



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
JIM GARLAND,	:
Requester	:
	:
v.	: Docket No: AP 2023-0492
	:
PENNSYLVANIA DEPARTMENT OF	:
STATE,	:
Respondent	:

FACTUAL BACKGROUND

On February 6, 2023, Jim Garland (“Requester”) submitted a request (“Request”) to the Pennsylvania Department of State (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “any information you have reflective to transferring filed documents between different departments within the state.”

On February 13, 2023, the Department denied the Request as being insufficiently specific and stating that it does not possess any responsive records based on the information provided in the Request.

On March 7, 2022, the Requester appealed to the Office of Open Records (“OOR”), arguing that the Department’s response was contradictory. The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On March 8, 2023, the Department submitted a position statement arguing that the Request is insufficiently specific because it fails to state a specific transaction or activity, does not identify a discrete group of documents, and does not provide a time period at all. *See* 65 P.S. § 67.703. In support of its position, the Department submitted the attestation of Janelle Hawthorne which details the Department’s attempt to search for responsive records. The Requester did not provide a submission in the appeal.

LEGAL ANALYSIS

The Department is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth 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 Department 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)).

The Department argues that the Request is insufficiently specific. The three-part balancing test set forth in *Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette* provides the standard to determine whether a request is sufficiently specific: (1) the subject matter of the request; (2) the scope of documents sought; and (3) the timeframe for which records are sought. *Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121, 1124 (Pa. Commw. Ct. 2015).

In the instant appeal, the Request seeks information relating to the transfer of documents between “different departments of the state.” The Request has no timeframe. The Request seeks

“information”, which is very broad in scope. The subject matter of which relates to the transfer of documents between unidentified departments within the state of Pennsylvania is both confusing and nebulous. Nothing in the Request identifies a specific transaction of the Department nor are there any defined keywords that the Department could use to potentially narrow its search for responsive records. 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. *Office of the DA of Phila. v. Bagwell*, 155 A.3d 1119, 1145 (Pa. Commw. Ct. 2017) (contrasting the requests in *Pa. Dep’t of Envtl. Prot. v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012) and *Mollick v. Township of Worcester*, 32 A.3d 859, 871 (Pa. Commw. Ct. 2011)). Accordingly, the Request is insufficiently specific.

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Department is not required to take any further action. 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. 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.¹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

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

FINAL DETERMINATION ISSUED AND MAILED: March 24, 2023

/s/ Catherine R. Hecker

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APPEALS OFFICER

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