

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

584 CD 2026

CHARLIE WOLFSON
and
PUBLICSOURCE,

Appellants,

v.

ALLEGHENY COUNTY
and
ALLEGHENY COUNTY SHERIFF'S OFFICE,

Appellees.

BRIEF FOR APPELLANTS
CHARLIE WOLFSON AND PUBLICSOURCE

On appeal from the Order of the Court of Common Pleas of Allegheny
County (Regan, J.) dated and entered on February 20, 2026 at SA-25-
000170

Adam J. Tragone
Pa. Bar Id. No. 322479
Heather E. Murray*
Cornell Law School
First Amendment Clinic
Ithaca, NY 14853
(202) 909-3693
ajt273@cornell.edu

* *pro hac vice* forthcoming

Paula Knudsen Burke
Pa. Bar Id. No. 87607
Reporters Committee for
Freedom of the Press
4000 Crums Mill Rd., Ste. 101
(717) 370-6884
pknudsen@rcfp.org

Counsel for Appellants

TABLE OF CONTENTS

TABLE OF CITATIONS	iii
STATEMENT OF JURISDICTION.....	1
ORDER IN QUESTION	2
STATEMENT OF THE SCOPE OF REVIEW AND STANDARD OF REVIEW	3
STATEMENT OF THE QUESTIONS INVOLVED	4
STATEMENT OF THE CASE	5
I. Form of Action	5
II. Procedural History.....	5
III. The 2024 RTKL Request of PublicSource and Mr. Wolfson.....	8
SUMMARY OF THE ARGUMENT	10
ARGUMENT	11
I. THE TRIAL COURT ERRED WHEN IT IMPERMISSIBLY EXPANDED SECTION 708(b)(6)(iii) BEYOND ITS PLAIN LANGUAGE.....	13
II. THE TRIAL COURT COLLAPSED TWO DISTINCT RTKL EXEMPTIONS INTO ONE, RENDERING THE UNDERCOVER WORK EXEMPTION MEANINGLESS	17
III. THE TRIAL COURT GAVE IMPROPER WEIGHT TO CHIEF MANNING’S GENERALIZED CONCERNS OF OFFICER SAFETY.....	23
IV. THE COURT INCORRECTLY RELIED ON FUTURE POSSIBILITIES RATHER THAN CURRENT FACTS TO FIND THAT THE EXEMPTION APPLIED	27

V. THE SHERIFF'S OFFICE FAILED TO ESTABLISH THAT THE EXEMPTION APPLIED TO ALL 89 DEPUTIES.....	29
CONCLUSION	32
CERTIFICATES OF COMPLIANCE	33
CERTIFICATE OF SERVICE.....	34

TABLE OF CITATIONS

Cases

<i>Am. C.L. Union of Pa. v. Pa. State Police</i> , 232 A.3d 654 (Pa. 2020).....	17
<i>Borough of Pottstown v. Suber-Aponte</i> , 202 A.3d 173 (Pa. Commw. Ct. 2019).....	19, 28
<i>Bowling v. Off. of Open Recs.</i> , 990 A.2d 813 (Pa. Commw. Ct. 2010), <i>aff'd</i> , 75 A.3d 453 (Pa. 2013)	12, 14, 19, 28
<i>Cal. Borough v. Rothey</i> , 185 A.3d 456 (Pa. Commw. Ct. 2018).....	24
<i>Carey v. Pa. Dep't of Corr.</i> , 61 A.3d 367 (Pa. Commw. Ct. 2013).....	13, 22, 24
<i>Del. Cnty. v. Schaefer ex rel. Phila. Inquirer</i> , 45 A.3d 1149 (Pa. Commw. Ct. 2012).....	18, 25
<i>Governor's Off. of Admin. v. Purcell</i> , 35 A.3d 811 (Pa. Commw. Ct. 2011).....	13, 22, 23, 25
<i>Highlands Sch. Dist. v. Rittmeyer</i> , 243 A.3d 755 (Pa. Commw. Ct. 2020).....	3
<i>In re Melamed</i> , 287 A.3d 491 (Pa. Commw. Ct. 2022).....	26
<i>McKelvey v. Off. of Att'y Gen.</i> , 172 A.3d 122 (Pa. Commw. Ct. 2017).....	28
<i>McKelvey v. Pa. Dep't of Health</i> , 255 A.3d 385 (Pa. 2021).....	17
<i>Off. of Governor v. Scolforo</i> , 65 A.3d 1095 (Pa. Commw. Ct. 2013).....	12, 19

<i>Pa. State Police v. McGill</i> , 83 A.3d 476 (Pa. Commw. Ct. 2014).....	15, 16, 19
<i>Pa. State Troopers Ass’n v. Scolforo</i> , 18 A.3d 435 (Pa. Commw. Ct. 2011).....	14
<i>Peirce v. Pa. Off. of Admin.</i> , 2014 PA O.O.R.D. LEXIS 810 (Pa. Off. Open Recs. July 29, 2014).....	16
<i>Posey v. Dep’t of Corr.</i> , 329 A.3d 864 (Pa. Commw. Ct. 2025).....	18, 19, 26
<i>Vellucci v. S. Hills Area Council of Gov’t</i> , No. AP 2024-0651, 2024 WL 2077397 (Pa. Off. Open Recs. May 1, 2024).....	14

Statutes

1 Pa.C.S. § 1922.....	21
42 Pa.C.S. § 762.....	1
42 Pa.C.S. § 763.....	1
65 P.S. § 67.305(a)	12
65 P.S. § 67.708(a)(1).....	12, 24, 30
65 P.S. § 67.708(b)(1)(ii)	<i>passim</i>
65 P.S. § 67.708(b)(6)(ii)	16, 19, 23
65 P.S. § 67.708(b)(6)(iii)	<i>passim</i>
Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101–67.3104	5

Other Authorities

Pa.R.A.P. 1511.....	1
Pa.R.A.P. 2117.....	8

STATEMENT OF JURISDICTION

The Commonwealth Court has jurisdiction of this matter pursuant to 42 Pa.C.S. § 762, 42 Pa.C.S. § 763(a)(2), and Pa.R.A.P. 1511.

