

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Francis E. Weaver,	:	
Petitioner	:	
	:	
v.	:	No. 284 M.D. 2009
	:	
Pennsylvania Department	:	Submitted: May 14, 2010
of Corrections, Jeffrey Beard	:	
Ph. D., Secretary, Office of Attorney	:	
General, Ronald C. Stanko,	:	
Administrative Law Judge,	:	
Chief Deputy Attorney General,	:	
Respondents	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE SIMPSON**

**FILED: August 19, 2010**

Before this Court in our original jurisdiction are the preliminary objections of the Department of Corrections and its Secretary, Jeffrey Beard Ph.D. (collectively, DOC) and the Office of the Attorney General and Ronald C. Stanko, Administrative Law Judge, Chief Deputy Attorney General (collectively, OAG) to the amended petition for review in the nature of mandamus filed by Francis E. Weaver (Weaver), representing himself. DOC and OAG challenge the specificity and legal sufficiency of the amended petition. Agreeing the amended petition lacks sufficient specificity and is legally insufficient, we sustain the preliminary objections of DOC and OAG.

## I. Background

Weaver is an inmate at a state correctional institution in Coal Township (S.C.I. – Coal Township). Weaver sought his own criminal history record information (CHRI) from S.C.I. – Coal Township. His claim is premised in part on the Criminal History Record Information Act (Act), 18 Pa. C.S. §§9101-9183.

Presumably pursuant to DOC's policy, DC-ADM 003 (Release of Information), Weaver filed a request for his CHRI with staff members at S.C.I.-Coal Township. DOC, asserting it is not a repository, responded with instructions to obtain the requested information by contacting the Pennsylvania State Police (PSP), the defined central repository under the Act. Weaver never alleges that he contacted PSP. Instead, Weaver filed a grievance with DOC, which was denied.

Weaver also contacted OAG seeking an appeal pursuant to the Act, 18 Pa. C.S. §9152. Chief Deputy Attorney General Stanko corresponded with Weaver on this issue. Then, Weaver filed a petition for review.<sup>1</sup>

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<sup>1</sup> Litigation between these parties includes: Weaver v. Dep't of Corr., 829 A.2d 750 (Pa. Cmwlth. 2003) (seeking the return of confiscated artwork and art supplies and enforcement of written DOC policies); Weaver v. Dep't of Corr., 720 A.2d 178 (Pa. Cmwlth. 1998) (asserting a mandamus action to invalidate DOC's inmate medical service co-pay regulations); and Weaver v. Dep't of Corr., 702 A.2d 370 (Pa. Cmwlth. 1997) (requesting access to the Pennsylvania Additive Classification Tool Manual under the Right-to-Know Law, Act of June 21, 1957, P.L. 390, as amended, formerly 65 P.S. §§66.1-66.4, repealed and replaced by Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104). See also memorandum opinions, Weaver v. DOC, (Pa. Cmwlth., No. 14 M.D. 2007, filed August 15, 2008 and March 31, 2009) (challenging DC-ADM 003 regarding fees for copies of medical records).

Significant for our discussion, this Court previously sustained DOC's preliminary objections to Weaver's petition for review on the grounds of insufficient specificity and failure to conform to rules of court. This Court ruled that DOC's preliminary objection raising absence of case or controversy was moot.

Thereafter, Weaver filed an amended petition. Weaver's amendments include adding OAG to the petition and setting forth averments in numbered paragraphs.

## **II. Issues**

At the outset, the Court notes that Weaver's arguments are almost incomprehensible. While unclear at best, it appears Weaver seeks to obtain his entire criminal history record information from DOC, regardless of whether all that information is in the possession of DOC, and without payment of any fees. Also, Weaver apparently seeks more robust assistance from OAG in obtaining his free criminal history record information from DOC.

Several issues are currently before the Court. Common to all issues is the question of whether the amended petition identifies the criminal history record information Weaver seeks with sufficient specificity. In addition, the preliminary objections question whether Weaver's cause of action in mandamus and claim for declaratory relief are legally sufficient. The legal sufficiency of Weaver's due process and equal protection claims are also at issue.

