

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Bruce Wishnefsky, :
Petitioner :
 :
v. : No. 177 C.D. 2025
 : Submitted: May 12, 2026
Department of Corrections :
(Office of Open Records), :
Respondent :

BEFORE: HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WALLACE

FILED: September 28, 2026

Petitioner Bruce Wishnefsky (Wishnefsky), who represents himself in this appeal, petitions for review of a Final Determination (Determination) by the Pennsylvania Office of Open Records (OOR), dated January 7, 2025. That Determination denied Wishnefsky's appeal of a decision by the Pennsylvania Department of Corrections (DOC), rejecting in part Wishnefsky's request for records under the Right-to-Know Law (RTKL).¹ After review, we affirm.

¹ Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104.

BACKGROUND

Wishnefsky, an inmate at the State Correctional Institution at Laurel Highlands, requested the DOC provide access, pursuant to the RTKL, to that “portion of the D.O.C. policy or procedure including, but not limited to [Policy] 6.3.12, that explains the steps to be taken by D.O.C. staff after an inmate is unable to produce a urine sample after two hours.” Certified Record (C.R.), OOR Ex. 1 at 003.²

The DOC provided access to certain documents but rejected the request for Policy 6.3.12. The DOC invoked an exemption covering records the disclosure of which “would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.”³ The DOC also invoked an exemption for records “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 or preparedness or public protection activity.”⁴ Finally, the DOC invoked an exemption applicable to certain records relating to criminal or non-criminal investigations.⁵ OOR Ex. 1 at 004-005.

Wishnefsky appealed. *Id.* at 002. The DOC submitted a letter to the OOR Appeals Officer opposing Wishnefsky’s appeal. OOR Ex. 4 at 002-006. With that letter the DOC submitted by a declaration under penalty of perjury by Major Robert Williamson, its Chief of Security (“Williamson Declaration”). *Id.* at 007-010. That

² Conforming to the numbering of the Certified Record as filed by the agency, we cite specific documents and pages here as “OOR Ex. [number] at [pages].”

³ 65 P.S. § 67.708(b)(1)(ii), sometimes referred to as the “personal security exemption.”

⁴ 65 P.S. § 67.708(b)(2), sometimes referred to as the “public safety exemption.”

⁵ 65 P.S. § 67.708(b)(16), (17).

declaration listed Williamson's responsibilities, including "review [of] all policies and procedures as they relate to security." *Id.* at 007 (¶ 2).

The Williamson Declaration identified Policy 6.3.12 as DOC's Drug Interdiction Procedures Manual, including section 2, "Inmate Urinalysis Testing." *Id.* at 007 (¶ 3). Williamson described illicit drug use in prisons as an "institutional security concern." *Id.* (¶¶ 5-6). He declared such drug use harms the health of drug users and others within prisons. *Id.* at 008 (¶ 7). He further declared trafficking in illicit drugs results in other contraband entering the prisons, such as weapons, money, and cell phones, leading to other violations of security rules. *Id.* (¶ 8). Williamson explained the DOC uses various tools, including urinalysis, to identify inmates involved in illicit drug use. *Id.* (¶ 9). Policy 6.3.12 governs such testing, he added, and the DOC discloses that policy even to its own personnel only on an "as needed" basis. *Id.* (¶ 10).

To demonstrate the Policy falls within the exemptions Williamson further declared:

12. The Drug Interdiction Procedures Manual contains the security sensitive information regarding the drug detection and testing processes, including information pertaining to factors that are utilized to determine when drug testing or detection activities will be conducted, which inmates will be subject to such activities, how specimens will be collected and maintained, and similar information.

13. Inmates could easily manipulate the information contained in the Drug Interdiction Procedures Manual to circumvent the drug testing procedures or drug detection activity and to hinder the Department's ability detect drug usage and pursue appropriate administrative sanctions and/or criminal charges.

14. Knowledge of the contents of the Drug Interdiction Procedures Manual will allow inmates to take precautions to prevent the detection of illicit drug use by providing them with

information to allow them to avoid being tested or to manipulate the testing process.

15. Circumvention of the policies will allow illicit drug use and trafficking to go undetected, proliferating prison drug use and trafficking in institutions and is reasonably likely to result in a substantial risk of physical harm to inmate drug users, Department staff and corrections officers, and/or other inmates and others who interact with inmates under the influence of such drugs.

Id. at 008-009 (¶¶ 12-15).