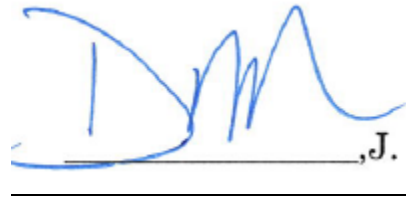
ORDER IN QUESTION

ORDER OF COURT

AND NOW, this 20th day of February 2026, after a trial and consideration of the parties' proposed findings of fact and conclusions of law, and finding Respondents have established requested records are exempt, it is hereby ORDERED, ADJUDGED, and DECREED:

Petitioners', Charlie Wolfson and Public Source, request is denied, and the March 3, 2025, Final Determinations of the Office of Open Records (OOR) at docket number AP 2025-0246 is affirmed.

BY THE COURT:



_____,J.

STATEMENT OF THE SCOPE OF REVIEW
AND STANDARD OF REVIEW

This Court’s “review of a trial court’s order in a RTKL dispute is limited to determining whether findings of fact are supported by competent evidence or whether the trial court committed an error of law, or an abuse of discretion in reaching its decision.” *Highlands Sch. Dist. v. Rittmeyer*, 243 A.3d 755, 759 n.4 (Pa. Commw. Ct. 2020) (citation and internal quotation marks omitted).

This Court’s “scope of review for a question of law under the [RTKL] is plenary.” *Id.* (citation omitted).

STATEMENT OF THE QUESTIONS INVOLVED

1. Did the lower court err in construing 65 P.S. § 67.708(b)(6)(iii) expansively to allow Appellees to redact the names or other identifying information of employees who are not “performing” an undercover or covert law enforcement activity?

Suggested answer: Yes

2. Did the lower court err in finding there was sufficient evidence presented that disclosing name and salary information for Sheriff’s deputies would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of the Sheriff’s deputies, as required by 65 P.S. § 67.708(b)(1)(ii)?

Suggested answer: Yes

STATEMENT OF THE CASE

I. Form of Action

This matter arises under the Pennsylvania Right-to-Know Law (“RTKL”), codified at 65 P.S. §§ 67.101–67.3104. It comes before the Court on petition for review from the February 20, 2026 order and opinion of the Honorable Daniel D. Regan of the Allegheny County Court of Common Pleas.

II. Procedural History

Appellant PublicSource, a nonprofit news organization serving the Pittsburgh region, and its reporter Charlie Wolfson, submitted a RTKL request on January 10, 2025 to Allegheny County (the “County”). R.1a. The request sought a digital file containing the names, salaries, and demographic information of all County employees for calendar year 2024. *Id.* Two weeks later, the County partially denied the request, directed Wolfson to publicly available information and asserted that employee names could be withheld pursuant to Section 708(b)(1)(ii), which exempts records for which disclosure would be reasonably likely to result in a substantial and demonstrable risk of physical harm or to personal security (hereinafter, the “personal-security exemption”), and Section

708(b)(6)(iii), which permits an agency to redact identifying information relating to an individual engaged in undercover or covert law enforcement activity (hereinafter, the “undercover-officer exemption”). R.119a–120a. On January 30, 2025, Wolfson filed an appeal of the County’s partial denial to the OOR. R.4a. During the OOR proceedings, both parties submitted position statements. R.4a–5a. On March 3, 2025 the OOR issued a Final Determination in favor of the County and denied Wolfson’s request. *See generally* R.3a–15a. On March 31, 2025 Wolfson appealed the denial to the Court of Common Pleas of Allegheny County. R.16a.

While the County was the only Respondent at the OOR level, on appeal the offices of the District Attorney (“DA”) and the Sheriff sought to intervene and assert the independent interests of their offices. R.29a. On October 6, 2025, the DA’s and Sheriff’s Uncontested Joint Petition to Intervene was granted. R.43a. On November 20, 2025, after settlement negotiations between the parties, the court approved the Stipulation of Discontinuance/Dismissal of the DA’s Office, and on December 2, 2025, the court granted Allegheny County’s Motion for Leave of Court for

Discontinuance/Dismissal of Respondent Allegheny County Police Department. R.141a–142a.

The dismissal of the County and the DA’s Office left the Sheriff’s Office as the only Respondent. The trial court directed Appellants and the Sheriff’s Office to submit proposed findings of fact and conclusions of law and scheduled a non-jury trial for December 3, 2025. During that proceeding, testimony was elicited which dealt only with the propriety of the redactions of the identities of certain employees in the Sheriff’s Office,¹ the Sheriff’s Office called one witness: Chief Deputy Sheriff Richard Manning (hereinafter, “Chief Manning”). R.178a. Following the hearing, the trial court denied Appellants’ appeal and affirmed the OOR’s Final Determination as it applied to the Sheriff’s Office. The court issued its opinion and order on February 20, 2026, followed by an amended opinion on March 16, 2026 and an opinion of May 15, 2026.² Appellants timely filed the present appeal on March 19, 2026. R.250a.

