IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John C. Stein, Petitioner	:	
v.	:	No. 1236 C.D. 2009
Office of Open Records, Respondent	:	Submitted: February 19, 2010

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM **FILED: May 19, 2010**

John C. Stein (Requester), an inmate at SCI-Smithfield, petitions for review of the Final Determination of the Office of Open Records (OOR) that denied his appeal from the decision of the Agency Open Records Officer (AORO) of the Department of Corrections (Department). The AORO granted, in part, Requester's request for the salaries and benefit information of the Department's employees at SCI-Smithfield but denied, in part, Requester's request insofar as the AORO stated that the first names of the corrections officers would be redacted. For the reasons that follow, we affirm the Final Determination of the OOR.

Requester initially requested "the names, salaries, ranks and information regarding employee benefits" for almost all of the Department's employees at SCI-Smithfield. (Final Determination at 2.) The AORO supplied this information, but

redacted the first names of the corrections officers. Requester submitted a second request on March 13, 2009, requesting the corrections officers' first names. The AORO issued a decision on April 24, 2009, granting Requester access to all of the information requested except for first names[1] and denying access to the first names of the corrections officers. The AORO justified the denial on the grounds that the first names are: exempt pursuant to the personal security exemption found at Section 708(b)(1)(ii) of the Right to Know Law (RTKL),[2] 65 P.S. § 67.708(b)(1)(ii); exempt pursuant to Section 708(b)(2) of the RTKL, 65 P.S. § 67.708(b)(2), which excludes records maintained in connection with public safety or law enforcement that would be reasonably likely to endanger public safety or public protection preparedness if disclosed; exempt pursuant to Section 708(b)(6) of the RTKL, 65 P.S. § 67.708(b)(6), which exempts from disclosure personal identification information; and protected by the right to privacy found at article I, section 1 of the Pennsylvania Constitution.

Requester appealed the AORO's decision to the OOR on May 18, 2009. The OOR issued a letter to the parties on May 18, 2009, stating that the matter was being assigned to an Appeals Officer and inviting the parties to submit additional information. The Department submitted the declaration (Declaration) of Major Timothy Riskus, Chief of Security for the Department. In his Declaration, Major Riskus stated that the job of a corrections officer involves a risk of physical harm

[1] Although Requester's request seems to indicate that the AORO or the Department had already provided Requester with a redacted list, the AORO's decision purported to again grant access to the salary and benefit information.

[2] Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101 – 67.3104.

and that, because of the nature of their duties, corrections officers may become the targets of hostility from inmates. Major Riskus stated that knowing the corrections officers' first names would facilitate retaliation by inmates against corrections officers and their families. On June 17, 2009, the OOR issued the Final Determination. The Final Determination denied Requester's request on the basis of Section 708(b)(1)(ii)'s personal security exemption. Requester now petitions this Court for review.[3]

Before this Court, Requester argues that:[4] (1) the OOR did not apply the

[3] When reviewing an order of the OOR, this Court "independently reviews the OOR's orders and may substitute its own findings of fact for that of the agency." Bowling v. Office of Open Records, 990 A.2d 813, 818 (Pa. Cmwlth. 2010) (en banc). Moreover, this Court is "not limited to the rationale offered in the OOR's written decision." Id. at 820.

[4] We have reordered Requester's arguments in the interest of clarity. Requester states his questions involved as follows:

> Question 1
>
> Does the public of this Commonwealth have the right-to-know [sic] the first names of Commonwealth employees whom [sic] receive Commonwealth funds for the purpose of specifically identifying who is receiving the public's Commonwealth funds and in what amount irregardless of the nature of their jobs?
>
> . . .
>
> Question 2
>
> Did the OOR have enough substantial evidence or case law to support its decision to withhold the requested records under 65 P.S. § 67.708(b)(1)(ii) the personal security exception?
>
> . . .
>
> Question 3
>
> Did the OOR formulate an appropriate test to determine whether there is a reasonable likelihood of substantial and demonstrable risk of physical harm

proper analysis under Section 708(b)(1)(ii) in determining whether the disclosure of the corrections officers' first names would cause a substantial risk of personal injury; (2) the Department did not present sufficient evidence to justify withholding the corrections officers' first names pursuant to Section 708(b)(1)(ii)'s personal security exemption; and (3) disclosing the corrections officers' first names is not likely to cause substantial risk of harm because corrections officers are just as likely to engender enmity as other law enforcement officers, and both corrections officers and law enforcement officers commonly disclose their first names to the public. In addition, on January 6, 2010, Requester filed with this Court a Request for Judicial Notice, in which he asked this Court to take judicial notice of three documents that appear to be signed by corrections officers using both the officers' first and last names.