“In reviewing preliminary objections in the nature of a demurrer, we must accept as true all well pled facts, which are relevant and material, as well as

all inferences reasonably deducible therefrom.” Weaver v. Dep’t of Corr., 829 A.2d 750, 751 (Pa. Cmwlth. 2003); Cohen v. City of Phila., 806 A.2d 905 (Pa. Cmwlth. 2002). It is not necessary for the court, in ruling on the demurrer, to accept as true conclusions of law, unwarranted inferences from the facts, argumentative allegations, or expressions of opinion. Portalatin v. Dep’t of Corr., 979 A.2d 944 (Pa. Cmwlth. 2009).

In ruling on legal insufficiency (demurrer), the definitive question is whether the law states with certainty that no recovery is possible based on the alleged facts. Kretchmar v. Dep’t of Corr., 831 A.2d 793 (Pa. Cmwlth. 2003). Any doubt is resolved in favor of overruling the demurrer. Id. In deciding the issue of legal insufficiency, a court must confine its analysis to the complaint. Torres v. Beard, \_\_\_ A.2d. \_\_\_ (Pa. Cmwlth., No. 621 M.D. 2009, filed June 11, 2010); Clark v. Beard, 918 A.2d 155 (Pa. Cmwlth. 2007).

### **III. Specificity**

The crucial question in this case is exactly what criminal history record information is Weaver requesting. He simply requests his criminal history record information. In response to this Court’s prior order sustaining a preliminary objection to specificity, Weaver merely added “as defined in 18 Pa.C.S.A. §9101 and §9102” to his amended petition.

To put the specificity dispute in context, DOC claims that it offered Weaver the opportunity to review his sentencing order from the Court of Common Pleas in Tioga County, the court commitment report, and his sentence status summary report during the pendency of this matter. These documents are arguably

criminal history record information in DOC's possession. In a record filing, Weaver specifically denied requesting these three documents and stated that DOC requested that he pay a fee for them.

As both DOC and OAG contend, Pennsylvania is a fact-pleading jurisdiction. Unified Sportsmen of Pa. v. Pa. Game Comm'n, 950 A.2d 1120 (Pa. Cmwlth. 2008). As defined in 18 Pa. C.S. §9102, criminal history record information is information about a case after an arrest and initiation of criminal proceedings. Dep't of Auditor Gen. v. Pa. State Police, 844 A.2d 78 (Pa. Cmwlth. 2004).<sup>2</sup>

Here, Weaver already had an opportunity to make his request for criminal history record information understandable. He failed to remedy the defect. Moreover, as discussed more fully below, Weaver's amended petition is legally deficient. Based on the foregoing, the preliminary objections raising specificity are sustained with prejudice.

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<sup>2</sup> Cf. Dunbar v. Pa. State Police, 902 A.2d 1002 (Pa. Cmwlth. 2006) (challenging his criminal sentence records for certain convictions stemming from an arrest in April 1985 that led to convictions for, among other offenses, attempted murder, rape, burglary, robbery, terrorist threats, simple assault and possessing instruments of crime and alleging inaccuracies in his aggregated sentence for criminal offenses relating to information nos. 2436, 2434 and 2435); Feigley v. Dep't of Corr., 731 A.2d 220 (Pa. Cmwlth. 1999) (claiming prison records contained false allegations of institutional violence and use of a gun in an attempted prison escape).

## **IV. Legal Insufficiency**

### **A. Mandamus-DOC**

#### **1. Generally**

Mandamus is “an extraordinary remedy at common law, designed to compel the performance of a ministerial act or mandatory duty.” Lawrence v. Dep’t of Corr., 941 A.2d 70 (Pa. Cmwlth. 2007); Detar v. Beard, 898 A.2d 26 (Pa. Cmwlth. 2006). This remedy is properly invoked where “the petitioner possesses a clear legal right to enforce the performance of a ministerial act or mandatory duty, the defendant possesses a corresponding duty to perform the act, and the petitioner possesses no other adequate or appropriate remedy.” Id.

