



FINAL DETERMINATION

IN THE MATTER OF	:
	:
BETH ANN ROSICA,	:
Requester	:
	:
v.	: Docket No: AP 2023-0389
	:
COATESVILLE AREA SCHOOL	:
DISTRICT,	:
Respondent	:

FACTUAL BACKGROUND

On January 20, 2023, Beth Ann Rosica (“Requester”) submitted a request (“Request”) to the Coatesville Area School District (“District” or “CASD”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, stating:

Item A— Please provide a copy of all emails, including attachments, text messages, as well as any electronic communications transmitted through any kind of chat or messaging software such as Slack, Microsoft [T]eams, etc. from the dates September 1, 2022, to September 30, 2022, that were sent to and/or from any CASD staff or administrator at Caln Elementary School, East Fallowfield Elementary School, and/or Kings Highway Elementary School and contain any of the following key words/phrases: “People’s Light Theater.”

Item B— Please provide a copy of all emails, including attachments, text messages, as well as any electronic communications transmitted through any kind of chat or messaging software such as Slack, Microsoft [T]eams, etc. from the dates October 1, 2022, to October 31, 2022, that were sent to and/or from any CASD staff or administrator at Caln Elementary School, East Fallowfield Elementary School, and/or Kings Highway Elementary School and contain any of the following key words/phrases: “People’s Light Theater.”

Item C—Please provide a copy of all emails, including attachments, text messages, as well as any electronic communications transmitted through any kind of chat or messaging software such as Slack, Microsoft [T]eams, etc. from the dates December 1, 2022, to December 22, 2022, that were sent to and/or from any CASD staff or administrator at Caln Elementary School, East Fallowfield Elementary School, and/or Kings Highway Elementary School and contain any of the following key words/phrases: “People’s Light Theater”, “Alice in Wonderland”, “mask”, “drag queen.”

Item D—Please provide a copy of all emails, including attachments, text messages, as well as any electronic communications transmitted through any kind of chat or messaging software such as Slack, Microsoft [T]eams, etc. from the dates December 1, 2022, to December 22, 2022, that were sent to and/or from any CASD Administrative staff and contain any of the following key words/phrases: “People’s Light Theater”, “Alice in Wonderland”, “mask”, “drag queen.”

Item E—Please provide a copy of all emails, including attachments, text messages, as well as any electronic communications transmitted through any kind of chat or messaging software such as Slack, Microsoft [T]eams, etc. from the dates December 1, 2022, to December 22, 2022, that were sent to and/or from any CASD Board member and contain any of the following key words/phrases: “People’s Light Theater”, “Alice in Wonderland”, “mask”, “drag queen.”

On February 22, 2023, following a thirty-day extension during which to respond,¹ 65 P.S. § 67.902(b), the District denied the Request, arguing that the Request does not identify records of the District, 65 P.S. § 67.102, and the Request is insufficiently specific, 65 P.S. § 67.703.

On February 22, 2023, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the District to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On March 10, 2023,² the District submitted a position statement reiterating its grounds for denial and copies of three spreadsheets listing by number the job class or name and the school

¹ On January 26, 2023, the District invoked a thirty-day extension during which to respond. 65 P.S. § 67.902(b).

² On February 24, 2023, the OOR granted the District’s request of an extension of the submission period from March 3, 2023 until March 10, 2023. See 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”). Additionally, on that same day, the Requester granted the OOR’s request for a corresponding extension of time until March 31, 2023 to issue this

building of each individual employee of Caln Elementary School, East Fallowfield Elementary School and Kings Highway Elementary School. In support of its position, the District submitted the attestation of its Solicitor, James Musial, Esq. (“Musial Attestation”).

LEGAL ANALYSIS

The District 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 District 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 District did not demonstrate that the electronic communications sought in the Request are not records of the District

The District argues that the electronic communications sought in the Request do not constitute records under the RTKL because the Request “does not identify any transaction or activity of the...District to which the requested material relates.” The District also argues that “no ‘staff’ or ‘administrator’ at any of the three schools [identified in the Request]...have any authority to act on behalf of the...District[.]” Finally, the District argues that the Request is “not even limited to seeking emails sent by employees using...District-issued computers or other electronic devices, or...sent by employees using...District-issued email addresses[.]”

