pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
DANIEL ANGELUCCI,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2016-1558**
	:	
PENNSYLVANIA OFFICE OF	:	
ADMINISTRATION,	:	
Respondent	:	

INTRODUCTION

Daniel Angelucci ("Requester") submitted a request ("Request") to the Pennsylvania Office of Administration ("Office") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking various records pertaining to the G4 Bargaining Unit list and the decertification of the American Federation of State, County and Municipal Employees ("AFSCME"). The Office denied the Request, alleging that it did not seek records and was insufficiently specific. The Requester appealed to the Office of Open Records ("OOR"). For the reasons set forth in this Final Determination, the appeal is **granted in part** and **dismissed as moot in part**, and the Office is required to take further action as directed.

FACTUAL BACKGROUND

On September 8, 2016, the Request was filed, stating:

> Who provided the G4 Bargaining Unit list (1524 members) to the [Pennsylvania Labor Relations Board ("PLRB")] and on what date? Any and all emails, written

> correspondence, raw notes and phone calls pertaining to the decertification of [AFSCME] as the representative of the G4 Bargaining Unit.

On September 15, 2016, the Office denied the Request, stating that the first sentence of the Request did not seek records and that the second sentence was insufficiently specific. *See* 65 P.S. § 67.703.

On September 15, 2016, the Requester appealed to the OOR, challenging the denial and asserting grounds for disclosure. The OOR invited both parties to supplement the record and directed the Office to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On September 28, 2016, the Office submitted a position statement, arguing that the Request had been improperly modified on appeal, that the first sentence of the Request did not seek records, that the second sentence of the Request was insufficiently specific, and that there were no relevant third parties to the appeal. The Office also submitted a document that they argued mooted the first part of the Request. Finally, the Office requested that the OOR grant a hearing. On October 11, 2016, the OOR requested, and received, a one-week extension of time to issue a Final Determination. *See* 65 P.S. § 67.1101(b)(1).

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 law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id*. 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, the Office requested a hearing; however, the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The Office is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in possession of a Commonwealth 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)(1). 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 may not alter the Request on appeal

The Office argues that the Requester impermissibly attempted to alter the Request on appeal. The original Request to the Office states:

> Who provided the G4 Bargaining Unit list (1524 members) to the PLRB and on what date? Any and all emails, written correspondence, raw notes and phone calls pertaining to the decertification of [AFSCME] as the representative of the G4 Bargaining Unit.

However, the appeal states:

> I was denied access to the following records: The name of the agency or person and the date the G4 members list of 1524 was submitted to the PLRB in reference to the decertification of [AFSCME] as their bargaining agent. Any records, emails, phone calls, notes, between [AFSCME] and the PLRB.

A requester may not modify, explain or expand 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 as written.") Therefore the OOR's review on appeal is confined to the Request as written. *See Brown v. Pa. Turnpike Comm'n,* OOR Dkt. AP 2011-1287, 2011 PA O.O.R.D. LEXIS 998.

2. The appeal is moot as to the first sentence of the Request

On appeal, the Office maintains that the first sentence of the Request impermissibly asks a question rather than seeking identified records. Nevertheless, the Office provided the Requester with a copy of an unredacted e-mail in which the Director of the Bureau of Labor Relations remits the referenced list to the PLRB on May 12, 2016. Because this record is fully

responsive to the first sentence of the Request, the appeal is dismissed as moot as to that sentence.

3. The Request is sufficiently specific

On appeal, the Office argues that the second sentence of the Request is insufficiently specific to enable the Office to locate responsive records because it lacks a subject matter, a limiting scope or an identified timeframe. *See* 65 P.S. § 67.703. 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." *Id.* 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 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 813). 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, 372 (Pa. Commw. Ct. 2013). Finally, "[t]he fact that a request is burdensome does not deem it overbroad, although it may be considered as a factor in such a determination." *Pa. Dep't of Envtl. Prot. v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012).

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. The Office argues that the Request does not "specify the OA transaction or activity relating to the decertification of AFSCME as the representative of the G4 Bargaining Unit that is being sought." The Request seeks "[a]ny and all emails, written correspondence, raw notes and phone

calls pertaining to the decertification of [AFSCME] as the representative of the G4 Bargaining Unit." This identifies a subject matter, although one which is admittedly broad: records pertaining to the decertification of AFSCME as the representative of the G4 Bargaining Unit. This provides the Office with sufficient context to narrow their search for responsive records.

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. Here, the Request specifies that it seeks "emails, written correspondence, raw notes and phone calls", which allows the Office to narrow its search for responsive records to those who might have produced notes or correspondence regarding AFSCME's decertification. While the scope of this request is broad, it is discrete enough to aid in identifying the documents sought.

Finally, "[t]he timeframe of the request should identify a finite period of time for which records are sought." *Id.* at 1126. "The timeframe prong is … the most fluid of the three prongs, and whether or not the request's timeframe is narrow enough is generally dependent upon the specificity of the request's subject matter and scope." *Id*. A timeframe as long as four years has been upheld as sufficiently specific. *See Dep't of Envtl. Prot.*, 50 A.3d at 265. Here, the Request does not specify a timeframe, but when considering the specificity of a request, an item or phrase must be construed in the request's context. *Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516-17 (Pa. Cmwlth. 2010). An item which, considered in context with the rest of the request, necessarily implies a timeframe can provide context for an agency's search. *America Rising, LLC v. City of Reading*, 2014-1482, 2014 PA O.O.R.D. LEXIS 1215. Here, the Request is referring to a discrete event; the provision of the G4 Bargaining Unit List to the PLRB and a related attempt to decertify AFSCME as that unit's representative. Although this does not

provide a 'fixed' timeframe to guide the agency, the context provided by the Request affords the agency sufficient guidance to further narrow its search.

Because the Request is sufficiently specific to guide the Office's search for responsive records, and the Office does not raise any exemptions as to these records, the appeal is granted as to the second sentence of the Request.

CONCLUSION

For the foregoing reasons, Requester's appeal is **granted in part** and **dismissed as moot in part**, and the Office is required to provide the Requester with all records responsive to the second sentence of the Request within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond 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.[1] This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: October 24, 2016

/s/ Jordan Davis

APPEALS OFFICER
JORDAN C. DAVIS

Sent to: Daniel Angelucci (via e-mail only);
Sonja Zucker, Esq. (via e-mail only);
Wha Lee Strohecker (via e-mail only)

[1] *See Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).