¹ During the non-jury trial, Allegheny County submitted as an exhibit an Excel spreadsheet that contained 208 employees of the Sheriff’s Office. R.122a–R.127a. Of that 208, 89 were redacted. *Id.*

² The March 16, 2026 and May 15, 2026 opinions corrected several inaccurate citations to the findings of facts and conclusions of law as well as changes to headings/formatting. R.243a; R.255a.

On May 26, 2026, the solicitor for Allegheny County filed an application to withdraw as counsel with this Honorable Court, clarifying that the instant appeal only pertains to the Sheriff's Office, which is an independent, elected position, and that as a County row office, the Sheriff's Office is represented by its own counsel (not the attorneys for the County). The Court granted the application to withdraw on June 15, 2026, and on the same day counsel for the Sheriff's Office entered an appearance.

III. The 2024 RTKL Request of PublicSource and Mr. Wolfson

Pursuant to Pa.R.A.P. 2117(a)(2), Appellants include the following brief statement of any prior determination of any court or other government unit in the same case. Here, a prior determination of the OOR is germane.

On January 4, 2024, Wolfson submitted a RTKL request to the County, seeking a digital file containing the names, salaries, and basic demographic information of all County employees for calendar year 2023. R.275a. One week later, the County responded by directing Wolfson to information available on a government website. R.277a. That information, however, redacted the names of more than three-quarters of

employees within the Sheriff's Office. *See* R.273a. On January 16, 2024, Wolfson timely appealed to the OOR. R.285a.

On February 26, 2024, the OOR issued a Final Determination concluding that the County had failed to establish that all redacted law enforcement employee names were exempt from disclosure under Section 708(b)(6)(iii) of the RTKL. R.270a. The OOR directed the County to conduct a supplemental review of the redactions and provide Wolfson with an attestation describing both the review process and any resulting redactions. *Id.*

In response, on March 11, 2024, the County produced a signed affidavit from a Human Resources Department employee, R.51a–52a, and a revised spreadsheet containing salary and demographic information for County employees during calendar year 2023, R.53a–112a. The County limited its redactions to individuals allegedly “*currently* performing undercover work.” R.51a (emphasis added). As a result of the supplemental review, approximately 17 percent of the spreadsheet remained redacted.

SUMMARY OF THE ARGUMENT

The trial court's order should be overturned for three separate reasons. *First*, it misinterpreted Section 708(b)(6)(iii) by stretching the undercover-officer exemption beyond its plain meaning to include deputies who worked previously in a covert or “undercover” capacity or *might* perform such work in the future, rather than just those currently “performing” such duties. *Second*, even if the exemption could apply more broadly to personnel other than current undercover officers, the Sheriff's Office didn't meet its burden of proving all 89 redacted deputies qualified for the exemption. Its own evidence showed the redacted deputies fell into three groups—those currently doing undercover work, those who had in the past year, and those who could be assigned in the future—yet the trial court granted a blanket exemption without requiring proof for each individual category. *Third*, the Sheriff's Office didn't show that releasing the names would likely cause a substantial, demonstrable risk to personal safety under Section 708(b)(1)(ii), relying instead on vague concerns about doxxing, threats, and hypothetical harm without tying them to any specific deputy or concrete facts. Because the trial court overbroadly construed a narrowly drawn RTKL exemption and accepted

speculative, generalized claims instead of the individualized proof the law demands, the court's order should be reversed.

ARGUMENT

The Right-to-Know Law ("RTKL") is a remedial statute enacted to promote government transparency and public accountability. *Bowling v. Off. of Open Recs.*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff'd*, 75 A.3d 453 (Pa. 2013). Accordingly, records in the possession of a Commonwealth or local agency are presumed to be public, and that presumption may be overcome only if the agency establishes that a statutory exemption applies. 65 P.S. § 67.305(a); *id.* § 67.708(a)(1). Because the RTKL was 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," courts must construe its exemptions narrowly. *Off. of Governor v. Scolforo*, 65 A.3d 1095, 1100 (Pa. Commw. Ct. 2013) (quoting *Bowling*, 990 A.2d at 824).

These foundational principles govern this appeal. First, because exemptions must be narrowly construed, the Court must apply the plain language chosen by the General Assembly and may not expand the

exemption provided in Section 708(b)(6)(iii) beyond its terms, as the trial court did here. Second, because the Sheriff's Office bore the burden of proof, it was required to establish by a preponderance of the evidence that the claimed exemption applied to each category of information withheld and could not rely upon broad, categorical assertions regarding a large group of employees; the Sheriff's Office did not meet this burden. Third, because the RTKL requires evidence—not conjecture—to overcome the statute's presumption of openness, the Sheriff's Office was required to present competent evidence demonstrating that disclosure would create a substantial and demonstrable risk to personal security rather than merely identifying generalized concerns applicable to law enforcement personnel. *See Governor's Off. of Admin. v. Purcell*, 35 A.3d 811, 820 (Pa. Commw. Ct. 2011); *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367, 373 (Pa. Commw. Ct. 2013). Again, the Sheriff's Office did not meet this burden. In ruling for the Sheriff's Office, the trial court departed from each of these governing principles, and the trial court's February 20, 2026 Order should therefore be reversed.

I. THE TRIAL COURT ERRED WHEN IT IMPERMISSIBLY EXPANDED SECTION 708(b)(6)(iii) BEYOND ITS PLAIN LANGUAGE

The RTKL provides for thirty exemptions to the general mandate of public access to government records. One of those exemptions permits “[a]n agency [to] redact the name or other identifying information relating to an individual *performing* an undercover or covert law enforcement activity from a record.” 65 P.S. § 67.708(b)(6)(iii) (emphasis added). Because the RTKL “is remedial legislation designed to promote access to official government information . . . exemptions from disclosure must be narrowly construed,” including the definition of the term “performing” in Section 708(b)(6)(iii). *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Bowling*, 990 A.2d at 824). The lower court erred by expansively interpreting the term beyond the plain meaning of the statute.