“An action filed in mandamus must define the issues, and every act or performance essential to that act must be set forth in the complaint.” Nickson v. Pa. Bd. of Prob. & Parole, 880 A.2d 21, 23 (Pa. Cmwlth. 2005) (citations omitted).

In Weaver’s request for relief, he asks that this Court require DOC to:

1- comply with the Criminal History Records [sic] Information Act, 18 Pa.C.S.A. §9101 et seq; 2- allow Petitioner, Weaver, to view and review his own criminal history record information that is being held by the SCI-Coal Township Records Office; . . . 6- mandate that the Respondents amend the DC ADM 003 to come into compliance with the Act.

Am. Pet. at p. 7.<sup>3</sup>

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<sup>3</sup> Weaver utilizes all capital letters in his amended petition. For ease of reading, all quotes from Weaver’s Amended Petition have been changed to lowercase letters.

## 2. Contentions

In his amended petition, Weaver claims “Respondents” violated the Act by denying his request for CHRI. Am. Pet. at ¶8. Weaver states “Respondents denied Petitioner his request to view and review his own CHRI using the rational [sic] that inmate must send such a request to the Pennsylvania State Police (PSP).” Am. Pet. at ¶16. Weaver also alleges DOC’s policy statement, DC-ADM 003, violates the Act. Am. Pet. at ¶13.

In DOC’s preliminary objection, it maintains that Weaver fails to establish he has a right to obtain his CHRI from DOC or that DOC has a duty to provide it to him. Thus, Weaver falls short of pleading a cause of action in mandamus against DOC. Further, if Weaver is seeking disclosable documents under the Act, he may obtain the documents himself from the issuing agencies. DOC’s position is that DC-ADM 003 is a general policy governing the release of information and neither diminishes nor expands any provisions of the Act.

Specifically, DOC submits that, at most, it is responsible for sentencing information. DOC maintains that, under the Act, it collects and submits “information regarding the admission, release and length of sentence” for incarcerated individuals. 18 Pa. C.S. §9113(c). DOC argues that it is required, at most, to provide sentence status summary reports (DC-16Es) for review and release to inmates under the Act.

DOC argues that in the absence of clear statutory language, a criminal justice agency, other than the central repository under the Act, should not release

any documents created by another criminal justice agency. DOC further asserts PSP, not DOC, determines the documents to be released under the Act pursuant to PSP's statutory charge of collecting, compiling, maintaining and disseminating CHRI in the central repository.<sup>4</sup> DOC supports these propositions by referencing 18 Pa. C.S. §9102 (defining "central repository") and 18 Pa. C.S. §9106 (d) (Secondary dissemination prohibited) (referring to intelligence information, investigative information and treatment information).

### 3. Discussion

The focus of this action is Weaver's request for unspecified CHRI. The Act defines "criminal history record information" as,

Information collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, dates and notations of arrests, indictments, informations or other formal criminal charges and any dispositions arising therefrom. The term does not include intelligence information, investigative information or treatment information, including medical and psychological information, or information and records specified in section 9104 (relating to scope).

18 Pa. C.S. §9102. State correctional facilities are included in the Act's definition of "criminal justice agency." Id.

In Weaver's amended petition, he states that "Respondents" advised him to contact PSP for his CHRI. See Am. Pet. at ¶16. We may accept this fact

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<sup>4</sup> The Act provides, "[c]riminal history record information shall be disseminated by a State or local police department to any individual or noncriminal justice agency only upon request." 18 Pa. C.S. §9121(b).

and the reasonable inferences therefrom. Weaver, 829 A.2d 750. Absent from the amended petition is any averment that Weaver contacted PSP to review his CHRI. See Cunningham v. Dep't of Corr., 990 A.2d 1205 (Pa. Cmwlth. 2010) (explaining, in part, that an inmate seeking his pre-sentence investigation report from DOC using DC-ADM 003 failed to state a cause of action in mandamus because an alternate means possibly existed for obtaining the report). Therefore, Weaver failed to utilize an appropriate and available remedy prior to seeking this extraordinary remedy against DOC.