We first address Requester's Request for Judicial Notice. In the Request for Judicial Notice, Requester asks this Court to take judicial notice of three documents. The first is titled "Comprehensive Paging System Request Form," and it lists Requester as the inmate name and contains a signature with the first and last name of a corrections officer. The second is a memo regarding suspension of contact visits (Suspension Memo). The name of the inmate appearing on the Suspension Memo has been redacted. The Suspension Memo states that it is from a security lieutenant and lists the lieutenant's first and last name. The third document is a Misconduct Report. The inmate's name appearing on the

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> necessary to trigger the personal security exception in this context, and if so, was it properly applied?

(Requester's Br. at 5.)

Misconduct Report is redacted, as is the name of the ranking corrections officer on duty who reviewed and approved the Misconduct Report. It contains a first and last name in the space for the reporting corrections officer.

This Court will not take judicial notice of the documents offered by Requester. Rule 201 of the Pennsylvania Rules of Evidence provides that a court, upon request by a party, shall take judicial notice of a fact that is "not subject to reasonable dispute in that it is . . . (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Pa. R.E. 201(b). We do not agree that the documents submitted by Requester are "sources whose accuracy cannot reasonably be questioned." Pa. R.E. 201(b)(2). While these documents appear to be official Department forms, their provenance is unknown. This Court does not know how Requester came into possession of these documents, nor do we know whether they have been altered from their original form. In fact, two of the documents have been significantly redacted. It is not apparent how this Court could independently verify the information contained in these documents. This is different from other cases in which this Court has taken, or upheld the taking of, judicial notice of facts which were readily available from sources generally available to the public. See, e.g., Hyer v. Department of Transportation, Bureau of Driver Licensing, 957 A.2d 807 (Pa. Cmwlth. 2008) (upholding the taking of judicial notice by the trial court of the definition of a code found in the Code Dictionary of the American Association of Motor Vehicle Administrators); Pennsbury Village Associates, LLC v. McIntyre, 949 A.2d 956, 963 n.5 (Pa. Cmwlth. 2008) (taking judicial notice of a county resolution and of "the recording of a 'Declaration of Covenant' acknowledging that the purchase of

lands was financed in part by a . . . grant from the Department of Conservation and Natural Resources"); Bolus v. Fisher, 785 A.2d 174, 176 n.3 (Pa. Cmwlth. 2001) (taking judicial notice of a nominee's felony conviction). Because there is no means of authenticating the documents of which Requester asks this Court to take judicial notice, we decline to take judicial notice of them.

We now turn to the merits of the case. Initially, we note that, although the parties do not frame their arguments as such, the information sought by Requester is a financial record under the RTKL. Section 102 of the RTKL defines a financial record as including "[t]he salary or other payments or expenses paid to an officer or employee of an agency, including the name and title of the officer or employee." 65 P.S. § 67.102(2). Section 708(c) of the RTKL provides that "[t]he exceptions set forth in subsection (b) shall not apply to financial records, *except* that an agency *may* redact that portion of a financial record protected under subsection (b)(1), (2), (3), (4), (5), (6), (16) or (17)." 65 P.S. § 67.102(c) (emphasis added). Therefore, if the first names of the corrections officers are properly encompassed by the personal security exemption found at Section 708(b)(1)(ii), it was properly within the discretion of the Department to redact this information.

This Court agrees with the OOR and the Department that the corrections officers' first names fall within the personal security exemption found at Section 708(b)(1)(ii). Section 708(b)(1)(ii) states that records exempt from disclosure under the RTKL include 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). Section 708(a)(1) states that

"[t]he burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence." 65 P.S. § 67.708(a)(1). In this case, in support of its argument that disclosure of the corrections officers' first names "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 Department submitted the Declaration. Requester argues that the Declaration is not sufficient evidence to support the OOR's determination, in that the Declaration only postulates speculative harm to corrections officers. We disagree.

In the Declaration, Major Riskus states that corrections officers are targets of hostility from inmates because corrections officers are charged with enforcing discipline on the inmates. (Declaration ¶ 7). Major Riskus also states that not only is disclosure of the corrections officers' first names likely to cause a risk of harm to corrections officers and their families, but that such harm has occurred in the past:

> The disclosure of the first names of corrections officers will further enable inmates and/or others to identify the officers, their residences and their families to orchestrate threats, harassment, assaults, or physical harm, or to file fraudulent liens or other financially damaging documents. . . . [R]eal damage to an officer's person or finances or to the person or finances of those individuals closest to the officer has been the result of disseminating information such as is requested here.