First, the statute uses the gerund “performing,” and does not state that it extends to any individual that “has performed,” “will perform,” “may perform” or any other past, future or potential performance. In other words, the exemption is, on its face, limited to individuals who are “currently undercover or covert operations officers.” *Vellucci v. S. Hills*

Area Council of Gov't, No. AP 2024-0651, 2024 WL 2077397, at *5 (Pa. Off. Open Recs. May 1, 2024). That makes sense because, as the Commonwealth Court has made abundantly clear, the General Assembly “made the policy decision” in the RTKL that the name of a public official or an agency employee shall not be precluded from release *except* in one very narrow circumstance: when that official, employee, or police officer “is engaged in undercover or covert work.” *Pa. State Police v. McGill*, 83 A.3d 476, 480 (Pa. Commw. Ct. 2014).

The trial court impermissibly framed the issue as whether the Sheriff’s Office could redact information about an individual who was not performing undercover or covert activity, but who might still face some security risk if identified.

Interpreting this unambiguous language to include past or future activity is contrary to the plain language of the statute, lacks any limiting principle, and would thus lead to a vastly overbroad withholding of information that the RTKL requires to be public. For example, a Pennsylvania agency could redact the names of employees who performed undercover activities over a decade ago or who might go undercover sometime in the unidentified distant future.

That is exactly what happened in this case. On cross-examination, Chief Manning admitted that uniformed and identifiable deputies assigned at courthouses *could* be assigned to an undercover role at a future time. R.222a. Based on Chief Manning's logic, a police officer who would not be assigned an undercover role in January *might* be chosen for an undercover role in July, and because of *that* possibility, his identity would be redacted and be exempted from disclosure. That logic runs afoul of the spirit and intent of the RTKL.

Such an overinclusive interpretation would also eviscerate the provision that appears immediately before this exemption in the RTKL, which provides:

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.

65 P.S. § 67.708(b)(6)(ii).

This statutory provision, in conjunction with the ensuing exemption, mandates that “[t]he only name of a public employee that cannot be released is the name of an individual, whether a police officer or not, who *is engaged* in undercover or covert work.” *McGill*, 83 A.3d at

480 (emphasis added); *see also Peirce v. Pa. Off. of Admin.*, 2014 PA O.O.R.D. LEXIS 810 (Pa. Off. Open Recs. July 29, 2014).

The Sheriff's Office knows which of its law enforcement officers are engaged in active undercover work. Chief Manning testified that there is a "static number of definitive detectives doing undercover or plainclothes work" on "a regular basis." R.187a, 189a–190a. The Sheriff's Office's position that it nonetheless may redact and withhold the names of twice that "static number" of individuals—including the names of law enforcement officers who are merely "believe[d]" to be going undercover, R.175a, or are "most likely [to] go" undercover, R.177a—is inconsistent with the plain language of the RTKL.

If the Pennsylvania legislature "intended the exemption to cover individuals who *may* be tasked with performing undercover activities, it would have said so." R.173a (emphasis added). Instead, in enacting the RTKL, Pennsylvania lawmakers designed a statute "to promote access to official government information," *McKelvey v. Pa. Dep't of Health*, 255 A.3d 385, 400 (Pa. 2021) (citation omitted), through a strict interpretation of its statutory exemptions, *Am. C.L. Union of Pa. v. Pa. State Police*, 232 A.3d 654, 656 (Pa. 2020). Accordingly, this Court should

reverse the trial court's decision and require the release of the names of officers who are not currently performing undercover duties.

II. THE TRIAL COURT COLLAPSED TWO DISTINCT RTKL EXEMPTIONS INTO ONE, RENDERING THE UNDERCOVER WORK EXEMPTION MEANINGLESS

The trial court's analysis cannot be reconciled with the structure of the RTKL itself. The General Assembly created two separate exemptions that address two separate concerns. Section 708(b)(6)(iii) protects the name or identifying information relating to an individual "performing an undercover or covert law enforcement activity." 65 P.S. § 67.708(b)(6)(iii) (the "undercover-officer exemption"). Section 708(b)(1)(ii), by contrast, protects records whose disclosure "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) (the "personal-security exemption"). The former is a targeted exemption directed at a specific category of law enforcement activity; the latter is a generally applicable exemption requiring proof of a concrete security risk. The trial court blurred that distinction and, in doing so, relieved the Sheriff's Office of meeting its burden to justify withholding under each exemption.

This conflation of two independent and separate exemptions lacks any support in the law. For the personal-security exemption to apply, the agency invoking the exemption must show that there was a “reasonable likelihood” of a “substantial and demonstrable risk to a person’s personal security.” *Posey v. Dep’t of Corr.*, 329 A.3d 864, 869 (Pa. Commw. Ct. 2025) (quoting *Del. Cnty. v. Schaefer ex rel. Phila. Inquirer*, 45 A.3d 1149, 1156 (Pa. Commw. Ct. 2012)). A “substantial and demonstrable risk” is a risk that is “actual or real and apparent.” *Id.* (quoting *Borough of Pottstown v. Suber-Aponte*, 202 A.3d 173, 180 (Pa. Commw. Ct. 2019)); see also *McGill*, 83 A.3d at 480 (declaring that “[a]bsent particularized concerns about the personal security of an individual, the General Assembly has made the policy decision that ‘nothing . . . shall preclude the release of the name . . . of a public official or an agency employee’” (quoting 65 P.S. § 67.708(b)(6)(ii))).

