

Finley was detained on September 18, 2007 for a technical parole violation, and a urine test was given the following day. He states that following a December 17, 2007 hearing, he was found guilty of a technical parole violation involving alcohol and drug use. On January 12, 2008, he requested access under the RTKL for, among other documents, reports from urinalysis conducted by the DOC on or around November 29, 2005 and September 18, 2007. The issue here concerns the September 2007 report. The RTKL Officer denied access stating:

Under the RTKL, only public records are subject to disclosure. A public record is defined as "[any] account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property," or "[any] minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons." 65 P.S. § 66.1. Drug and alcohol test results do not qualify as public records under the statutory definition. *See Neyhart v Department of Corrections*, 721 A.2d 391 (Pa. Cmwlth. 1998).

RTKL Officer's Response, Certified Record (C.R.) Item 2.

On March 13, 2008, the Exceptions Officer affirmed the RTKL Officer's denial of access to the urinalysis report and adopted his reasoning:

[The RTKL Officer] advances two reasons to deny access: 1) "A urinalysis report is not an agency decision. The Department makes no decision regarding what the result of a urinalysis report is or will be. A urinalysis report is a scientific and medical record of the contents of one's bodily fluid. As such it is outside the purview of the RTKL..." and, 2) "Even if...the requested records was [sic] the basis of a specific agency decision, there are strong privacy interests in drug test results which outweigh the value of such a record from being available to the general public. The requested records fall within the personal reputation exception to the Right to Know Law. Under that exception, documents which would

operate to the prejudice or impairment of a person's reputation are not considered public records...."

Final Determination, p. 3 n4, C.R. Item 5 (citations omitted).²

Finley argues that a urinalysis report is an agency decision because the DOC decided to obtain a urinalysis, the testing facility has an account with the agency and the agency is fixing Finley's personal rights. A report is also defined as a "minute" in Black's Law Dictionary. Finley appears to argue that if his urinalysis report is deemed to be a medical record, then he is entitled to his medical record under Section 6155(b) of the Judicial Code, *as amended*, 42 Pa. C.S. §6155(b).³

Finley also argues, without citation, that even if the urinalysis report is subject to the personal reputation exception under the RTKL, he is entitled to the report under Section 1 of the Fourteenth Amendment, which provides in part that: "No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the Unites States." There are no privacy concerns in releasing the report because Finley signed a D.C. 108 disclaimer relinquishing all of his privacy rights, and he is the sole owner of his bodily fluids.⁴ Alternatively,

²The Court's review of an agency decision is limited to determining whether constitutional rights have been violated, whether an error of law has been committed and whether necessary findings of fact are supported by substantial evidence in the record. *Parsons v. Urban Redevelopment Authority of Pittsburgh*, 893 A.2d 164 (Pa. Cmwlth. 2006).

³Section 6155(b)(1) under Subchapter E (Medical Records) provides, in part : "A patient ... shall have the right of access to his medical charts and records ... without the use of a subpoena duces tecum, for his own use." Finley also cites generally the Freedom of Information Act (FOIA), 5 U.S.C. §552, and Section 6 of the Pennsylvania Drug and Alcohol Abuse Control Act (DAAC Act), Act of April 14, 1972, P.L. 221, *as amended*, 71 P.S. §1690.106(b), which provides: "The conditional release of any drug or alcohol abuser ... convicted of any Commonwealth offense may be conditioned on the person's agreement to periodic urinalysis...."

⁴Finley cites Section 7 of the DAAC Act, 71 P.S. §1690.107, that provides: "A person receiving care or treatment under ... this act shall retain all of his civil rights and liberties." Finley claims that an inmate has the status of a patient who is subject to physical examinations.

the report is a criminal record and pursuant to Section 9151(b) of the Criminal History Record Information Act (CHRIA), 18 Pa. C.S. §9151(b), prisoners have the right "to obtain a copy of their criminal history record information."⁵ Finley claims prejudice in his appeal from the December 17, 2007 parole revocation by the denial of access to the exculpatory report in violation of the Fifth Amendment (federal due process clause), citing *U.S. Department of Justice v. Julian*, 486 U.S. 1 (1988) (holding that FOIA requires disclosure of presentence investigation reports to prisoners subject to exceptions).

Finley contends that the urinalysis report would exonerate him from what he believes to be false charges of alcohol and drug use and that the DOC may not deny access to such exculpatory evidence. He notes that an accused has a constitutional right to present affidavits and other documentary evidence, citing *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) (discussing parolee's right to counsel at revocation hearing), and *Morrissey v. Brewer*, 408 U.S. 471 (1972) (describing parolee's due process rights at revocation hearing). He further contends that DOC officials can access prisoners' records without privacy concerns and that the RTKL is the proper channel to access the report, and he asserts that *Hunt v. Pennsylvania Department of Corrections*, 698 A.2d 147 (Pa. Cmwlth. 1997), guaranteed such access, although that case actually held that under the existing facts an inmate's medical records were not public records.

