

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Anthony M. Helferty, :
Petitioner :
v. : No. 350 M.D. 2024
: Submitted: July 7, 2025
West Whiteland Township Police :
Department and Scott E. Pezick, :
Respondents :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE MATTHEW S. WOLF, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE COHN JUBELIRER¹

FILED: August 20, 2026

Before us in our original jurisdiction are the preliminary objections of the West Whiteland Township Police Department (Department) and Scott E. Pezick (Pezick) (collectively, Respondents), to the complaint of pro se litigant Anthony M. Helferty (Petitioner). The complaint seeks damages and equitable relief against Respondents for alleged violations of the Wiretapping and Electronic Surveillance Control Act (Act), 18 Pa.C.S. §§ 5701-5782, and constitutional violations. We sustain Respondents' preliminary objections in part and overrule the objections in part. We sustain Respondents' objection regarding jurisdiction, concluding that we lack jurisdiction over the merits of the claims for damages pursuant to Section 5725

¹ This matter was reassigned to the author on March 19, 2026.

of the Act (Section 5725 claims), 18 Pa.C.S. § 5725. As a result, we transfer Petitioner’s Section 5725 claims to the Court of Common Pleas of Chester County (common pleas), together with any claim against the Department and/or sounding in failure-to-train. Because we lack jurisdiction over the Section 5725 claims, we also transfer Respondents’ preliminary objections (1) seeking dismissal of the Department and (2) for insufficient specificity pursuant to Pa.R.Civ.P. 1028(a)(3) to common pleas, except to any extent otherwise set forth herein. We sustain the remaining preliminary objection in the nature of a demurrer to Petitioner’s removal claim under Section 5726 of the Act, 18 Pa.C.S. § 5726—over which we do have jurisdiction—without prejudice, granting leave for Petitioner to refile an amended complaint asserting a removal claim in this Court.

I. BACKGROUND

On July 12, 2024, Petitioner filed a complaint in this Court. The complaint alleges the following. While Petitioner was confined in the Chester County Prison (Prison), the Prison lawfully intercepted Petitioner’s telephone and text message communications with several individuals. (Compl. ¶¶ 2, 7.) Pezick, a law enforcement officer employed by the Department, did “intentionally intercept, endeavor to intercept, and procure other persons to intercept” Petitioner’s communications. (*Id.* ¶ 8.) Pezick then unlawfully disclosed the contents of the intercepted communications to Brandi Place (Place), a third party.² (*Id.* ¶¶ 4, 6, 8-10.) Place is not a person to whom Pezick could lawfully have disclosed the

² Petitioner avers in his answer to the preliminary objections that Place is his paramour of seven years and in his brief that Place is his common law spouse and paramour of eight years, but the complaint does not contain these factual averments. (Answer to Prelim. Objs. ¶ 17; Petitioner’s Brief (Br.) at 4.)

communications under the Act, such as another law enforcement or investigative officer. (*Id.* ¶ 10.) “The contents [of the communications] which [Pezick] disclosed to [] Place” consisted of “the identities of the above initialed participants [J.M., J.D., S.H., and D.M.], and the content of communications with [Petitioner].” (*Id.* ¶¶ 9, 11.) The contents of the communications disclosed were not evidence of any crime, and Pezick’s disclosure of the communications was not part of any criminal investigation or prosecution. (*Id.* ¶¶ 11-14.) Petitioner believes that Pezick disclosed the contents of communications to Place “to create a false sense of criminal activity and infidelity.” (*Id.* ¶ 11.)

As to timing of the disclosures, Pezick disclosed the contents of Petitioner’s communications with three individuals, J.M., S.B., and D.M., to Place between January 1 and January 8, 2024. (*Id.* ¶ 6.) Pezick further disclosed the contents of Petitioner’s communications with four individuals, J.M., J.D., S.H., and D.M., to Place between April 1 and April 25, 2024.³ (*Id.* ¶ 9.) As to intentionality of violations, Petitioner avers that Pezick “intentionally disclose[d] the content of intercepted wire and electronic communications,” that each Respondent “knowingly” violated the Act, and that Respondents’ actions were “purely malicious.” (*Id.* ¶¶ 5, 8, 14.) The complaint alleges that, based on the above disclosures, Respondents violated various provisions of the Act, including Sections 5703, 5717, 5721.1, and 5741, 18 Pa.C.S. §§ 5703, 5717, 5721.1, 5741. (*Id.* ¶¶ 16-18.) Further, the complaint avers that Department neglected to properly train Pezick.