Because the RTKL’s exemptions must be narrowly construed and the statute is remedial in nature, this Court has repeatedly emphasized that courts may not enlarge exemptions beyond the language chosen by the General Assembly. *Bowling*, 990 A.2d at 824; *Scolforo*, 65 A.3d at 1100.

The Sheriff's Office already demonstrated that it could not satisfy the requirements of the undercover-officer exemption Section 708(b)(6)(iii) for many of the deputies whose names were withheld. During his testimony, Chief Manning reviewed a list of deputies whose names were redacted. While reviewing the full list of all deputies' names (both redacted and unredacted), he testified that the redacted group included not only deputies currently assigned to undercover or covert functions, but also deputies who had participated in such work within the previous year and deputies who merely might be called upon to perform such work in the future. R.199a–203a. The statute, however, only protects the names of individuals “performing” undercover or covert law enforcement activity. It does not protect everyone who has ever performed such work, nor everyone who may someday perform such work. Had the General Assembly intended to create a broader exemption encompassing former undercover officers, prospective undercover officers, or all members of a potential investigative pool, it easily could have done so. It did not.

Unable to fit all 89 redactions within the confines of the undercover-officer exemption of Section 708(b)(6)(iii), the trial court effectively

invoked the personal-security exemption of Section 708(b)(1)(ii) to fill the gap. But that approach creates a fundamental statutory problem. If the generalized possibility that an individual may participate in undercover work is sufficient to establish a personal-security exemption, then the limitations embedded in Section 708(b)(6)(iii) cease to have any practical meaning. Under the trial court's reasoning, an agency could withhold the identity of virtually any officer who previously engaged in undercover work, who occasionally assists in surveillance operations, or who may be assigned to an investigative detail in the future, notwithstanding the General Assembly's decision in this context to confer special protection only upon (a) individuals actually "performing" undercover or covert activities or (b) those whose security would actually be threatened by disclosure. But the statute cannot reasonably be interpreted to mean that anyone with even a tenuous connection to potential undercover work would face a concrete threat to their personal security if their identity were revealed.

Pennsylvania courts do not construe statutes in a manner that renders statutory language superfluous. *See* 1 Pa.C.S. § 1922(2) (presuming that the General Assembly intends an entire statute to be

effective and certain). The trial court’s interpretation violates that fundamental principle. Section 708(b)(6)(iii) reflects a legislative judgment that a specific and identifiable category of law enforcement personnel warrants categorical protection. By contrast, Section 708(b)(1)(ii) requires an evidentiary showing that disclosure would create a reasonable likelihood of a substantial and demonstrable risk to personal security. The provisions serve different functions and impose different burdens. The former turns on status and activity; the latter turns on proof of risk.

The Commonwealth Court’s personal-security cases confirm that distinction. To invoke Section 708(b)(1)(ii), an agency must establish “(1) a reasonable likelihood of (2) substantial and demonstrable risk to a person’s security.” *Purcell*, 35 A.3d at 820 (citation and internal quotation marks omitted). A substantial and demonstrable risk must be “actual or real and apparent,” *Carey*, 61 A.3d at 373, and “[m]ore than mere conjecture is needed,” *Purcell*, 35 A.3d at 820 (citation omitted).

Yet the trial court’s analysis effectively presumed the existence of a personal security risk from the mere fact that some members of the redacted group had participated, or might participate, in undercover

activity. That is precisely the type of categorical reasoning the RTKL forbids. The General Assembly created a specific exemption for undercover officers and a separate exemption for demonstrated security risks. The Sheriff's Office was required to satisfy one or the other. It could not evade the limitations of Section 708(b)(6)(iii) by invoking generalized security concerns under Section 708(b)(1)(ii) and thereby obtain protection for a much broader class of employees than the legislature authorized.

The consequence of the trial court's ruling extends well beyond this case. If allowed to stand, any law enforcement agency could convert the narrow undercover-officer exemption into a sweeping personnel exemption simply by asserting that disclosure of an employee's identity might create some future security concern because that employee had participated—or could participate—in investigative work. Such a construction would substantially expand the scope of nondisclosure while simultaneously eliminating the limiting language the General Assembly deliberately included in Section 708(b)(6)(ii). The RTKL does not permit that result, and this Court should reject it.

III. THE TRIAL COURT GAVE IMPROPER WEIGHT TO CHIEF MANNING’S GENERALIZED CONCERNS OF OFFICER SAFETY

The trial court’s opinion relies almost entirely on Chief Manning’s testimony that disclosure creates unspecified “concerns” regarding threats, doxxing, and risks to deputies and their families. R.248a. The trial court erroneously relied on this testimony to rule that the personal-security exemption applied to the requested records. But Pennsylvania law repeatedly requires more than generalized security concerns to allow an agency to withhold public records.

For the exemption to apply, this Court’s precedents require an agency to present evidence of a “reasonable likelihood of . . . substantial and demonstrable risk to a person’s security.” *Purcell*, 35 A.3d at 820 (citation and internal quotation marks omitted). When assessing what is a “reasonable likelihood,” courts “look to the likelihood that disclosure would cause the alleged harm, requiring more than speculation.” *Cal. Borough v. Rothey*, 185 A.3d 456, 468 (Pa. Commw. Ct. 2018) (quoting *Carey*, 61 A.3d at 375). It is the agency’s burden to prove, by a “preponderance of the evidence” that the disclosure “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(a)(1), (b)(1)(ii) (emphasis added). Mere conjecture is not sufficient to justify withholding under the personal-security exemption. *Rothey*, 185 A.3d at 468.