Disclosure to inmates, Williamson declared, would hinder the DOC's ability to identify and stop illicit drug use and contribute to violent activity associated with the distribution of illegal drugs and contraband, resulting in "substantial risk of physical harm to Department staff and corrections officers, other inmates and others who interact with inmates." *Id.* at 010 (¶ 16). Williamson further declared disclosure would give inmates "information to avoid or counter drug detection activities and drug testing procedures and render such processes useless." *Id.* (¶ 17). As a result, he declared, disclosure would be "reasonably likely to result in a substantial and demonstrable risk of physical harm to facility staff and/or other inmates." *Id.* (¶ 18).

Wishnefsky submitted a motion to the Appeals Officer seeking *in camera* review of Policy 6.3.12. That motion asserted the DOC response to his appeal offered "only boilerplate recitations" from the RTKL and cases "distinguishable to [sic] the instant matter." OOR Ex. 5 at 002. Wishnefsky did not submit any further response to the DOC letter or the Williamson Declaration, and did not address the specific arguments or facts in them.

The OOR denied Wishnefsky's appeal and determined the personal security exemption applied to Policy 6.3.12. OOR Ex. 6 at 002-009. The OOR also denied

the motion for *in camera* review, concluding it had sufficient evidence to determine applicability of the exemption without such review. *Id.* at 004.

In the Determination, the OOR quoted extensively from the Williamson Declaration, concluding it demonstrated “disclosure of Policy 6.3.12 would create a reasonable likelihood of substantial and demonstrable risk to facility staff and/or inmates by providing inmates with information that would allow them to circumvent the detection of drug use and drug trafficking in the institutional setting, which would, in turn, allow for the proliferation of drug use and trafficking.” *Id.* at 007. The OOR further explained it “is mindful of the expertise of correctional facility personnel in the realm of prison security, and . . . will not substitute its own judgment in such matters.” *Id.* at 008.⁶

Wishnefsky filed a timely Petition for Review of the Determination.

ISSUE

Wishnefsky presents a single issue for review: whether the OOR violated his due process rights under the 14th Amendment to the United States Constitution by refusing to conduct *in camera* review of Policy 6.3.12. Pet. Br. at 1. Wishnefsky argues refusal of *in camera* review deprived him of notice of, and the right to be heard on, the issues presented by his appeal. Pet. Br. at 3-4

DISCUSSION

We previously summarized the standard and scope of review relating to findings of fact in RTKL appeals such as this one:

⁶ The OOR also cited prior appeals in which it concluded the personal security exemption applied to Policy 6.3.12. *Id.* at 007-008, citing *Mogollon and Amistad Law Project v. Pa. Dep’t of Corr.*, OOR Dkt. AP 2022-2663, and *Wishnefsky v. Dep’t of Corr.*, OOR Dkt. AP 2014-1963 (available at <https://www.openrecords.pa.gov/Appeals/DocketSearch.cfm>).

Pursuant to Chapter 13 of the RTKL, with respect to appeals relating to decisions of Commonwealth agencies, this Court is the ultimate factfinder in RTKL disputes. Section 1301 of the RTKL, 65 P.S. § 67.1301. Accordingly, we owe no deference to the OOR’s legal analysis or factfinding, as our standard of review of a final determination of the OOR is *de novo*. *Bowling v. Off. of Open Recs.*, 75 A.3d 453, 474 ([Pa.] 2013). In addition, we are “entitled to the broadest scope of review[,]” covering all justiciable issues raised and preserved below. *Id.* at 477. *See also Payne v. Pa. Dep’t of Health*, 240 A.3d 221, 225 n.6 (Pa. Cmwlth. 2020). Unlike in other administrative agency contexts, “we . . . may substitute our own findings of fact for that of the agency.” *W. Chester Univ. of Pa. v. Browne*, 71 A.3d 1064, 1067 n.4 (Pa. Cmwlth. 2013). We have the discretion to conduct a hearing, or to remand to the OOR, to supplement the record. *Id.*

Pa. Off. of Governor v. Brelje (Off. of Open Recs.), 312 A.3d 928, 932 (Pa. Cmwlth. 2024). Section 1301(a) of the RTKL requires our decision “contain findings of fact and conclusions of law based upon the evidence as a whole” and “clearly and concisely explain the rationale for the decision.” 65 P.S. § 67.1301(a). We may adopt and incorporate the OOR’s findings of fact and conclusions when appropriate. *Off. of Open Recs. v. Center Twp.*, 95 A.3d 354, 370 (Pa. Cmwlth. 2014). As to questions of law, our standard of review is *de novo*, and our scope of review is plenary. *Bowling*, 75 A.3d at 466.