³ We note that Petitioner’s brief asserts the dates of additional disclosures by Pezick to Place in July 2024 and August 2024, as well as states more specific dates of disclosure in January and April 2024, as opposed to the general ranges Petitioner sets forth in his complaint, limited to January and April 2024. (Petitioner’s Br. at ¶¶ 11-12.)

(*Id.* ¶¶ 18.) Petitioner seeks damages under Section 5725⁴ and equitable relief to remove Pezick from office under Section 5726. (*Id.* ¶¶ 21-23.)

Respondents filed preliminary objections asserting four bases for dismissal of the complaint, including lack of jurisdiction over the Section 5725 claims, insufficient specificity, and legal insufficiency as to both claims against the Department and the claim seeking Pezick’s removal pursuant to Section 5726. Petitioner filed a response to the preliminary objections, requesting that the Court overrule the preliminary objections, retain jurisdiction, and grant leave to file an amended complaint withdrawing the Department from the action.⁵ As the parties have now briefed the preliminary objections, they are ripe for consideration.

II. PARTIES’ ARGUMENTS

Respondents object under Pennsylvania Rule of Civil Procedure 1028(a)(1), Pa.R.Civ.P. 1028(a)(1), on the grounds that this Court lacks jurisdiction over the Section 5725 claims for damages. (Respondents’ Brief (Br.) at 6-8.) Specifically, Respondents assert that the Act does not offer a basis for jurisdiction over Section 5725 claims, nor does Section 761(a) of the Judicial Code, 42 Pa.C.S. § 761(a), as Pezick is not a commonwealth officer that would otherwise bring the claims within our original jurisdiction. (*Id.*) In the alternative, Respondents object to Petitioner’s

⁴ Section 5725 of the Act creates a cause of action for damages “against any person who intercepts, discloses or uses” any wire, electronic, or oral communication in violation of the Act. 18 Pa.C.S. § 5725(a). The Act waives sovereign immunity for such claims, but it provides a good faith defense if the use or disclosure of the communication is pursuant to court order or the Act. *Id.* § 5725(b), (c).

⁵ Petitioner asks us to dismiss the preliminary objections as untimely. (Petitioner’s Br. at 7-8.) By order, responsive pleadings were due September 23, 2024, and Respondents filed the preliminary objections on September 24, 2024. Petitioner does not allege prejudice beyond minor confusion. We decline to dismiss the preliminary objections. *See Humphrey v. Dep’t of Corr.*, 939 A.2d 987, 991 (Pa. Cmwlth. 2007).

Section 5725 claims for insufficient specificity under Pa.R.Civ.P. 1028(a)(3), arguing that Petitioner has not pleaded facts related to the circumstances of the intercepted communications or their disclosure as needed to enable a court to determine if a statutory exception to disclosure applies. (*Id.* at 8-10.)

Respondents also raise two objections in the nature of a demurrer under Pa.R.Civ.P. 1028(a)(4). (*Id.* at 5-6, 10-11.) Respondents first assert a demurrer to all claims against the Department on several grounds. (*Id.* at 5-6.) They argue that the Department is not a separate, suable entity, and that a cause of action for damages under Section 5725 of the Act accrues only against an individual person or private corporation, not a political subdivision. (*Id.* at 5 (citing 18 Pa.C.S. §§ 5702; 5725).)⁶ They also argue further that Petitioner’s failure-to-train claim against the Department, to the extent it sounds in state tort law, is barred by the Political Subdivision Tort Claims Act, 42 Pa.C.S. § 8542(b), and that Petitioner did not allege the proper elements of a failure-to-train claim against the Department under 42 U.S.C. § 1983. (*Id.* at 6.) Respondents’ second objection in the nature of a demurrer seeks dismissal of Petitioner’s Section 5726 claim for removal of Pezick from office. (*Id.* at 11.) They argue that Petitioner failed to adequately plead Pezick violated the Act, undermining any Section 5726 claim. (*Id.*) Moreover, Respondents argue that even if Petitioner pled an underlying violation of the Act, the complaint does not plead that any alleged violation was willful or intentional, as opposed to inadvertent, or that Petitioner suffered any serious privacy violation warranting the extreme sanction of removal. (*Id.*)