In summary, Weaver makes few factual allegations and various conclusions of law in the amended petition. The few facts alleged in the amended complaint do not establish a clear right to relief in mandamus. Furthermore, Weaver has an alternate means of obtaining his CHRI. Accordingly, DOC's demurrer to the mandamus action against it is sustained.

## **B. Mandamus-OAG**

### **1. Due Process**

OAG challenges Weaver's due process claim in mandamus against it. The purpose of mandamus is not to establish legal rights, but rather to enforce those rights already established. Jamieson v. Pa. Bd. of Prob. & Parole, 495 A.2d 623 (Pa. Cmwlth. 1985). An action in mandamus is not appropriate to compel a discretionary act. Weaver v. Pa. Bd. of Prob. & Parole, 688 A.2d 766 (Pa. Cmwlth. 1997).

A due process claim requires analysis of "whether a constitutionally protected property or liberty interest is implicated, and if so, then assessing the

appropriate procedural protection due.” Keeley v. State Real Estate Comm’n, 501 A.2d 1155, 1157 (Pa. Cmwlth. 1985) (citation omitted). To have due process protection in a protected property interest, “one must clearly have more than an abstract need or desire for it or an [sic] unilateral expectation of it, rather, he must have a legitimate claim of entitlement to it.” Id.

### **a. Hearing**

Weaver avers “Mr. Stanko has denied Petitioner due process and equal protection under the law by denying Petitioner a fair appeal on the D.O.C. denial.” Am. Pet. at ¶29. More specifically, Weaver avers that “[a]fter about seven (7) months of correspondence between the Petitioner and Mr. Stanko, the Petitioner realized that Mr. Stanko was not going to do anything to correct the matter with the records office,” and he decided to initiate the request and grievance procedure again. Am. Pet. at ¶28.

Factually, OAG states Weaver received the process due, which is evidenced by Weaver’s participation in the grievance process and ability to access the court. Further, it is undisputed that OAG responded to Weaver, even though Weaver does not provide the details in the amended petition. Am. Pet. at ¶28. OAG avers its correspondence to Weaver, attached to Weaver’s answer to OAG’s preliminary objections, advised Weaver of the process to request a hearing. Moreover, OAG does not possess Weaver’s CHRI; therefore, it is not depriving Weaver of it.

Legally, OAG asserts that Weaver is not entitled to a hearing under the Act. OAG maintains a challenge to the accuracy of the criminal record is a

prerequisite for a hearing under §9152(e) of the Act. Section 9152(e)(1) provides “[i]f the challenge is ruled invalid, an individual has the right to appeal the decision to the Attorney General within 30 days of notification of the decision by the criminal justice agency.” Even the most generous reading of Weaver’s amended petition fails to reveal any challenge to the accuracy of any criminal record.

Further, OAG argues the Act does not give Weaver a property interest in his criminal history records or to a particular procedural process. Such an interest is a prerequisite to a claim for due process violation. OAG contends there is no due process violation in failing to provide Weaver a hearing to which he has no entitlement. Pa. Game Comm’n v. State Civil Service Comm’n (Taccone), 789 A.2d 839 (Pa. Cmwlth. 2002). In support, OAG also cites United States v. Jiles, 658 F.2d 194 (3d Cir. 1981) for the analogous proposition that procedures created by Pennsylvania regarding the release of juvenile criminal records did not create a property interest.

### **b. Investigation**

Weaver also alleges OAG refused to accept oversight of DOC. Am. Pet. at ¶30. In response, OAG asserts Weaver is not entitled to an investigation by it. Taking the position that the power granted to OAG by 18 Pa. C.S. §9161(4) (including making investigations) is discretionary, OAG concludes the Act does not require it to conduct investigations upon a request of an individual.