(Declaration ¶ 8.) We accept Major Riskus's statements that disclosure of the corrections officers' first names is reasonably likely to cause a demonstrable and substantial risk of physical or financial harm to the personal security of corrections

officers and their families. In doing so, this Court is mindful that Requester is an inmate of the Department, and that "[a] prison setting involves unique concerns and security risks." Commonwealth v. Dugger, 506 Pa. 537, 542, 486 A.2d 382, 384 (1985). The Pennsylvania Supreme Court has stated that "internal prison operations are more properly left to the legislative and executive branches, and that prison officials must be allowed to exercise their judgment in the execution of policies necessary to preserve order and maintain security free from judicial interference." Bronson v. Central Office Review Committee, 554 Pa. 317, 321, 721 A.2d 357, 358 (1998); see also Beard v. Banks, 548 U.S. 521, 530 (2006) (stating that with respect to matters involving professional judgment, courts' "inferences must accord deference to the views of prison authorities"). Here, the Department argues that it has a policy of restricting inmates from knowing the first names of corrections officers, and that this policy is intended to protect corrections officers and those close to them.[5] The Department has offered testimony that such concerns are not just speculative, but that there have been past incidents of harm resulting from inmates' knowledge of corrections officers' full names. This Court, therefore, concludes that disclosure of the corrections officers' first names to Requester "would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security" of the corrections officers and those close to them. 65 P.S. § 67.708(b)(1)(ii).

[5] Even if we were to take judicial notice of the documents offered by Requester and find that some corrections officers have disclosed their first names to inmates, our rationale and outcome on this issue would not change. The Department's policy is not negated because some corrections officers have not complied with it, and the risks that corrections officers face when inmates obtain their full names are not negated because some officers may choose to assume those risks.

Requester argues that the corrections officers are in no more danger of retaliation than are other law enforcement officials, and that this Court allowed the disclosure of the names of law enforcement officials under the former Act commonly known as the Right to Know Act (Act)[6] in Times Publishing Co., Inc. v. Michel, 633 A.2d 1233 (Pa. Cmwlth. 1993) (en banc). Michel is distinguishable. In that case, Times Publishing Company, Inc. requested access to applications pertaining to "valid licenses to carry firearms issued by Sheriff Robert N. Michel" (Michel) of Erie County. Id. at 1234. One of the arguments raised by Michel against disclosing the applications was the personal security exception of the Act.[7] This Court acknowledged that "[w]hile many individuals who work in law enforcement and in the criminal justice system hold licenses to carry firearms, and these persons' identities may be known by virtue of their public employment, maintaining the confidentiality of their address operates to protect them and their families." Id. at 1236. This Court ultimately allowed disclosure of the applications after the redaction of applicants' home addresses, telephone numbers, and social security numbers. Requester argues that, because this Court determined that the disclosure of the names of firearm license applicants in Michel was permissible under the security exception of the Act, even though some of the applicants were likely law enforcement officers, the names of corrections officers must not fall within the personal security exemption of the current RTKL. We disagree. We note that the requester in Michel was a publishing company, not a

[6] Act of June 21, 1957, P.L. 390, as amended, 65 P.S. §§ 66.1-66.4, repealed by the Act of February 14, 2008, P.L. 6.

[7] Section 1(2) of the Act exempted records that "would operate to the prejudice or impairment of a person's . . . personal security." 66 P.S. § 66.1(2) (repealed).

prison inmate. As discussed above, there is evidence in the record in this case that the disclosure of corrections officers' first names has led to safety issues in the past and could do so in the future.[8] We, therefore, hold that Michel is distinguishable, and we decline to infer from this Court's holding in that case that the names of corrections officers cannot fall within the personal security exemption of the RTKL.