⁶ Section 5725 creates a cause of action against “any **person** who intercepts, discloses or uses or procures any other person to intercept, disclose or use, such communication” 18 Pa.C.S. § 5725 (emphasis added). Under the Act, “person” is defined as: “Any **employee, or agent** of the United States or any state or political subdivision thereof, and any individual, partnership, association, joint stock company, trust or corporation.” *Id.* § 5702 (emphasis added).

Petitioner responds that this Court has original jurisdiction because Pezick, as a local law enforcement officer performing a duty to enforce the laws of the Commonwealth, should be viewed as an officer of the Commonwealth. (Petitioner's Br. at 9-12.) Further, Petitioner contends that if this Court has original jurisdiction over his Section 5726 claim, ancillary jurisdiction would allow us to address any Section 5725 claims, even if we do not have original jurisdiction over those claims. (Answer to Prelim. Objs. ¶ 7.) Petitioner requests that if we determine that we do not have jurisdiction over any claims, we transfer those claims to the proper tribunal. (*Id.* ¶ 8.)

As to the objection for insufficient specificity, Petitioner argues that the complaint is sufficiently specific, as it avers relevant dates, party names, the basic information disclosed by Pezick, the origin of that information, and "the purpose or suspected malice," and all other "minimum information" deemed necessary to adequately state a claim under *McCulligan v. Pa. State Police*, 123 A.3d 1136, 1139-40 (Pa. Cmwlth. 2015), *aff'd*, 135 A.3d 580 (Pa. 2016). (Petitioner's Br. at 13-14; Answer to Prelim. Objs. ¶¶ 10-11.) In the alternative, Petitioner argues that if this Court determines that the complaint does not satisfy Pa.R.Civ.P. 1033, we should grant him leave to amend the complaint.⁷ With respect to the demurrer to claims against Department, Petitioner concedes that he should not have named the Department and agrees to withdraw the Department as a Respondent. (Answer to Prelim. Objs. ¶¶ 6, 30; Petitioner's Br. at 7.) As a result, Petitioner seeks leave to name additional parties, including the West Whiteland Township in place of the Department. (*Id.*)

⁷ Petitioner additionally requests leave to amend the complaint, independent of this Court's ruling on the objection for insufficient specificity, to add new claims and parties. (Petitioner's Br. at 14, 16.)

Finally, Petitioner argues that the Section 5726 removal claim should survive a demurrer because it pleads sufficiently egregious conduct, to the extent that Pezick “thrust [himself] into [Petitioner’s] private life” where there was not “even a sc[i]ntilla of dealing with criminal activity” and discovery will bear out Pezick’s “malicious” intentions. (Answer to Prelim. Objs. ¶ 14.) Petitioner further asserts that the removal claim should survive the demurrer because no good faith defense or exception applies, which might otherwise prevent this Court from concluding that an intentional violation of the Act occurred. (*Id.* ¶¶ 15-21).

III. DISCUSSION⁸

When deciding preliminary objections, we accept as true all well-pleaded material facts and all reasonable inferences from those facts. *Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1214 n.6 (Pa. Cmwlth. 2018) (en banc). “[W]e need not accept unwarranted inferences, conclusions of law, argumentative allegations, or expressions of opinion.” *Id.* To sustain preliminary objections, it must be clear that the law will permit no recovery, and we resolve any doubt in favor of the non-movant. *Id.* “Because a demurrer results in the dismissal of a suit, it should be sustained only in cases that are clear and free from doubt and only when it appears with certainty that the law permits no recovery under the allegations pleaded.” *Pa. Div., Horsemen’s Benevolent & Protective Ass’n, Inc. v. Mountainview Thoroughbred Racing Ass’n, Inc.*, 855 A.2d 957, 960 n.3 (Pa. Cmwlth. 2004).

⁸ We have reordered and consolidated issues for ease of review.

A. Jurisdiction

We first address Respondents' preliminary objection concerning lack of jurisdiction over Petitioner's Section 5725 claims for damages, as this issue is dispositive of several claims in the complaint. We begin with a review of relevant law.