Final Determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

The RTKL defines a “record” as “[i]nformation, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency.” 65 P.S. § 67.102. The RTKL imposes a two-part inquiry for determining if certain material is a record: 1) does the material document a “transaction or activity of an agency?” and 2) if so, was the material “created, received or retained...in connection with a transaction, business or activity of [an] agency?” See 65 P.S. § 67.102; *Allegheny Cnty. Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1034-35 (Pa. Commw. Ct. 2011); *Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at *13 (Pa. Commw. Ct. 2012). Because the RTKL is remedial legislation, the definition of “record” must be liberally construed. See *A Second Chance*, 13 A.3d at 1034. In *A Second Chance*, the Commonwealth Court interpreted the word “documents” as meaning “proves, supports [or] evidences” and held that certain requested information met the first part of the definition of a record because it documented the existence of a governmental action. *Id.*

For electronic communications to qualify as records of an agency, the OOR must look to the subject matter of the records. For example, emails are not considered records of an agency merely because they were sent or received using agency email addresses or by virtue of their location on an agency computer or other device. See *Meguerian v. Off. of the Att’y Gen.*, 86 A.3d 924, 930 (Pa. Commw. Ct. 2013); *Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259 (Pa. Commw. Ct. 2012). Instead, the emails must document a transaction or activity of the agency. See *Mollick v. Twp. of Worcester*, 32 A.3d 859 (Pa. Commw. Ct. 2011).

In this instance, the District argues that electronic communications sought in the Request do not constitute records under the RTKL because the Request “does not identify any transaction

or activity of the...District to which the requested material relates[.]” and because “no ‘staff’ or ‘administrator’ at any of the three schools [identified in Items A-C the Request]...have any authority to act on behalf of the...District[.]” However, although the District cites applicable case law,³ it does not provide evidence demonstrating that the requested communications sought in the Request do not document a transaction or activity of the District, nor does the District provide evidence demonstrating that “no ‘staff’ or ‘administrator’ at any of the three schools [identified in the Request]...have any authority to act on behalf of the...District[.]” The District simply provides a brief argument in its unsworn position statement, which “does not constitute evidence. Position statements are akin to briefs or proposed findings of fact, which, while part of the record, are distinguishable from the *evidentiary* record.” *Office of the Governor v. Davis*, 122 A.3d 1185, 1193-94 (Pa. Commw. 2015) (*en banc*) (emphasis in original). *See Hous. Auth. of the City of Pittsburgh v. Van Osdol*, 40 A.3d 209, 216 (Pa. Commw. Ct. 2012) (holding that unsworn statements of counsel are not competent evidence); *City of Phila. v. Juzang*, July Term 2010, No. 2048 (Phila. CCP June 28, 2011) (“Because the letter written by City's counsel is a legal brief, it cannot be...evidence at all”). Accordingly, the OOR cannot conclude that the requested communications are not records of the District pursuant to the RTKL.⁴ *See* 65 P.S. § 67.102.

2. The Request is sufficiently specific in part

The District argues that the Request, in its entirety, is insufficiently specific. *See* 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

³ *See Baxter*, 35 A.3d 1259; *Mollick* 32 A.3d 859; *see also Pa. Off. of Atty. Gen. v. Phila. Inquirer*, 127 A.3d 57 (Pa. Commw. Ct. 2015).

⁴ In *Mission Pa., LLC v. McKelvey*, the Commonwealth Court stated that “[a] preponderance of the evidence may be the lowest burden of proof, but it still requires evidence unless the facts are uncontested or clear from the face of the RTKL request or the exemption. 212 A.3d 119, 129 (Pa. Commw. Ct. 2019), *appeal denied by* 223 A.3d 675 (Pa. 2020).

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)⁵ (citing *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d*, 75 A.3d 453 (Pa. 2013)). 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).

