



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

**IN THE MATTER OF**

**WILLIAM TOMASIC,  
Requester**

**v.**

**WOODLAND HILLS SCHOOL  
DISTRICT,  
Respondent**

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**Docket No. AP 2016-1422**

**INTRODUCTION**

William Tomasic (“Requester”) submitted a request (“Request”) to the Woodland Hills School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records related to negotiations between the District and the Woodland Hills Education Association. The District denied the Request, asserting that the responsive records are exempt from disclosure because they pertain to strategy or negotiations relating to labor relations or collective bargaining. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied**, and the District is not required to take any further action.

**FACTUAL BACKGROUND**

On August 18, 2016, the Request was filed, stating:

[A]ny and all documents related to negotiations that have taken place with the Woodland Hills School District and the Woodland Hills Education and [sic] Association from 2006 forward. I am requesting any files associated with the negotiations especially any which have not been published in the contract such as addendums etc. This includes any that the solicitor Don Palmer has in his

possession or the Law firm GRB for which he works. If it is part of the contract it is a matter of public record.

On August 19, 2016, the District denied the Request, asserting that the requested records are exempt from disclosure because they are related to negotiations between the District and a labor organization. *See* 65 P.S. § 67.708(b)(8)(i).

On August 24, 2016, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited the parties to supplement the record, and directed the District to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On September 6, 2016, the District submitted a position statement, reiterating its reason for denial, while also arguing that the Request is insufficiently specific and that the Requester is attempting to modify his Request on appeal. On September 16, 2016, at the request of the OOR, the District submitted the sworn attestation of Licia Lentz, Open Records Officer for the District. On September 7, 2016, the Requester submitted a position statement arguing that he seeks “any notes or documents that are supplemental to the contract which is a public record.”

### **LEGAL ANALYSIS**

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, neither party requested a hearing; however, the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The District is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL clearly places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The 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). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct.

2011) (quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

### **1. The Requester cannot modify the Request on appeal**

On appeal, the Requester argues that he also seeks “any and all addendums[,] etc[.] that are part of the actual contract from 2006 until the present.” Additionally, the Requester states that he seeks “any notes or documents that are supplemental to the contract which is a public record.” However, the Request is worded far more broadly and seeks “any and all documents related to negotiations ... from 2006 forward...[and] any files associated with the negotiations ... such as addendums.” A requester may not modify, explain or expand upon a request on appeal. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010); *Staley v. Pittsburgh Water and Sewer Auth.*, OOR Dkt. AP 2010-0275, 2010 PA O.O.R.D. LEXIS 256 (“A requester may not modify the original request as the denial, if any, is premised upon the original request was written”). Therefore, the OOR’s review on appeal is confined to the Request as written, and any modifications of the Request on appeal will not be considered. *See Petka v. Pa. Dep't of Transp.*, OOR Dkt. AP 2014-1288, 2014 PA O.O.R.D. LEXIS 996.

### **2. The Request is insufficiently specific**

On appeal, the District argues that the Request is insufficiently specific.<sup>1</sup> Section 703 of the RTKL states that “[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” 65 P.S. § 67.703. When interpreting a RTKL request, agencies should rely on the common meaning of words and phrases, as the RTKL is remedial legislation that must be interpreted to maximize

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<sup>1</sup> While the District did not raise specificity as grounds for denial in its original response, it is not precluded from raising new grounds for denial on appeal. *See Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013).

access. *See Gingrich v. Pa. Game Comm'n.*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at \*16 (Pa. Commw. Ct. 2012) (citing *Bowling*, 990 A.2d at 818). In determining whether a particular request under the RTKL is sufficiently specific, the OOR uses the three-part balancing test employed by the Commonwealth Court in *Pa. Dep't of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. COmmw. Ct. 2015), and *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367 (Pa. Commw. Ct. 2013).

First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Pa. Dep't of Educ.*, 119 A.3d at 1125. When considering the specificity of a request, the item or phrase must be construed in the request’s overall context. *Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516-17 (Pa. Commw. Ct. 2010). In *Carey*, the Commonwealth Court found a request for unspecified records (“all documents/communications”) related to a specific agency project (“the transfer of Pennsylvania inmates to Michigan”) and a limiting timeframe to be sufficiently specific “to apprise [the agency] of the records sought.” 61 A.3d 367 (Pa. Commw. Ct. 2013). Second, the scope of the request must identify a discrete group of documents (e.g., type or recipient). *See Pa. Dep't of Educ.*, 119 A.3d at 1125. Finally, “[t]he timeframe of the request should identify a finite period of time for which records are sought.” *Id.* at 1126. This factor is the most fluid and is dependent upon the request’s subject matter and scope. *Id.* Failure to identify a finite timeframe will not automatically render a sufficiently specific request overbroad; likewise, a short timeframe will not transform an overly broad request into a specific one. *Id.*

Here, the Request seeks ten years’ worth of records relating to labor negotiations between the District and the Woodland Hills Education Association. Although the Request states that it seeks “addendums” it generally seeks “any and all documents related to [these] negotiations” and

does not identify a discrete group of documents (e.g., type or recipient). *Id.* at 1125. Based on the broad language of the Request, and the Requester's failure to limit the Request to the specific District business to which the requested records relate, the Request seeks any and all records regarding the District's labor negotiations in the last ten years.<sup>2</sup> As a result of the ten-year timeframe, the broad subject matter and the lack of identification of the types of records requested, the Request is insufficiently specific. However, the Requester is not prohibited from filing a new RTKL request that provides additional detail concerning which records are sought. *See* 65 P.S. § 67.703.

## CONCLUSION

For the foregoing reasons, the Requester's appeal is **denied**, and the District is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing of this Final Determination, any party may appeal to the Allegheny County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.<sup>3</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

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<sup>2</sup> In addition to arguing that the Request is insufficiently specific, the District argues that responsive records would be exempt from disclosure pursuant to Section 708(b)(8)(i) of the RTKL. Section 708(b)(8)(i) exempts from public disclosure "[a] record pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration proceeding." 65 P.S. § 67.708(b)(8)(i).

<sup>3</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

**FINAL DETERMINATION ISSUED AND MAILED: September 23, 2016**

/s/ Kathleen A. Higgins

APPEALS OFFICER  
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