The Act explicitly provides a right for aggrieved persons to bring removal claims in our Court under Section 5726(a):

(a) Cause of action.--Any aggrieved person **shall have the right to bring an action in Commonwealth Court** against any investigative or law enforcement officer, public official or public employee seeking the officer's, official's or employee's removal from office or employment on the grounds that the officer, official or employee has intentionally violated the provisions of this chapter. If the court shall conclude that such officer, official or employee has in fact intentionally violated the provisions of this chapter, the court shall order the dismissal or removal from office of said officer, official or employee.

18 Pa.C.S. § 5726(a) (emphasis added). By contrast, Section 5725(a) contains no such language that aggrieved parties may bring Section 5725 claims before this Court:

(a) Cause of action.--Any person whose wire, electronic or oral communication is intercepted, disclosed or used in violation of this chapter shall have a civil cause of action against any person who intercepts, discloses or uses or procures any other person to intercept, disclose or use, such communication; and shall be entitled to recover from any such person:

- (1) Actual damages, but not less than liquidated damages computed at the rate of \$100 a day for each day of violation, or \$1,000, whichever is higher.
- (2) Punitive damages.
- (3) A reasonable attorney's fee and other litigation costs reasonably incurred.

Id. § 5725(a).

This Court has previously considered this distinction in language between Sections 5726 and 5725 to assess whether we have jurisdiction over Section 5725 claims in *McCulligan*. 123 A.3d at 1138-40. In *McCulligan*, the petitioner alleged that respondents—the Pennsylvania State Police (PSP), PSP troopers, and county detectives—intentionally violated the Act and raised both removal claims under Section 5726 and damages claims under Section 5725. *Id.* at 1137-38. The *McCulligan* respondents asserted a preliminary objection for lack of subject matter jurisdiction, arguing that the Section 5725 claim for damages did not fall within our original jurisdiction because (1) county detectives are not officers of the Commonwealth government under Section 761(a) of the Judicial Code and (2) the Act only vests original jurisdiction in this Court over Section 5726 removal claims, not Section 5725 claims for damages. *Id.* at 1138-39. The petitioner in *McCulligan* responded that even if this Court lacked original jurisdiction over the Section 5725 claim, we have ancillary jurisdiction over any damages claim by virtue of our jurisdiction over the Section 5726 removal claim. *Id.* at 1139. This Court ultimately rejected the petitioner’s arguments for finding jurisdiction in *McCulligan*, reasoning that the legislature’s silence on any language vesting this Court with jurisdiction in Section 5725, while specifically including such language in Section 5726, establishes legislative intent that ancillary jurisdiction would **not** apply to extend jurisdiction over the Section 5725 claim:

Although we have found no direct authority indicating that the issue of jurisdiction has been definitively determined, we have observed as follows regarding the inclusion of jurisdictional language in Section 5726 and its omission in Section 5725:

Significantly, [Section 5726(a)] expressly provides that an aggrieved person shall bring [his or her equitable cause of] action in the Commonwealth Court, although the

immediately preceding section, which creates a civil action for money damages, **18 Pa.C.S. § 5725, provides no such language vesting this court with jurisdiction.** Fundamental in statutory construction is the rule that, **where a section of a statute contains a given provision, the omission of that provision from a similar section is significant to show a different intention existed.**

Boettger [v. *Miklich*], 481 A.2d [972,] [] 975 n. 2 [Pa. Cmwlth. 1984] (emphasis added) (citations omitted). *See also Birdseye v. Driscoll*, [] 534 A.2d 548, 550 n. 2 ([Pa. Cmwlth.] 1987) (a removal case noting the distinction made in *Boettger* “between actions for damages under Section 5725 and an equitable cause of action for removal created by Section 5726, which contains express language vesting this Court with original jurisdiction”) and *Welch v. Palka*, (Pa.[]Cmwlth., No. 274 M.D. 2008, filed November 29, 2010), slip op. at 8 n. 4, *aff’d*, [] 40 A.3d 1185 ([Pa.] 2012) (single-judge opinion reiterating the distinction made in *Boettger* and noting: “[I]n the absence of specific language stating otherwise, this Court is arguably not vested with jurisdiction to hear claims made under either Sections 5741 or 5747 [of the Act, *as amended*, 18 Pa.C.S. §§ 5741 and 5747].”). **Accordingly, where the legislature specifically afforded jurisdiction to this Court in Sections 5726 and 5728 of the Wiretap Act, 18 Pa.C.S. §§ 5726 and 5728, for example, the absence of such language in other provisions indicates its intent not to afford this Court jurisdiction over other provisions even in situations where ancillary jurisdiction arguably could apply.**

McCulligan, 123 A.3d at 1139–40 (emphasis added) (footnotes omitted) (some alterations in original).