This Court’s decision in the *Purcell* case is instructive. The requester there sought the full birth date of state employees from the Governor’s Office of Administration (GOA). The GOA denied the request under the personal-security exemption and supported its denial with specific evidence, including a letter from the district attorney warning of the increase of identity theft when criminals have dates of birth of potential targets, an affidavit from an identity-theft expert, and an affidavit from the Commonwealth’s chief information security officer that releasing dates of birth of all state employees would create a proliferation of identity-theft crimes. *Purcell*, 35 A.3d at 813–14. The *Purcell* court made specific findings of fact based on those official statements, studies, and expert opinions and ruled that full birth dates of state employees were exempt. *Id.* at 818–19.

In a similar case relying on *Purcell*, this Court held that any “denial under the RTKL must be supported by demonstrable evidence, such as

the sworn Affidavits submitted in *Purcell* that the release of the specific information about a person would be reasonably likely to result in substantial risk to his personal security.” *Schaefer*, 45 A.3d at 1158. The *Schaefer* court remanded the case back to the trial court to “allow the County the opportunity to develop the record and submit evidence to support its position.” *Id.* at 1159.

And, even more recently, this Court rejected an agency’s attempts to shield names under Section 708(b)(1)(ii) in a case involving a RTKL request for correctional officers’ first and middle names or initials. In finding that the Department of Corrections had not met its burden, the Court explained:

In sum, permitting such perfunctory rejections of requests effectively imposes a per se rule against the release of certain categories of records with a basis only in OOR precedent, rather than the RTKL itself. Furthermore, such blanket denials are incongruent with the well-settled principle that “the exceptions to disclosure of public records must be narrowly construed” pursuant to “the RTKL’s goal of promoting government transparency and its remedial nature.”

Posey, 329 A.3d at 872 (quoting *In re Melamed*, 287 A.3d 491, 498 (Pa. Commw. Ct. 2022)).

Here, the evidence presented in the trial court fell well below that standard. Chief Manning testified generally that sheriff's deputies participate in sensitive investigations involving federal task forces, surveillance operations, fugitive apprehensions, narcotics investigations, child-exploitation cases, and crowd-control activities. R.186a–189a. He further expressed concerns regarding potential doxxing or threats to deputies and their families, and the general possibility that individuals under investigation could identify law enforcement personnel. R.204a. Yet Chief Manning identified no specific deputy who had been threatened as a result of public disclosure, no ongoing investigation that would be compromised by release of the requested records, and no concrete instance in which disclosure of a deputy's name resulted in harm to officer safety. Instead, he described concerns that law enforcement agencies face “in general,” and a “myriad of concerns” associated with placing identifying information in the public domain. *Id.*

Equally important, the Sheriff's evidence established that many of the redacted deputies were not actively engaged in undercover work at all. Chief Manning testified that approximately 44 to 45 deputies constituted the Sheriff's “static” investigative group, while the remaining

redacted deputies were drawn from a larger pool of personnel who may be utilized for surveillance or investigative assignments as operational needs arise. R.189a–191a. He further testified that deputies’ names were redacted if they were assigned to investigative units, had worked such investigations within the previous year, or were “potentially going to be called” for future operations. R.193a. Indeed, Chief Manning acknowledged that roughly forty-five of the redacted deputies were individuals who “*may or may not* go undercover covert.” R.196a (emphasis added). Chief Manning’s failed to testify that the release of any of the deputies’ names showed a “reasonable likelihood of . . . substantial and demonstrable risk to [a deputy’s] security.” Accordingly, the trial court’s reliance on this testimony to support the exemption was erroneous, and therefore, the trial court’s order should be reversed.

IV. THE COURT INCORRECTLY RELIED ON FUTURE POSSIBILITIES RATHER THAN CURRENT FACTS TO FIND THAT THE EXEMPTION APPLIED

On several occasions during the hearing, Chief Manning could only speculate who the Sheriff’s Office believed would be assigned to an undercover role. R.195a–196a, 203a–204a, 222a. This speculation is the

exact equivocation and uncertainty that this Court has cautioned agencies against when trying to skirt RTKL compliance.

The RTKL is “remedial legislation 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.” *Suber-Aponte*, 202 A.3d at 179 (quoting *Bowling*, 990 A.2d at 824). The RTKL asks whether a record is exempt “at the time of [the] request.” *McKelvey v. Off. of Att’y Gen.*, 172 A.3d 122, 125 (Pa. Commw. Ct. 2017) (citation omitted).

During the trial, Chief Manning was asked whether deputies could be assigned to serve in an undercover role “at some point in the future,” to which he said: “Yes.” R.222a. The possibility that a deputy may someday participate in covert work does not establish that the deputy is presently protected under Section 708(b)(6)(iii). The court’s reasoning effectively creates a perpetual exemption for a large class of deputies based on hypothetical future assignments. That testimony is inherently predictive and based on future possibilities, and therefore, the trial court’s reasoning to support redaction under the undercover-officer exemption was incorrect.

V. THE SHERIFF'S OFFICE FAILED TO ESTABLISH THAT THE EXEMPTION APPLIED TO ALL 89 DEPUTIES

Chief Manning expressly admitted that he redacted deputies in three separate categories. The Sheriff's own evidence established that the 89 redacted deputies did not constitute a single class of employees currently engaged in undercover or covert law enforcement activity. Rather, Chief Manning testified that approximately "44, 45ish" deputies were part of the Sheriff's "static" group that regularly performed undercover, covert, investigative, or taskforce work. R.189a. He further explained that the Sheriff's Office routinely draws additional personnel from a larger pool of courthouse deputies whenever taskforce operations or surveillance details require additional staffing. R.190a–191a.