### **c. Discussion**

We find OAG’s arguments persuasive. Without pleading the necessary facts to show entitlement to an appeal hearing, Weaver fails to state a

necessary element of his due process claim. Undisputedly, Weaver is not challenging the accuracy of his CHRI. On the issue of investigation, Weaver fails to establish an absolute ministerial duty on the part of OAG to investigate upon an individual's demand. Accordingly, OAG's preliminary objection on the grounds of legal insufficiency to Weaver's due process claim against it is sustained with prejudice.

## **2. Equal Protection**

Weaver next claims OAG denied him equal protection with respect to his attempted appeal. Am. Pet. at ¶ 29.

The elements required to state a claim under equal protection are:

(1) the person, compared with others similarly situated, was selectively treated, and (2) the selective treatment was motivated by an intention to discriminate on the basis of impermissible considerations, such as race or religion, to punish or inhibit the exercise of constitutional rights, or by a malicious or bad faith intent to injure the person.

Martin v. Diguglielmo, 644 F. Supp. 2d 612, 622 (W.D. Pa. 2008) (citations omitted).

Merely claiming a violation of equal protection without factual support is not enough to withstand a preliminary objection in the nature of legal insufficiency. Bullock v. Horn, 720 A.2d 1079 (Pa. Cmwlth. 1998). Without alleging a petitioner was subjected to treatment different from that received by other inmates at the facility, a claim under the equal protection clause is not stated. Kretchmar.

Here, Weaver fails to provide supporting facts for his conclusory statement that Mr. Stanko denied him equal protection by denying him an appeal. See Am. Pet. at ¶29. Weaver fails to allege he was treated differently than those similarly situated at S.C.I. – Coal Township or that his treatment resulted from an improper motive. Based on a total lack of any factual allegations regarding Weaver’s equal protection claim, the preliminary objection in the nature of demurrer is sustained.<sup>5</sup>

### **C. Declaratory Judgment**

#### **1. Generally**

Both DOC and OAG assert Weaver’s amended petition fails to state a cause of action for declaratory relief.

It is well established that declaratory judgments are “judicial searchlights, switched on at the behest of a litigant to illuminate an existing legal right, status or other relation.” Doe v. Johns-Manville Corp., 471 A.2d 1252, 1254 (Pa. Super. 1984). As such, declaratory judgments may not be used to “search out new legal doctrines.” Id. (explaining declaratory judgment actions determine fixed legal rights).

Declaratory relief requires a real controversy. Pa. State Lodge, Fraternal Order of Police v. Dep’t. of Conservation & Natural Res., 909 A.2d 413

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<sup>5</sup> Weaver claims a denial of equal protection based on the denial of his request for CHRI, which appears to be directed at DOC. Am. Pet. at ¶25. Again, Weaver offers no averment of an improper motive or supporting facts for his claim. Therefore, no claim is stated.

(Pa. Cmwlth. 2006). Specifically, the requirements include the presence of antagonistic claims indicating imminent and inevitable litigation coupled with a clear manifestation that the declaration will be of practical help in ending the controversy. Relief is not a matter of right, “but a matter of the court’s discretion.” *Id.* at 419. A declaratory judgment is not appropriate for an advisory opinion that may prove academic. Mazur v. Washington Cnty. Redevelopment Auth., 954 A.2d 50 (Pa. Cmwlth. 2008), appeal denied, 600 Pa. 766, 967 A.2d 961 (2009).

The remainder of Weaver’s request for relief includes the following:

3- declare that the Department of Corrections and SCI-Coal Township are by definitions in the Criminal History Records [sic] Information Act: (a) criminal justice agencies and (b) repositories for criminal history record information purposes and the records sought; 4- declare that the Respondents are unable to charge for copies of criminal history records [sic] information under the Right to Know Law, as the act and the rules and regulations established by the Attorney General’s Office control the maximum cost for those records; 5- declare that the DC ADM Policy 003-Release of Information is in violation of the Act; 6 [addressed above] and 7- issue such relief as may be allowed upon the Attorney General’s Office, Ronald C. Stanko, Administrative Law Judge, CDAG.