Requester argues that, as a requester of documents under the RTKL, he stands in the position of the public at large, per Pennsylvania State University v. State Employees' Retirement Board, 594 Pa. 244, 257, 935 A.2d 530, 537 (2007), and that his status as an inmate should not be taken into account. We do not agree. Initially, we note that Pennsylvania State University stands for the principle that "[w]hen the media requests disclosure of public information from a Commonwealth agency pursuant to the [Act], the requester then stands in the shoes of the general public." Id. Inmates do not enjoy the same "panoply of rights" as non-incarcerated citizens. Bronson, 554 Pa. at 321, 721 A.2d at 359 (quoting Robson v. Biester, 420 A.2d 9, 12 (Pa. Cmwlth. 1980).) Disclosure of the first names of corrections officers to the general public might not pose the same risk of harm as disclosure of those names to an inmate. We note that, even if we were to

[8] Our rationale on this point also addresses Requester's argument that many law enforcement officers provide their full names to individuals against whom they enforce the law. The case at bar presents us with the unique situation of an inmate attempting to gain information about the corrections officers at a facility where he is incarcerated. As discussed above, courts will grant deference to the professional judgment of prison administrators in decisions affecting the safety of inmates, prison employees, and the public. Because we hold that, in this case, the Department is justified in redacting the first names of corrections officers does not mean, as Requester argues, that similar redaction would necessarily be required for all law enforcement officers under the personal security exemption.

hold that Requester was entitled to the corrections officers' first names under the RTKL, the Department could still prohibit Requester from receiving this information. See Bundy v. Beard, 924 A.2d 723 (Pa. Cmwlth. 2007) (An inmate obtained Uniform Commercial Code (UCC) filing forms through a right-to-know request to the Pennsylvania Department of State, and this Court upheld a Department policy prohibiting inmates from receiving UCC materials under a rational basis test, on the basis that prohibiting the receipt of the materials furthered a legitimate penological purpose). We, therefore, reject Requester's position that this Court should disregard the fact that he is an inmate seeking information about the corrections officers at the facility where he is incarcerated.

For these reasons, we affirm the Final Determination of the OOR denying Requester's appeal.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John C. Stein,		:	
	Petitioner	:	
		:	
v.		:	No. 1236 C.D. 2009
		:	
Office of Open Records,		:	
	Respondent	:	

PER CURIAM

O R D E R

NOW, May 19, 2010, the Final Determination of the Office of Open Records in the above-captioned matter is hereby **AFFIRMED**.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

John C. Stein,	:	
Petitioner	:	
	:	
v.	:	No. 1236 C.D. 2009
	:	Submitted: February 19, 2010
Office of Open Records,	:	
Respondent	:	

OPINION NOT REPORTED

DISSENTING OPINION
PER CURIAM FILED: May 19, 2010

I respectfully dissent. The majority holds, based on the "Declaration of Timothy Riskus" (Riskus Declaration), that the first names of corrections officers are exempt from disclosure as public records under the personal security exception at section 708(b)(1)(ii) of the Right-to-Know Law[1] (RTKL) because such 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). For the following reasons, I cannot agree.

John C. Stein (Requester), an inmate, requested the first names of certain corrections officers working for the Department of Corrections (Department). The Department denied the request, and Requester appealed to the Office of Open Records (OOR). The Department submitted the Riskus Declaration to the OOR. Riskus, who is Chief of Security for the Department, stated:

[1] Act of February 14, 2008, P.L. 6, 65 P.S. §67.708(b)(1)(ii).

> 8. The disclosure of the first names of corrections officers will **further** enable inmates and/or others to identify the officers, their residences, and their families to orchestrate threats, harassment, assaults, or physical harm…. While specific examples of … physical harm exist, disclosure of those examples poses an inherent security risk because such information is reasonably likely to prompt inmates to repeat such activity. Suffice it to say, real damage to an officer's person … or to the person … of those individuals closest to the officer has been the result of disseminating information **such as is requested here**.

(Declaration at 2) (emphasis added). Based on the Riskus Declaration, the OOR affirmed the Department's denial of the request, and Requester appealed to this court.

I. Public Information by Law

Pursuant to section 614(a) of The Administrative Code of 1929 (Administrative Code),[2] all administrative departments annually transmit to the Auditor General, State Treasurer and Secretary of the Budget a complete list of the **names** of all persons entitled to receive compensation from the Commonwealth for

[2] Act of April 9, 1929, P.L. 177, added by section 3 of the Act of September 27, 1978, P.L. 775, *as amended*, 71 P.S. §234(a).

services rendered to an administrative department. The list contains various kinds of information, including the person's voting residence. Pursuant to section 614(c) of the Administrative Code, except for voting residence, the information is "public information." 71 P.S. §234(c). Thus, the name of a corrections officer who receives compensation from the Department for services rendered is public information as a matter of law.