Most significantly, when asked to explain the criteria used to determine which names would be withheld, Chief Manning testified: "They are either assigned to one of those units, they've worked that type of investigation" and "they are those that are potentially going to be called" from the larger pool for future assignments. R.193a. When counsel sought clarification, Chief Manning confirmed that the redacted list included individuals who had worked such investigations "within the last year." *Id.*

Thus, by the Sheriff's own testimony, the 89 redacted deputies consisted of at least three distinct groups: (1) deputies presently assigned to undercover or covert units; (2) deputies who had participated in such investigations within the previous year; and (3) deputies who were merely considered potential candidates for future undercover or investigative assignments. Chief Manning later acknowledged that roughly forty-five of the redacted deputies fell into the latter category of personnel who "may or may not go undercover covert." R.196a.

The RTKL places the burden on the agency to prove that an exemption applies to the information withheld. 65 P.S. § 67.708(a)(1). Yet the Sheriff's Office offered no individualized evidence demonstrating which of the 89 deputies belonged to each category or why each category independently satisfied the claimed exemption. Instead, the trial court approved a blanket redaction of all 89 names despite evidence that many of those deputies were not currently engaged in undercover or covert activities at all.

The absence of individualized findings is particularly significant because Chief Manning repeatedly testified that assignments change constantly. *See* R.185a–195a. He explained that deputies move in and out

of investigative positions, that the list was already inaccurate within months of its creation, and that the Sheriff's Office could not predict with certainty who would be assigned to future operations. *Id.* Those admissions underscore that the Sheriff's Office was not only withholding the identities of deputies currently performing undercover work; rather, it was attempting to withhold the identities of a fluid and expanding group of employees who had performed such work in the past or might do so in the future.

Having established the existence of materially different categories of deputies, the Sheriff's Office was required to demonstrate why each category qualified for the asserted exemption. It failed to do so, and the trial court erred by treating all 89 deputies as a single exempt class.

CONCLUSION

For the foregoing reasons, this Court should reverse the trial court's order and grant Appellants' appeal.

Date: July 6, 2026

Respectfully submitted,

/s/ Adam J. Tragone

Adam J. Tragone

Pa. Bar Id. No. 322479

Heather E. Murray*

Cornell Law School

First Amendment Clinic

Ithaca, NY 14853

(202) 909-3693

ajt273@cornell.edu

**pro hac vice forthcoming*

Paula Knudsen Burke

Pa. Bar Id. No. 87607

Reporters Committee for

Freedom of the Press

4000 Crums Mill Rd., Ste. 101

(717) 370-6884

pknudsen@rcfp.org

CERTIFICATES OF COMPLIANCE

I hereby certify:

This filing complies with the word-count limit set forth in Pa.R.A.P. 2135(a)(1), (b). Based on the word-count function of Microsoft Word, the filing contains 5,303 words.

This filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Date: July 6, 2026

/s/ Adam J. Tragone

Adam J. Tragone

Pa. Bar Id. No. 322479

Cornell Law School

First Amendment Clinic

Ithaca, NY 14853

(202) 909-3693

ajt273@cornell.edu

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121 and 2185:

Jack Goodrich
Goodrich & Associates, P.C.
429 Fourth Avenue, Suite 900
Pittsburgh, PA 15219
jack@goodrichpc.com
jgoodrich@allegheycourts.us
(*Electronic Service via PACFile*)

Michael Ben Lederman
310 Grant St Ste 814
Pittsburgh, PA 15219
mlederman9@aol.com
(*Electronic Service via PACFile*)

Date: July 6, 2026

/s/ Adam J. Tragone
Adam J. Tragone
Pa. Bar Id. No. 322479
Cornell Law School
First Amendment Clinic
Ithaca, NY 14853
(202) 909-3693
ajt273@cornell.edu

Appendix A

**Amended Concise Opinion of The Court of Common Pleas of
Allegheny County, March 16, 2026**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

CHARLIE WOLFSON and
PUBLIC SOURCE

Petitioner,

v.

ALLEGHENY COUNTY and
ALLEGHENY COUNTY,
SHERIFF'S OFFICE

Respondent.

AMENDED CONCISE OPINION

No. SA-25-000170

Filed by:

Honorable Daniel D. Regan
819 City-County Building
414 Grant Street
Pittsburgh, PA 15219

COPIES TO:

Counsel for Petitioner:

Paula Knudsen Burke, Esquire
4000 Crums Mill Road
Suite 101
Harrisburg, PA 17112
pknudsen@rcfp.org

Pro Se Respondent:

Rosalyn Guy-McCorkle, Solicitor
Maggie Shiels, Assistant Solicitor
Allegheny County Law
Department
445 Fort Pitt Blvd.
3rd Floor
Pittsburgh, PA 15219
Maggie.Shiels@alleghenycounty.us

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

CHARLIE WOLFSON and
PUBLIC SOURCE,

Petitioner,

No.: SA-25-000170

v.

ALLEGHENY COUNTY and
ALLEGHENY COUNTY SHERIFF OFFICE,

Respondent.

AMENDED CONCISE OPINION UNDER 65 P.S. §67.1302(a)

REGAN, J.

Adoptior

I adopt all Charie Wolfson and Public Source's (collectively Petitioners and/or Wolfson's), Allegheny County, and Allegheny County Sheriff's Office (collectively Respondents and/or County) Proposed Findings of Fact as filed with this court on January 2, 2026, and December 30, 2025, respectively.

I adopt Petitioner's Proposed Conclusions of Law 30, 31, 32, 33, 34, 35, 47, 48, and 49, the Respondent's Proposed Conclusions of Law 1, 2, 3, 4, 5, 7, and 8 as filed with this court on January 2, 2026, and December 30, 2025, respectively.

