] us also suggests that the disclosure of the video was not sanctioned by the Prison as, according to the Requester himself, the posts were removed shortly after they were brought to the attention of the Prison.

<sup>4</sup>Thus, overall, we are unable to conclude that Mr. Garcia's disclosure of the short video clips alters the applicability of Sections 708(b)(1) and (2) to the video footage at issue. See *Rothey v. California Borough*, AP 2015-1925, 2016 PA O.O.R.D. LEXIS 864 (rejecting a requester's argument that the agency waived its right to assert an exemption because it had already disclosed the responsive video to the media), *rev'd on other grounds, California Borough v. Rothey*, 185 A.3d 456 (Pa. Commw. Ct. 2018); *Lancaster Newspapers, Inc. v. Lancaster County*, OOR Dkt. AP 2011-0407, 2011 PA O.O.R.D. LEXIS 652 (concluding [t]he fact that responsive video footage was shared with an inmate's mother did not belie the real security concerns of the agency in releasing the record as a public record under the RTKL, particularly where the disclosure to the inmate's mother took place outside of the RTKL); *But compare Borough of Pottstown v. Suber-Aponte*, No. 1416 and 1417 C.D. 2019, 2021 Pa. Commw. Unpub. LEXIS 245 (Pa. Commw. Ct. 2021) (reversing the trial court and finding that purposes of the RTKL's security related exemptions were undermined by the prior disclosure of the police video footage to the requester and when viewed in open court at a related criminal [\*23] trial).

The Requester also argues that the County has disclosed information related to its security policies and procedures at the Prison in the past. He points to a recent, unrelated grand jury investigation report posted online by the County's District Attorney which discusses the use of force, extractions and electronic stun devices at the Prison. Whether or not the Prison has disclosed its security-related policies in the past, is not determinative to our decision here concerning whether the responsive surveillance and body camera video is accessible under the RTKL. The video footage at issue here and Prison policies are two very distinct and different types of records.

In his appeal, the Requester asserts that this matter is of great interest and public concern. We do not disagree with the Requester on that point, particularly given some of the allegations that have been made against the Prison concerning the incident. However, based on the foregoing, we are constrained to find that the responsive video footage captured by the

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<sup>4</sup> An email dated May 14, 2021 from Warden Ogle to Mr. Garcia relayed the following message:

I was informed that a promotional video was posted on a website that had a short clip of our facility during an operation. I did see the video. I understand that you cannot make out the likeness of any inmate, but we do not allow any video from YCP to be shared with the public without a court order. It is my understanding that you were informed by Shawn and Clair not to post videos from here. I appreciate you taking the video down. Please respond to the email to confirm our position on this matter.

surveillance system and body cameras from within the Prison on the date in question is not subject to public access under the RTKL.<sup>5</sup>

[\*24] **CONCLUSION**

For the foregoing reasons, the appeal is **denied**, and the County is not required to take any further action. 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 York 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>6</sup>This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: September 3, 2021**

*/s/ Angela Edris*

APPEALS OFFICER  
ANGELA EDRIS, ESQ.

Sent via email to: Dylan Segelbaum/YDR;

Michèle Pokrifka, Esq., AORO

PA Office of Open Records Final Determinations

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<sup>5</sup> The RTKL is not a confidentiality statute nor is it a mandatory limitation on the release of information by government agencies to the citizens it serves. Under the RTKL, an agency is never required to withhold information, it is only permitted to do so. An agency has discretion to release records unless prohibited by law from doing so. See 65 P.S. § 67.506(c) (stating that an agency "may exercise its discretion to make an otherwise exempt record accessible").

<sup>6</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).