Here, just as the petitioner in *McCulligan*, Petitioner brings both Section 5725 and 5726 claims against Respondents and reasons that ancillary jurisdiction should allow us to hear the Section 5725 claims, given that we exercise original jurisdiction over the Section 5726 removal claim. As in *McCulligan*, Respondents object on jurisdictional grounds. Based on *McCulligan* and the authority cited therein, we conclude that we lack subject matter jurisdiction over Petitioner’s Section 5725 claims, notwithstanding Petitioner’s arguments regarding ancillary jurisdiction. As

to Petitioner’s arguments that we should view the Department as the Commonwealth government or Pezick as a Commonwealth officer in order to exercise original jurisdiction under Section 761(a), this position is unsupported by the Judicial Code. While this Court’s original jurisdiction under Section 761(a) relates only to “officer[s]” of the “Commonwealth government,” Section 102 of the Judicial Code, the definition of “Commonwealth government” excludes “any political subdivision, municipal or other local authority, or any officer or agency of any such political subdivision or local authority.” *See* 42 Pa.C.S. § 761(a); 42 Pa.C.S. § 102. Accordingly, local law enforcement officers are not officers of the commonwealth government for purposes of 42 Pa.C.S. § 761(a)(1), and this provision affords Petitioner no relief to overcome Respondents’ jurisdictional objection. *See Balshy v. Rank*, 490 A.2d 415, 417 (Pa. 1985). Based on the foregoing, we will sustain Respondents’ preliminary objection as to jurisdiction and transfer the Section 5725 claims to common pleas. *See Stedman v. Lancaster Cnty. Bd. of Comm’rs*, 221 A.3d 747, 760 (Pa. Cmwlth. 2019) (en banc).

To the extent that Respondents object to Petitioner’s Section 5725 claims for insufficient specificity under Pa.R.Civ.P. 1028(a)(3), we lack jurisdiction over the merits of this objection for the reasons set forth above and will transfer this preliminary objection to common pleas. Likewise, because we lack jurisdiction over the merits of the Section 5725 claims, we will not dispose of Respondents’ preliminary objection in the nature of a demurrer against Department, notwithstanding Petitioner having conceded that he cannot proceed against the Department as a “person” against whom to bring a claim under the Act. (Answer to Prelim. Objs. ¶ 6; Petitioner’s Br. at 7.) As a result, we will also transfer all claims

against the Department, including any claim sounding in failure-to-train, to common pleas, except to any extent otherwise set forth herein.

B. Demurrer to Removal Claim

Turning now to Respondents' demurrer to the Section 5726 removal claim, we begin with a review of the applicable law on interception of communications by county correctional facilities and removal claims under the Act. Our Supreme Court has explained:

[The Act] is designed to protect individual privacy while also giving law enforcement authorities a tool to combat crime. The statute generally prohibits intercepting, using, or disclosing private communications except pursuant to specified procedures The Act does, however, allow county correctional facilities to monitor and record inmate phone calls without any specific prior authorization, so long as inmates are notified in writing and anyone calling into the facility is also told that [the] call may be monitored and recorded. *See* 18 Pa.C.S. § 5704(14). **Such facilities may divulge the recordings only as necessary to safeguard the facility, in response to a court order, or in the prosecution or investigation of a crime.** *See id.* § 5704(14)(i)(C).