Although Wishnefsky presents only a question of constitutional due process, we construe his pro se appeal liberally, *see Lassiter v. Unemployment Compensation Board of Review*, 295 A.3d 17, 20 (Pa. Cmwlth. 2023), and, therefore, also consider whether the RTKL or other applicable law required OOR to review Policy 6.3.12 *in camera* before deciding Wishnefsky’s appeal. We conclude neither the RTKL nor any other law required such review.

Wishnefsky contends the OOR’s refusal to review Policy 6.3.12 *in camera* violated his due process rights under the United States Constitution. It did not.

Access to public records under by the RTKL is a privilege and not a property interest to which a constitutional right of due process applies. *City of Harrisburg v. Prince*, 288 A.3d 559, 578 (Pa. Cmwlth. 2023); *Vu v. Pa. Bd. of Prob. & Parole*, 200 A.3d 627, 632 (Pa. Cmwlth. 2018) (collecting cases); *Prison Legal News v. Off. of Open Recs.*, 992 A.2d 942, 947 (Pa. Cmwlth. 2010).

The RTKL establishes expedited and flexible proceedings for the decision of appeals. *Bowling*, 75 A.3d at 474. It gives Appeals Officers broad discretion to determine the procedures needed to decide particular appeals. *Bowling*, 75 A.3d at 467; *Center Twp.*, 95 A.3d at 370. *See also* 65 P.S. § 67.1102(b)(3) (“In the absence of a regulation, policy or procedure governing appeals under this chapter, the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute.”). Appeals Officers may, and frequently do, find exemptions justified based on affidavits that present adequate facts to justify such a conclusion. *See Crocco v. Pa. Dep’t of Health*, 214 A.3d 316, 324 (Pa. Cmwlth. 2019).

The OOR may review requested documents *in camera* if the Appeals Officer concludes decision of an appeal requires such review. *Twp. of Worcester v. Off. of Open Recs.*, 129 A.3d 44, 60 (Pa. Cmwlth. 2016); *Center Twp.*, 95 A.3d at 367-68. Nothing in the statute or case law, however, requires *in camera* review, unless the OOR or the Court determines it is necessary to create an adequate record. *Berks Cnty. v. Pa. Off. of Open Recs.*, 204 A.3d 534, 544 (Pa. Cmwlth. 2019) (Appeals Officers may review records *in camera* “where, in the appeals officers’ judgment, *in camera* review is necessary to develop an adequate record”); *Pa. Turnpike Comm’n v. Electr. Transaction Consult. Corp.*, 230 A.3d 548, 563 n.17 (Pa. Cmwlth. 2020) (“it is within the OOR’s discretion regarding the necessity of conducting a hearing

or *in camera* review”). A decision refusing *in camera* review is a discretionary judgment based on the facts and circumstances of each case, subject to review for abuse of discretion. *Am. Civ. Liberties Union v. Pa. State Police*, 232 A.2d 654, 665 (Pa. 2020) (*ACLU*).⁷

The Appeals Officer concluded that deciding Wishnefsky’s appeal did not require *in camera* review of Policy 6.3.12. Wishnefsky’s brief does not present any reason to conclude otherwise, and we discern none. As noted above, Wishnefsky argues refusal of *in camera* review deprived him of notice and a right to be heard. Pet. Br. at 3-4. He had a right to notice and an opportunity to be heard, under the RTKL and case law, *Wishnefsky v. Pennsylvania Department of Corrections*, 144 A.3d 290, 295 (Pa. Cmwlth. 2016), but a decision not to review the document *in camera* does not equate to a deprivation of those rights. The DOC letter and Williamson Declaration presented in detail the reasons for the DOC’s invocation of the exemptions. Wishnefsky had notice of those reasons and the opportunity to be heard on them, which is all due process requires.

⁷ In *ACLU*, the OOR proposed *in camera* review of the State Police policy sought by the requestor, and neither the requestor nor the State Police objected. *Id.* at 659. The OOR reviewed the policy *in camera* alongside the affidavit submitted by the State Police, and ordered disclosure. *Id.* at 659-60. This Court reversed without reviewing the policy. *Id.* at 660. Applying an abuse of discretion standard, the Pennsylvania Supreme Court reversed and remanded for this Court to review the document *in camera*, as the OOR had. *Id.* at 670. By contrast, in this case, the OOR reviewed the affidavit and concluded it was adequate to decide the appeal without *in camera* review.

CONCLUSION

For the reasons stated in this Memorandum Opinion, we affirm the Final Determination denying Wishnefsky's appeal.

STACY WALLACE, Judge

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ORDER

AND NOW, this 28th day of September 2026, the Final Determination of the Office of Open Records, dated January 7, 2025, is **AFFIRMED**.

STACY WALLACE, Judge