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. 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”) that included a limiting timeframe was sufficiently specific “to apprise [the agency] of the records sought.” 61 A.3d 367. 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.*

While responding to a RTKL request must entail accuracy and a good faith effort to provide the records sought, it is not an exact science, and must also encompass reasonable discretion by

⁵ The OOR cites for its persuasive value.

the agency to identify and provide the requested information, particularly where the request is a broad one.

a. Items A and B of the Request are sufficiently specific

The District argues that Items A and B are “insufficiently specific and overbroad[.]” As the District notes, Items A and B of the Request are identical except for the identified timeframes.

When conducting the three-part balancing test, a review of Item A of the Request shows that it does not contain a subject matter but, instead, contains one keyword, “People’s Light Theater[.]” Items A and B also contain a broad scope, “emails, including attachments, text messages, as well as any electronic communications transmitted through any kind of chat or messaging software” from “any [District] staff or administrator” at three identified District elementary schools. Finally, each item contains a finite timeframe—September 1, 2022, to September 30, 2022 for Item A and October 1, 2022, to October 31, 2022 for Item B. *See Pa. Dep’t of Educ.*, 119 A.3d at 1125.

Although Items A and B of the Request contain a finite timeframe of approximately one month, depending on the scope and subject matter of the Request, a one-month timeframe may or may not be sufficiently limiting. For example, the OOR recently held that a request for all emails containing five keyword phrases for a period of one month to be insufficiently specific because the request’s expansive scope and lack of a clearly identified subject matter did not provide sufficient context to guide a search for responsive records. *See Daly v. Bucks Cnty.*, OOR Dkt. AP 2022-2368, 2022 PA O.O.R.D. LEXIS 2523. In contrast, the OOR determined that the request in *Garis v. Upper Darby Twp.*, which had a timeframe of approximately three weeks, to be sufficiently specific in part because the request’s scope was narrow enough for the agency to

understand what records were being sought and to conduct a good faith search. OOR Dkt. AP 2022-0857, 2022 PA O.O.R.D. LEXIS 1342.

As stated above, Items A and B of the Request do not contain a subject matter but, instead, contain a single keyword. Using keywords in place of a subject matter is not fatal to a request; however, the keywords provided must help to guide the agency in its search and must serve to help the agency limit the universe of potentially responsive records. *See Slaby v. City of Pittsburgh*, OOR Dkt. AP 2017-0142, 2017 PA O.O.R.D. LEXIS 238 (“A keyword list does not necessarily make a request insufficiently specific; however, a request must provide enough specificity in its scope and timeframe to help guide the agency in its search for records”); *see also Keystone Nursing & Rehab of Reading, LLC v. Simmons-Ritchie*, No. 1631 C.D. 2018, 2020 Pa. Commw. Unpub. LEXIS 8 (Pa. Commw. Ct. 2020).⁶ In *Office of the Governor v. Engelkemier*, the request sought all emails sent and received by the Governor’s Chief of Staff for a five-and-a-half-month period where the requester provided a list of 109 search terms to guide the search, including names of public officials and employees, as well as topics such as “2015-2016 budget,” “Senate Republicans,” “Liquor Privatization,” and “Expenses.” In finding the request sufficiently specific, the Court stated:

A keyword list is not necessarily a substitute for a properly-defined subject matter(s)— i.e., a particular transaction or activity of an agency. If terms on a list are too general or too broad, a requester runs the risk that the request will be rejected for lack of specificity, if not by the agency then by the OOR or this Court. A clearly-defined subject matter, such as ‘liquor privatization,’ by contrast, has a better chance of passing the specificity test.

48 A.3d 522, 531 (Pa. Commw. Ct. 2016). Therefore, the Court found that, although the keyword list was lengthy and broad, the fact that the request had a narrow timeframe and scope, along with

⁶ The OOR cites for its persuasive value.

the Office’s response stating that it was producing records, meant that the request was sufficiently specific. *Id.* at 532.