Karoly v. Mancuso, 65 A.3d 301, 303-04 (Pa. 2013) (emphasis added). Section 5717 limits use and disclosure of the contents of intercepted communications, placing restrictions on **who** may receive subsequent disclosures:

(a) Law enforcement personnel.--Any investigative or law enforcement officer who, under subsection (a.1), (b), (b.1) or (c), has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, **may disclose such contents or evidence to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.**

(a.1) Use of information.--Any investigative or law enforcement officer who, by any means authorized by this subchapter, has obtained knowledge of the contents of any wire, electronic or oral

communication or evidence derived therefrom may use such contents or evidence **to the extent such use is appropriate to the proper performance of his official duties.**

(b) Evidence.--Any person who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, **may disclose such contents or evidence to an investigative or law enforcement officer and may disclose such contents or evidence while giving testimony under oath or affirmation** in any criminal proceeding in any court of this Commonwealth or of another state or of the United States or before any state or Federal grand jury or investigating grand jury.

(b.1) Criminal cases.--Any person who by means authorized by section 5704(17) (relating to exceptions to prohibition of interception and disclosure of communications) has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, may in addition to disclosures made under subsection (b) disclose such contents or evidence, on the condition that such disclosure is made **for the purpose of providing exculpatory evidence in an open or closed criminal case.**

(c) Otherwise authorized personnel.-

(1) Except as provided under paragraph (2), any person who, by any means authorized by the laws of another state or the Federal Government, has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived from any wire, electronic or oral communication, **may disclose the contents or evidence to an investigative or law enforcement officer and may disclose the contents or evidence where otherwise admissible while giving testimony under oath or affirmation in any proceeding in any court of this Commonwealth.**

(2) The contents of a nonconsensual interception authorized by the laws of the Federal Government or another state shall not be admissible unless the interception was authorized by a court upon a finding of probable cause that the target of the surveillance is engaged or will engage in a violation of the criminal laws of the Federal Government or any state.

18 Pa.C.S. § 5717 (emphasis added).

As set forth above, Section 5726 establishes a cause of action for removal from office for intentional violations of the Act. *See* 18 Pa.C.S. § 5726 (emphasis added). “[R]emoval may only be ordered upon a finding of an **intentional** violation of the Act.” *Leventry v. Miller*, 796 A.2d 427, 430 (Pa. Cmwlth. 2002) (emphasis added). “The removal cause of action . . . is an extreme sanction that has rarely if ever been deployed, and was clearly intended to deter the most egregious intentional violations of personal privacy.” *McCulligan*, 123 A.3d at 1141-42 (quoting *Welch v. Palka*, 983 A.2d 209, 211 (Pa. 2009) (concurring & dissenting statement of Castille, C.J.)).

With these principles in mind, we examine whether Petitioner has pled an intentional violation of the Act to determine whether a removal claim is available to him. Here, Petitioner pleads that although the Prison **lawfully intercepted** his communications to various individuals pursuant to an exception to the general prohibition on interception and disclosure of communications under Section 5704(14),⁹ the **subsequent disclosure** of these intercepted communications by

⁹ Pursuant to Section 5704(14)(i)(A)-(C):

It shall not be unlawful and no prior court approval shall be required under this chapter for:

. . . .

(14) An investigative officer, a law enforcement officer or employees of a county correctional facility to intercept, record, monitor or divulge an oral communication, electronic communication or wire communication from or to an inmate in a facility under the following conditions:

(i) The county correctional facility shall adhere to the following procedures and restrictions when intercepting, recording, monitoring or divulging an oral communication, electronic communication or wire communication from or to an inmate in a county correctional facility as provided for by this paragraph:

(Footnote continued on next page...)

Respondents to Place—in the absence of any applicable exception for lawful disclosure—violated the Act. (Compl. ¶¶ 6-17.) As set forth above, Petitioner avers that Place is not a law enforcement or investigative officer as defined under Section 5702 of the Act, nor is she an employee of the Prison or the Department. (*Id.* ¶ 10.) Petitioner, as set forth above, also avers generally that Pezick “**intentionally** disclose[d] the content” of unspecified communications and that Respondents “**knowingly**” violated the Act, acting in a “purely malicious” manner. (*Id.* ¶¶ 5, 8, 14 (emphasis added).)