Am. Pet. at p. 7.

## **2. DOC**

With regard to points (3) and (5) above, the difficulty with these requests stems from the lack of relationship between the ultimate relief Weaver seeks, disclosure of certain, unidentified CHRI and the declaratory relief requested. Thus, even if we declared that DOC and S.C.I. – Coal Township were criminal

justice agencies and repositories and that DC-ADM 003 violated the Act, this would not result in disclosure of the information Weaver seeks because the CHRI sought is not identified. See, e.g., Unified Sportsmen of Pa. v. Pa. Game Comm’n, 903 A.2d 117 (Pa. Cmwlth. 2006) (noting a disconnect between the duties of the respondents and the relief requested and dismissing petitioners’ claim for mandamus). Weaver’s failure to specify the information sought renders the requested declarations inappropriate as it is far from clear that grant of the requested declaratory relief in points (3) and (5) would be “of practical help in ending the controversy.” Pa. State Lodge, 909 A.2d at 418 (citation and quotation omitted).

As to point (4) regarding the Right-to-Know Law (RTKL),<sup>6</sup> Weaver avers “[t]he DOC ADM 003 is in violation of 37 Pa. Code §195.3 when it attempts to charge for CHRI under the Right-To-Know Law” and references the \$10.00 fee per request set forth in 37 Pa. Code §195.3 (Uniform Schedule of Fees). Am. Pet. at ¶22.

Because Weaver never alleges that he was assessed or paid a RTKL fee for CHRI, DOC argues there is no present controversy. DOC states that Weaver was directed to contact PSP with the \$10.00 fee. DOC never indicated that the \$10.00 fee was pursuant to RTKL or DC ADM-003.

Weaver’s action is not based on the RTKL, nor does he raise any RTKL claims. More importantly, the RTKL permits the assessment of fees for

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<sup>6</sup> Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104.

duplication. 65 P.S. §67.1307. Weaver acknowledges “Respondents” advised him to contact PSP for his CHRI. See Am. Pet. at ¶16. Significantly, there are no allegations that DOC charged or attempted to charge Weaver a fee under RTKL. Thus, Weaver’s factual allegations are legally insufficient to support this claim for declaratory relief. Therefore, we sustain DOC’s preliminary objection.

### **3. OAG**

Against OAG, Weaver alleges constitutional violations and a refusal to enforce its own rules against DOC. Am. Pet. at ¶¶ 29, 30, 32. These allegations are addressed in the previous section. Even though Weaver includes these matters in the amended petition, he only requests general relief against OAG in point (7).

The fact that Weaver seeks no specific relief against OAG is the basis for OAG’s preliminary objection. OAG reasons that an order granting Weaver all his requested relief would have no effect on it. Likening the situation to one of mootness, OAG points out that courts do not enter decrees which have no effect. Mistich v. Pa. Bd. of Prob. & Parole, 863 A.2d 116 (Pa. Cmwlth. 2004).

We agree with OAG, and we sustain this preliminary objection.

### **V. Summary**

For the foregoing reasons, we sustain the preliminary objections and dismiss Weaver’s amended petition.

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ROBERT SIMPSON, Judge

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Ph. D., Secretary, Office of Attorney	:	
General, Ronald C. Stanko,	:	
Administrative Law Judge,	:	
Chief Deputy Attorney General,	:	
Respondents	:	

**ORDER**

**AND NOW**, this 19<sup>th</sup> day of August, 2010, it is the order of this Court that the preliminary objections on the grounds of insufficient specificity and legal insufficiency filed on behalf of the Department of Corrections and Jeffrey Beard and the Office of Attorney General and Ronald Stanko be and are hereby **SUSTAINED**. It is the further order of this Court that the amended petition is hereby **DISMISSED** with prejudice.

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ROBERT SIMPSON, Judge