Words in a statute are to be construed according to their common and approved usage. Section 1903(a) of the Statutory Construction Act of 1972, 1 Pa. C.S. §1903(a). By definition, a person's "name" is his or her distinctive and specific appellation, the words by which an individual is regularly known. Webster's Third New International Dictionary 1501 (2002). Thus, a person's name includes his or her first name, which means that a corrections officer's first name is public information under section 614(c) of the Administrative Code.

Moreover, statutes *in pari materia*, i.e., statutes that relate to the same thing, must be construed together, if possible, as one statute. Section 1932 of the Statutory Construction Act of 1972, 1 Pa. C.S. §1932. In section 614(c) of the Administrative Code, the legislature made **all** of the information public, **except for voting residence**. Making no exception for names, or first names, it is clear that the legislature intended to make first names public information. Because we must read the personal security exception in section 708(b)(1)(ii) of the RTKL *in pari materia* with section 614(c) of the Administrative Code, I conclude that the legislature did not contemplate that the disclosure of the first names of corrections officers would be a substantial and demonstrable risk to personal security.

Inasmuch as the legislature has spoken on the matter, the opinion of Riskus to the contrary is irrelevant.

II. Case Law

In *Times Publishing Company v. Michel*, 633 A.2d 1233, 1239 (Pa. Cmwlth. 1993), *appeal denied*, 538 Pa. 618, 645 A.2d 1321 (1994) (emphasis added) (quoting *Young v. Armstrong School District*, 344 A.2d 738, 740 (1975)), this court stated that "for records to fall within the personal security exception they must be intrinsically harmful and **not merely capable of being used for harmful purposes**."[3] Here, Riskus states only that inmates could use the first names of corrections officers for harmful purposes. There is no evidence that the public disclosure of the first names of corrections officers is intrinsically harmful.

Moreover, we held in *Michel* that, although the public disclosure of the home addresses, telephone numbers and social security numbers of persons in law enforcement falls under the personal security exception, the public disclosure of their names does not implicate the same concerns. Thus, the majority's holding is contrary to *Michel*.[4]

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[3] Indeed, section 301(b) of the RTKL states that a "Commonwealth agency **may not deny** a requester access to a public record **due to the intended use** of the public record by the requester unless otherwise provided by law." 65 P.S. §67.301(b) (emphasis added). Given section 614(c) of the Administrative Code, a Commonwealth agency, like the Department, may not deny the public access to the first names of corrections officers due to the requester's intended use.

[4] *See American Federation of State, County and Municipal Employees, Council 13, AFL-CIO v. Commonwealth*, (Pa. Cmwlth., No. 149 M.D. 2001, filed May 20, 2005), *aff'd per curiam*, 588 Pa. 537, 905 A.2d 916 (2006) (concluding that the first names of corrections officers do not fall within the personal security exception based on *Michel* and based on credible evidence that

The majority attempts to distinguish *Michel* based on the identity of the requester, i.e., based on the fact that the requester in *Michel* was not an inmate. In other words, the majority **would follow the holding in *Michel* if the requester were not an inmate**. However, the RTKL sets forth when the **public** can have access to information; it does not exclude inmates.[5] Moreover, if the majority were to hold that inmates may not make requests under the RTKL because inmates might use the information to threaten the personal security of someone, inmates need only ask non-inmate friends to submit right-to-know requests, or wait until they are no longer inmates.

III. Insufficiency of Evidence

The Riskus Declaration never explicitly states that the disclosure of the first name of a corrections officer to the public has resulted in physical harm to the corrections officer. In fact, the Declaration is carefully worded to avoid saying that. Riskus states that corrections officers have been harmed by the dissemination of information "such as is requested here." This vague statement can mean only that public dissemination of other kinds of personal information about corrections officers has harmed them. Indeed, Riskus states that disclosure of first names will "further" enable inmates to harm corrections officers.

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corrections officers do not take precautions to shield their first names from the public or from inmates).

[5] Section 102 of the RTKL defines a "requester" as a "person that is a legal resident of the United States and requests a record pursuant to this act." 65 P.S. §67.102.

Finally, the majority states, "Here, the Department argues that it has a policy of restricting inmates from knowing the first names of corrections officers, and that this policy is intended to protect corrections officers and those close to them." (Majority op. at 7-8.) There is absolutely no evidence in the record regarding a Department policy of restricting inmates from knowing the first names of corrections officers. Yet, the majority accepts the Department's bald assertion as a fact and notes that the "Department's policy is not negated because some corrections officers have not complied with it." (Majority op. at 8 n.5.)

For all of the foregoing reasons, I would reverse.