Upon careful review of the complaint, we agree with Respondents that Petitioner has not pled sufficient facts to establish that Pezick **intentionally** violated the Act. Although Petitioner avers in Paragraph 8 of the complaint that Pezick “did intentionally disclose the content of intercepted wire and electronic communications,” this averment does not identify **which** communications were intentionally disclosed or **to whom** the communications were intentionally

(A) Before the implementation of this paragraph, all inmates of the facility shall be notified in writing that, as of the effective date of this paragraph, their oral communications, electronic communications or wire communications may be intercepted, recorded, monitored or divulged.

(B) Unless otherwise provided for in this paragraph, after intercepting or recording an oral communication, electronic communication or wire communication, **only the superintendent, warden or a designee of the superintendent or warden or other chief administrative official or his or her designee, or law enforcement officers shall have access to that recording.**

(C) The contents of an intercepted and recorded oral communication, electronic communication or wire communication **shall be divulged only as is necessary to safeguard the orderly operation of the facility, in response to a court order or in the prosecution or investigation of any crime.**

18 Pa.C.S. § 5704(14)(i)(A)-(C) (emphasis added).

disclosed. (*Id.* ¶ 8.) While in other paragraphs the complaint references batches of communications disclosed to Place in January and April 2024, nowhere does the complaint specify that these particular 2024 disclosures to Place were the same communications alleged to have been **intentionally** disclosed by Pezick in Paragraph 8. (*Compare id.* ¶¶ 6, 9 with *id.* ¶ 8.) Where the Act contemplates that **some** disclosures are permissible if made to certain authorized individuals (such as investigative or law enforcement officers) under certain circumstances, general averments that Pezick made intentional disclosures to unspecified persons at unspecified times, (*id.* ¶ 8), or vague averments that Respondents knowingly violated the Act without reference to any supporting facts, (*id.* ¶ 5), do not amount to sufficient pleading that Pezick **intentionally** violated the Act **with respect to the January and April 2024 communications at issue.**

Further, we agree with Respondents that Petitioner has not sufficiently identified the contents of the disclosed communications or the circumstances surrounding them. In *McCulligan*, this Court sustained preliminary objections for failure to plead facts necessary to establish a cause of action for removal under Section 5726 where a petitioner:

made a series of legal conclusions, without specifying how or when the alleged violations occurred, who committed the alleged violations, **what information was disclosed**, the recipient of the information, **under what circumstances information was disclosed** or what subsections of the Act were allegedly violated. Further, his petition lacks averments specifying **the circumstances of the 2003 to 2004 communications at issue, such as time, place, participants, means of communication, means of interception and consent or lack thereof of the participants.**

123 A.3d at 1141 (emphasis added). Here, although Petitioner avers generally that the contents of intercepted communications disclosed to Place included “the

identities of the above initialed participants [J.M., J.D., S.H., and D.M.], and the content of the communications with [Petitioner],” he does not otherwise aver specifically what information was disclosed or more detailed circumstances of the communications at issue.¹⁰ (*Id.* ¶ 11). Without more detail on precisely what information Pezick disclosed to Place or the circumstances of these disclosures and the communications themselves, it is difficult for this Court to assess whether there was an underlying intentional violation of the Act, to gauge the egregiousness of the alleged violations, or to determine whether Petitioner can make out a claim for removal under Section 5726. For the foregoing reasons, we sustain Respondents’ preliminary objection in the nature of a demurrer to the removal claim brought under Section 5726.

Notwithstanding our decision to sustain the demurrer as to the removal claim, we grant leave for Petitioner to file an amended complaint in this Court, raising a Section 5726 claim in accordance with this Opinion and Order. While Respondents would have us dismiss Petitioner’s removal claim with prejudice, we are not so “clear and free from doubt” that Petitioner cannot plead an underlying violation of the Act such that the law would permit no recovery. *Mountainview Thoroughbred*, 855 A.2d at 960 n.3. In *Chiles v. Miller*, for example, our Superior Court held that an assistant district attorney (ADA) violated Section 5717 of the Act where prison authorities **lawfully recorded** an inmate’s conversations pursuant to Section 5704(14)(i)(C), but the ADA subsequently disclosed these communications **to third**

¹⁰ We note that Petitioner more specifically avers facts surrounding the alleged disclosures to Place in his answer to the preliminary objections, including a description of an alleged text from Pezick to Place, but these averments are not in the complaint. (Answer to Prelim. Objs. ¶ 18.)

parties who were not “investigative or law enforcement officers” under the Act.¹¹ 288 A.3d 913, 918 (Pa. Super. 2023). Specifically, the Superior Court held that the ADA’s disclosures (1) to the divorce attorney of the inmate’s husband and (2) to the attorney of the inmate’s in-laws violated the Act, notwithstanding that the ADA asserted a prosecutive or investigative purpose for the disclosures. *Id.* at 916-17.

