



FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
RACHEL DAVIDSON & YALE LAW	:	
SCHOOL, MEDIA FREEDOM &	:	
INFORMATION ACCESS CLINIC,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2022-2720
	:	
ALLEGHENY COUNTY,	:	
Respondent	:	

FACTUAL BACKGROUND

On October 19, 2022, Rachel Davidson and Yale Law School, Media Freedom & Information Access Clinic (“Requester”) submitted a request (“Request”) to Allegheny County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* seeking:

For the period between January 1, 2022 and the date of fulfillment of this request:¹

- [Part 1] All records or communications that restrict in any way the telephone numbers that may be contacted by inmates through telephones available for inmate use at the Allegheny County Jail (“the Jail”);
- [Part 2] All records or communications that prohibit, prevent, or otherwise restrict in any manner any inmate(s) from calling [Individual 1], [Individual 2], or the telephone number [. . .] from telephones available for inmate use at the Jail; and
- [Part 3] All records concerning any rules, standards, policies, practices, or procedures in effect restricting or regulating the telephone numbers that may be contacted through telephones available for inmate use at the Jail.

¹ The Request seeks records “to the date of fulfillment of this request.” A request, however, can only seek records that are in existence as of the date of the request; agencies are not required to provide records that do not exist, or have not been created, as of the time of the request. *See, e.g., Deeter v. New Britain Twp.*, OOR Dkt. AP 2019-1641, 2019 PA O.O.R.D. LEXIS 1314; *Terensky v. City of Monessen*, OOR Dkt. AP 2013-0772, 2013 PA O.O.R.D. LEXIS 349.

On October 26, 2022, the County invoked a thirty-day extension to respond; however, as the County did not respond within the extension period, the Request was deemed denied on November 28, 2022. *See* 65 P.S. § 67.902(b)(2). On December 5, 2022, the Requester appealed to the Office of Open Records (“OOR”) stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On December 22, 2022, the County submitted a position statement arguing that it conducted a good faith search, identified and obtained three documents in its search and provided all non-exempt records to the Requester. With its submission, the County also provided copies of the responsive records and submitted the attestation of Christopher Togneri, Communications Manager for the County. On December 28, 2022, the OOR inquired of the Requester what, if any, portions of the appeal she deemed satisfied in light of the County’s provision of certain responsive records. On January 9, 2023, the Requester responded to the OOR’s inquiry and asked questions regarding the timeframe of the block phone number list and the County’s search for emails. On January 9, 2023, the County responded that the Request did not include sufficient information for the County IT Department to search emails and thus it did not search for emails when searching for responsive records. On January 10, 2023, the County provided the supplemental attestation of Christopher Togneri. The Requester submits that her Request sought emails of Allegheny County Jail officials regarding the subject matter stated in Part 1 and 2. The County, through a supplemental position statement, contends that the portion of the Request seeking “all communications” is insufficiently specific. *See* 65 P.S. § 67.703.

LEGAL ANALYSIS

The County is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the

possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the County is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 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 County provided certain responsive records on appeal

Part 1 of the Request seeks “[a]ll records . . . that restrict in any way the telephone numbers that may be contacted by inmates through telephones available for inmate use at the Allegheny County Jail (‘the Jail’)[.]” Part 3 seeks “[a]ll records concerning any rules, standards, policies, practices, or procedures in effect restricting or regulating the telephone numbers that may be contacted through telephones available for inmate use at the Jail.” As stated in the Togneri Attestation, the County identified three responsive records to the Request: (1) the ACJ Policy #436, (2) the ACJ/ViaPath contract agreement, and (3) the list of blocked phone numbers. The County provided Allegheny County Jail (“ACJ”) Policy #436 in response to Parts 1 and 3 of the Request. ACJ Policy #436 provides the guidelines for inmate phone calls and contains stated restrictions on inmate phone calls and guidelines on blocked phone numbers. Accordingly, Parts 1 and 3 of the Request are moot as to the provision of ACJ Policy #436. *See Kutztown Univ. of Pa. v. Bollinger*, 2019 Pa. Commw. Unpub. LEXIS 521, *6 (holding that an appeal is properly dismissed as moot where no controversy remains).