⁵Section 9102 of the CHRIA, *as amended*, 18 Pa. C.S. §9102, defines the term "Criminal history record information" to exclude "intelligence information, investigative information or treatment information, including medical and psychological information...." Therefore, contrary to Finley's assertion, a urinalysis report probably is not considered to be criminal history record information.

The DOC responds that it makes no decision regarding the results of a urinalysis report; instead, a report is a medical record of one's bodily fluid contents outside the purview of the RTKL under *Hunt* and *Neyhart*. According to *Nanayakkara v. Casella*, 681 A.2d 857, 859 (Pa. Cmwlth. 1996), a prisoner's right to his inmate records under the RTKL "is not more or less than that of any Pennsylvania citizen." The DOC argues that Finley failed to show that the report must be made available, citing *Scranton Times, L.P. v. Scranton Single Tax Office*, 736 A.2d 711 (Pa. Cmwlth. 1999) (explaining that some records must be made public, some may be within official discretion and some may not be because they are subject to an express statutory prohibition). Also, Finley's motives for seeking the report are irrelevant under *Pennsylvania State University v. State Employees' Retirement Board*, 880 A.2d 757 (Pa. Cmwlth. 2005) (holding that the requester's motives are irrelevant). Finley has not shown that the report is a public record.

Alternatively, the DOC argues that Finley's requested records are not accessible because they fall within the personal reputation exception under Section 1(2) of the RTKL, 65 P.S. §66.1(2), which provides that "public records" "shall not include any record, document ... [or] report ... which would operate to the prejudice or impairment of a person's reputation or personal security...." It cites Article I, Section 1 of the Pennsylvania Constitution (relating to inherent rights of mankind) as well as *Cypress Media Inc. v. Hazleton Area School District*, 708 A.2d 866 (Pa. Cmwlth. 1998) (holding that teacher-applicants' medical reports are protected from disclosure), and *Times Publishing Co., Inc. v. Michel*, 633 A.2d 1233 (Pa. Cmwlth. 1993) (holding that home addresses, telephone numbers and social security numbers are protected from disclosure). Although Finley argues that privacy concerns in releasing his report are mitigated since he is the requester,

the RTKL does not allow access to non-public records. Under *Nanayakkara*, the relevant inquiry is not the status of the requester but the type of record requested.

In *Neyhart* the Court explained what constitutes a public record with respect to an agency decision under the RTKL:

[T]his Court has held that any record upon which a decision is based becomes a public record. "Just because a document may have an effect on or influence an agency decision, it does not make it an 'essential component' of that decision. The document must either be the basis for or a condition precedent of the decision."

Id., 721 A.2d at 393 (citation omitted). The Court then held that the inmate's requested urinalysis reports were not public records because his RTKL request "did not set forth any basis that those reports were an essential component of any decision," notwithstanding his subsequent assertion that the reports were the only evidence offered to secure his parole revocation. *Id.*, at 394.

In the instant matter, the Court concludes that the urinalysis report is not a public record under the RTKL because Finley's request failed to set forth any basis to show that the report is an essential component of any decision. *Neyhart*. Finley's RTKL request states only that the report is "need [sic] in a [sic] up coming legal appeal as evidence." C.R. Item 1. In his exceptions, Finley merely states that the report "is a decision made by [the DOC]" pursuant to its authority to order urinalysis. C.R. Item 3. Absent is any averment that the report was an essential component of any decision; rather, Finley asserts only that the report may contain exculpatory information. There was no error in dismissing Finley's exceptions.

Finally, Finley's constitutional arguments lack merit. Any reliance on *Gagnon* and *Morrissey* is misplaced where Finley does not allege any due process violations at the December 17, 2007 revocation hearing, and this case is not the

appeal of his parole revocation. Likewise, his reliance on the FOIA is misplaced. *See North Hills News Record v. Town of McCandless*, 555 Pa. 51, 722 A.2d 1037 (1999) (noting that public disclosure under RTKL is narrower than under FOIA). Finley's claim of the DOC's violation of its own policy is not fully developed and thus is waived. *See City of Philadelphia v. Berman*, 863 A.2d 156 (Pa. Cmwlth. 2004) (holding that an issue not addressed in argument section was waived). Moreover, Finley cites no legal authority to support his contention that the Judicial Code or CHRIA entitles him to access the report and to use the RTKL mechanism to gain access where he has not first established that the report is a public record. Lastly, Finley's motives or his inmate status are irrelevant in deciding whether the report is a public record. *Pennsylvania State University; Nanayakkara*. Finding no constitutional violation or error of law, the Court affirms the final determination.

DORIS A. SMITH-RIBNER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Steven Finley,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 554 C.D. 2008
	:	
Department of Corrections,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 29th day of September, 2008, the Court affirms the final determination of the Department of Corrections' Right-to-Know Law Exceptions Officer, Executive Deputy Secretary William Sprenkle.

DORIS A. SMITH-RIBNER, Judge