Here, we are similarly concerned that while the recording of Petitioner’s communications from Prison may have been lawful, subsequent disclosures to Place—identified as neither an investigative nor law enforcement officer under the Act or an employee of the Prison—may constitute an underlying violation of the Act. Accordingly, where Petitioner has alleged sufficient facts that **may** meet the criteria for establishing an underlying violation of the Act, we are not clear and free from all doubt that the law would bar recovery for a Section 5726 claim (if properly pled), and we decline to dismiss the removal claim **with prejudice**.

Moreover, as to whether there is some reasonable possibility of successful amendment, we are not convinced amendment would be futile to dismiss without leave to amend. *See Otto v. Am. Mut. Ins. Co.*, 393 A.2d 450, 451 (Pa. 1978) (“The right to amend should not be withheld where there is some reasonable possibility that amendment can be accomplished successfully.”). We note that Petitioner has already presented many additional facts in his answer and brief in opposition to the preliminary objections that are not present in the complaint, including but not limited to the fact that Place was his paramour of seven years, the contents of at least one text message between Pezick and Place, updated dates of intercepted and disclosed communications, updated total counts of disclosures, and so on. Based on

¹¹ “In general, Superior Court decisions are not binding on this Court, but they offer persuasive precedent where they address analogous issues.” *Lerch v. Unemployment Comp. Bd. of Rev.*, 180 A.3d 545, 550 (Pa. Cmwlth. 2018).

Petitioner’s demonstrated ability to expand on facts initially presented in the complaint, we have no reason to believe that it would be a futile exercise for Petitioner to plead more specifically that Pezick intentionally violated the Act or the contents and circumstances surrounding the disclosed communications.

IV. CONCLUSION

Based on the foregoing, we sustain the preliminary objection regarding jurisdiction and transfer the Section 5725 claims seeking damages to the Court of Common Pleas of Chester County, together with any claim against the Department, including any claim sounding in failure-to-train (except to any extent otherwise set forth herein) and Respondents’ preliminary objections seeking to dismiss the Department and preliminary objections for insufficient specificity pursuant to Pa.R.Civ.P. 1028(a)(3). We further sustain the preliminary objection in the nature of a demurrer to Petitioner’s Section 5726 claim and dismiss the removal claim without prejudice, granting leave for Petitioner to refile an amended complaint in this Court—all other claims in the complaint having been transferred to common pleas.

RENÉE COHN JUBELIRER, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Anthony M. Helferty,	:	
Petitioner	:	
v.	:	No. 350 M.D. 2024
	:	
West Whiteland Township Police	:	
Department and Scott E. Pezick,	:	
Respondents	:	

ORDER

NOW, August 20, 2026, the second preliminary objection filed by the West Whiteland Township Police Department (Department) and Scott E. Pezick (collectively, Respondents) pertaining to lack of subject matter jurisdiction over the claims for damages under 18 Pa.C.S. § 5725 is SUSTAINED. These claims, along with Respondents' first preliminary objection seeking to dismiss the Department and third preliminary objection for insufficient specificity pursuant to Pa.R.Civ.P. 1028(a)(3), are TRANSFERRED to the Court of Common Pleas of Chester County. The Prothonotary shall transmit the record of this matter to the Prothonotary of the Court of Common Pleas of Chester County, together with a copy of this memorandum opinion and order and a certified copy of docket entries. Subsequent to transfer, the assigned Common Pleas judge shall rule upon the remaining preliminary objections. The fourth preliminary objection over the claim pursuant to 18 Pa.C.S. § 5726 is SUSTAINED without prejudice for Petitioner to refile an amended complaint with this Court, consistent with this memorandum opinion, within 30 days of the date of this Order being docketed. Should Petitioner not file a timely amended complaint in our Court, Respondents may file an application to dismiss this action.

RENÉE COHN JUBELIRER, President Judge