2. The County proved that certain records are protected as personal identification information

With regard to the list of blocked phone numbers identified as responsive to Part 1 of the Request, the County argues that this list is exempt from public disclosure under the personal security exemption and the Pennsylvania Constitutional Right to Privacy. *See* 65 P.S. § 67.708(b)(6)(i)(A) & Pa.Const. Art. 1, §1. Section 708(b)(6) of the RTKL exempts from disclosure certain personal identification information, including “a record containing all or part of a person's Social Security number; driver's license number; personal financial information; home, cellular or personal telephone numbers; personal e-mail addresses; employee number or other confidential personal identification number.” 65 P.S. § 67.708(b)(6)(i)(A). The Togneri Attestation states:

When calls are placed by an inmate, the receiver is given three options: accept the call, reject the call, or have their number blocked. When a receiver chooses . . . to block all calls from the ACJ, the number is automatically added to the list of blocked numbers[.] . . . The ACJ cannot release the list of blocked numbers to the public because it contains private information about individuals, including possible victims, who requested their numbers be blocked because an inmate tried to contact them from the ACJ.²

See Togneri Attestation, ¶ 7. The list of blocked phone numbers is a list comprised of the phone numbers of individuals, including possible crime victims, who have elected to have their telephone numbers blocked from receiving calls from the Allegheny County Jail. Thus, under Section 708(b)(6)(i)(A), the list of blocked phone numbers is exempt from disclosure as exempt personal identification information. 65 P.S. § 67.708(b)(6)(i)(A).

3. The County did not prove that the ACJ/Viaphath contract is exempt from disclosure

The Togneri Attestation states that “[c]all restrictions are outlined in the ACJ/ViaPath

² Under the RTKL, a statement made under penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the County has acted in bad faith, “the averments in the [attestation] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’t Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

contract agreement” and that the accounts manager forwarded a copy of the agreement to the County in response to the County’s good faith search for responsive records. The contract between the County jail and the phone vendor contains “language that is standard for inmate communications service agreements” and is responsive to Part 3 of the Request. This agreement was not provided to the Requester and the County made no argument as to why this agreement is exempt under the RTKL. Accordingly, the County is directed to provide the ACJ/ViaPath contract to the Requester.

4. The County proved that no additional records exist

a. Parts 1 & 3

The County argues that no additional responsive records exist to Parts 1 and 3 of the Request seeking “all records.” In support of this argument, the County submitted the Togneri Attestation which attests to the good faith search performed and states that the County identified three responsive records to the Request: (1) the ACJ Policy #436, (2) the ACJ/ViaPath contract agreement, and (3) the list of blocked phone numbers. The OOR finds the Togneri Attestation credible that no additional responsive records exist beyond (1) the ACJ Policy #436, (2) the ACJ/ViaPath contract agreement, and (3) the list of blocked phone numbers. Based on the evidence provided, the County has met its burden of proof that it does not possess additional records responsive to the portion of the Request for “all records.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

b. Part 2

Part 2 of the Request seeks “[a]ll records . . . that prohibit, prevent, or otherwise restrict in any manner any inmate(s) from calling [Individual 1], [Individual 2], or the telephone number [specified telephone number] from telephones available for inmate use at the Jail[.]” The County

argues that no responsive records exist to Part 2 of the Request. In support of this argument, the County submitted the sworn attestation of Christopher Togneri (“Togneri Attestation”), which attests in relevant part.

6. Second, regarding the request for records “restricting or regulating inmate(s) from calling [Individual 1], [Individual 2], or the [specified telephone number] from telephones available for inmate use at the Jail,” I learned that no such records exist. I spoke directly to multiple ACJ officials, including Warden Orlando Harper, Dep. Blythe Toma, and members of Internal Affairs and learned that there is not and has never been any policy that restricts calls to [the specified individuals] or any other journalist. I later searched a database of blocked numbers and found no records of [specified number] being blocked. I was informed that the only reason calls to [the specified individuals] or anyone else would be restricted/blocked was if the recipient of a call by an inmate requested that their number be blocked.