Procedural History

On March 31, 2025, Petitioner filed a Statutory Appeal from a Final Determination of the Pennsylvania Office of Open Records (OOR) on Petitioner's Right to Know Request. On April 1, 2025, this court issued a Writ of Certiorari. On April 14, 2025, the OOR filed the Certified Record with this court.

On October 6, 2025, Allegheny County District Attorney Stephen A. Zappala, Jr. and Allegheny County Sheriff Kevin M. Kraus' Uncontested Petition to Intervene was granted. On November 20, 2025, this court approved the Stipulated Discontinuance/Dismissal of Respondent, Allegheny County District Attorney's Office. On December 2, 2025, Respondent Allegheny County's Motion for Leave of Court to Discontinue/Dismiss Respondent Allegheny County Police Department, which was consented to by Petitioner, was granted.

On December 3, 2025, the court held a one-day trial on Petitioner's Appeal. At the conclusion of the trial, the parties agreed to file proposed findings of fact and conclusions of law. On December 30, 2025, Respondents filed their Proposed Findings of Fact and Conclusions of Law. On January 2, 2026, Petitioners filed their Proposed Findings of Fact and Conclusions of Law.

Discussion

I. Standard of Review

The trial court's is the ultimate finder of fact in a RTKL statutory appeal, its standard review is *de novo*, and its scope of review is plenary. *Bowling v. Office of Open Records*, 75 A.3d 453, 474 (Pa. 2013).

II. Argument

- A. Whether the Sheriff's Office could redact the name or other identifying information relating to an individual who was not "performing" an undercover or covert law enforcement activity, but disclosure would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.**

The Sheriff's Office can redact the name or other identifying information relating to an individual who was not "performing" an undercover or covert law enforcement activity, but disclosure would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.

The issue is whether the Sheriff's Office could redact the name or other identifying information relating to an individual who was not "performing" an undercover or covert law enforcement activity, but disclosure would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.

The Right to Know Law ("RTKL") states that "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." 65 P.S. § 67.708(b)(6)(iii).

At trial, Chief Deputy Sheriff Richard Manning, testified to the following: he has been working for the Sheriff's Office since 1999 and currently oversees operations; the Sheriff's Office has between 161 and 165 Deputy Sheriffs; the Sheriffs are fully fledged police officers; the Sheriffs Office includes three fugitive units, federal task forces with the FBI and DEA, as well as investigations into sex travelers, sex traffickers, counterfeit merchandise, and drug and gun crimes; and 44 or 45 of those Deputy Sheriffs are performing undercover or covert activities on a regular basis. 12/3/25 Tr. at 30-36.

Pursuant to § 67.708(b)(6)(iii), the Sheriff's Office may redact the names or other identifying information of those individuals.

Furthermore, the Commonwealth Court has stated:

Section 708(b)(1)(ii) of the RTKL states that records are exempt which, if disclosed, "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). "[U]nder this exception, the agency must demonstrate (1) a 'reasonable likelihood' of (2) a 'substantial and demonstrable risk' to a person's personal security." *Del. Cty. v. Schaefer*, 45 A.3d 1149, 1156 (Pa. Cmwlth. 2012). 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. Cmwlth. 2018). This Court has "defined substantial and demonstrable [risk] as actual or *real and apparent*." *Carey*, 61 A.3d at 373 (emphasis added).

Borough of Pottstown v. Suber-Aponte, 202 A.3d 173, 180 (Pa. Cmwlth. 2019). The court continued:

This Court has recognized that the RTKL's security-related exceptions are of particular concern in police and prison settings. *See Carey*. This Court has also upheld an OOR determination to exempt from disclosure a record that "would, if made public, assist criminals in their efforts to achieve a criminal objective[.]" *Adams v. Pa. State Police*, 51 A.3d 322, 325 (Pa. Cmwlth. 2012). Finally, this Court has ruled that opinions regarding safety and security rendered by a law enforcement officer with over 20 years of experience are "not mere speculation or conjecture." *Id.*

Id. at 183.

At trial, Chief Deputy Manning testified to, in addition to the above, the following: when the Sheriff's Office needs more people to perform undercover or covert activities, it draws from its pool of deputy sheriffs who work "bank hours" in courthouses; the frequency the Sheriff's Office uses additional deputies to perform

undercover or covert work “depends on the number of investigations we have in one year’s time, how busy the task forces are, but many of them work other details that are related to covert work as well”; the 89 names redacted from the record at issue are those Deputy Sheriffs that perform undercover work, have been in one of those units in the year, or are in the pool of Deputy Sheriffs who may be called upon to perform undercover work; any of those individuals could be assigned to undercover or covert activities; and disclosing names or other identifying information of those individuals, or “doxxing,” raised “concerns” regarding “threats” to the Sheriff Deputies and their families. See 12/3/25 Tr. 38-40, 42-44, and 50-51.

Based on Chief Deputy Manning’s testimony, this court finds there is sufficient evidence that disclosure of the information would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of the said Sheriff Deputies and their families. Furthermore, Chief Deputy Manning’s testimony at trial, like the testimony in *Borough of Pottstown*, consisted of much more than a general conclusion of speculative harm. Chief Deputy Manning specifically detailed the real and apparent threats to the Deputies as well as their families.

Therefore, the Sheriff’s Office can redact the name or other identifying information relating to an individual who was not “performing” an undercover or covert law enforcement activity, but disclosure would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.

III. Conclusion

Based on the argument set forth above, this court finds the Final Determination of the OOR is affirmed, and Petitioner's Appeal is denied.

In view of the foregoing, I enter a separate Order of Court:

DATE

3/16/2026

BY THE COURT:

DM, J.