See Togneri Attestation, ¶ 6. The Togneri Attestation states that upon review of the blocked phone number list obtained from the phone vendor, the specified phone number and individuals are not on that list. Furthermore, the County attests that no other records exist demonstrating that the specified individuals or phone number are restricted from being called from the Allegheny County Jail. The OOR finds the Togneri Attestation credible that a good faith search was conducted and the County met its burden to demonstrate that no responsive records exist responsive to Part 2 of the Request seeking “all records.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

5. Parts 1 and 2 of the Request seeking “all communications” are insufficiently specific

Part 1 of the Request seeks “[a]ll . . . communications that restrict in any way the telephone numbers that may be contacted by inmates through telephones available for inmate use at the Allegheny County Jail” and Part 2 of the Request seeks “[a]ll . . . communications that prohibit, prevent, or otherwise restrict in any manner any inmate(s) from calling [Individual 1], [Individual 2], or the telephone number [specified telephone number] from telephones available for inmate use at the Jail[.]” The County argues that the Request for “all communications” is insufficiently

specific especially as it relates to the search for emails because the Request does not “give IT a time frame, key words, and a list of senders/recipients [in order to conduct a through email search].”

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 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).

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). First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Id.* at 1125. Second, the scope of the request must identify a discrete group of documents (*e.g.*, type or recipient). *Id.* 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.*

None of these factors are dispositive, instead, the Commonwealth Court has emphasized the importance of a “flexible, case by case, contextual application of the test.” *Office of the DA of Phila. v. Bagwell*, 155 A.3d 1119, 1145 (Pa. Commw. Ct. 2017). The Commonwealth Court held that where a Request does not seek a clearly defined universe of documents and requires files to

be reviewed and judgments to be made as to the relation of the documents to the specific request, such a request is insufficiently specific. *Id.* (contrasting the requests in *Department of Environmental Protection v. Legere*, 50 A.3d 260, 265 (Pa. Cmwlth. 2012) and *Mollick v. Township of Worcester*, 32 A.3d 859, 871 (Pa. Cmwlth. 2011)).

Parts 1 and 2 of the Request seek “all communications” of the County between January 1, 2022 and October 19, 2022 related to restrictions on inmate telephone calls at the County jail. The timeframe is approximately ten and a half months. The scope is broad in that all communications is not confined to all electronic communications on the County servers but includes every type of communication within the County. The subject-matter for Part 1 is “restrict[ions] in any way [on] the telephone numbers that may be contacted by inmates through telephones available for inmate use at the Allegheny County Jail.” The subject-matter for Part 2 is that which “prohibit[s], prevent[s], or otherwise restrict[s] in any manner any inmate(s) from calling [Individual 1], [Individual 2], or the telephone number [specified telephone number] from telephones available for inmate use at the Jail[.]” The subject-matter of both Parts of the Request requires the County to conduct a broad search for potential responsive communications and then make judgments as to the relation of the documents to the Request; this in conjunction with the broad scope of the Request renders the Request as to “all communications” insufficiently specific. *See Pa. Dep’t of Env’tl. Prot. v. Legere*, 50 A.3d 260, 264 (Pa. Commw. Ct. 2012). However, nothing in this Final Determination precludes the Requester from filing a more specific RTKL request for the same information, and if necessary, filing an appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

CONCLUSION

For the foregoing reasons, the appeal is **granted in part, denied in part, and dismissed**

as moot in part, and the County shall provide the ACJ/ViaPath contract agreement referenced in the Togneri Attestation to the Requester within 30 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 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 as per Section 1303 of the RTKL. 65 P.S. § 67.1303. 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.³ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: January 27, 2023

/s/ Catherine R. Hecker

CATHERINE R. HECKER, ESQ.
APPEALS OFFICER

Sent via email to: Rachel Davidson, Requester
Maggie Shiels, Esq.
Jessica Garafolo

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