Here, the single keyword used in Items A and B of the Request is “People’s Light Theater[,]” which the District argues is not a transaction or activity of the District. However, the District does not provide supporting evidence. The OOR’s own research shows that People’s Light Theater is a non-profit theatre located in Chester County.⁷ There is no evidence to show that this distinct keyword does not pertain to any District business or activity. Additionally, the single keyword serves to provide the District with an aid in its search for potentially responsive records.

Finally, the scope of the Request, “all emails, including attachments, text messages, as well as any electronic communications transmitted through any kind of chat or messaging software such as Slack, Microsoft teams, etc. from the [specified] dates, that were sent to and/or from any [District] staff or administrator at Caln Elementary School, East Fallowfield Elementary School, and/or Kings Highway Elementary School” is fairly broad. To determine if the scope is limiting enough for Items A and B of the Request in this matter to comply with the specificity requirements set forth in Section 703 of the RTKL,⁸ both components of scope (type and recipients), as set forth by the Commonwealth Court in *Pa. Dep’t of Educ.*, will be analyzed. 119 A.3d at 1125.

First, regarding the type of documents sought, Items A and B of the Request seek three types of documents—emails with attachments, text messages, and “electronic communications transmitted through chat or messaging software[.]” Emails and text messages are specific types of communications that can be searched for by the District to identify potentially responsive records. “Electronic communications transmitted through chat or messaging software” is much broader, especially given the large number of currently existing messaging applications. However,

⁷ See <https://www.peopleslight.org/> (last accessed March 20, 2023).

⁸ 65 P.S. § 67.703.

the Requester lists two types of messaging applications, “Slack... [and] Microsoft [T]eams[.]” which serve to aid the District in its search. Furthermore, even if the District does not utilize either of the named applications, the District should know which, if any, applications it does utilize. Finally, the District did not present evidence that it has the inability to perform a keyword search for responsive records within messaging applications.

Regarding the identified senders and recipients of the documents, the Request specifies both the senders and the recipients of the documents as “any District staff or administrator at Caln Elementary School, East Fallowfield Elementary School, and/or Kings Highway Elementary School[.]” The District argues that, although the Request identifies the senders of the communications, “the three named elementary schools have a combined staff, including administrators, of 141 employees[.]” *See* Musial Attestation, ¶ 4. However, the fact that a search is likely to produce many potentially responsive records or that a request is “burdensome will not, in and of itself, [render] the request...overbroad[.]” but it may be considered as a factor in determining the specificity of a request. *See Pa. Dep’t of Env’tl. Prot. v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012); *see also Ruggiero v. Lackawanna County*, OOR Dkt. AP 2014-0043, 2014 PA O.O.R.D. LEXIS 157; *Falcetta v. Grove City Area Sch. Dist.*, OOR Dkt. AP 2018-0908, 2018 PA O.O.R.D. LEXIS 908. Moreover, the District did not provide evidence of the burden imposed upon it to search for potentially responsive records.⁹ Therefore, because Items A and B of the Request seeks a clearly defined universe of documents and because both Items identify the senders and recipients of the communications, its scope serves to help guide the District in its search for responsive records. *See Pa. Dep’t of Educ.*, 119 A.3d at 1125.

⁹ Contrast with *Lemmon v. Puxtang Borough*, where the agency provided evidence in the form of an attestation demonstrating the burden imposed upon it to conduct a search for responsive records. OOR Dkt. AP 2022-2772, 2023 PA O.O.R.D. LEXIS 410.

Because Items A and B of the Request identify a finite timeframe, the records sought, the senders and recipients of the records, and a keyword to help guide the District's search, on balance, both Items meet the specificity requirements set forth in Section 703 of the RTKL. *See* 65 P.S. § 67.703; *see also Montgomery County v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct 2012). Accordingly, the District must conduct a good faith search for responsive records and provide the Requester with all responsive documents.¹⁰

b. Item C of the Request is sufficiently specific in part

Like Items A and B of the Request, when conducting the three-part balancing test, a review of Item C of the Request shows that it does not contain a subject matter but, instead, contains several keywords, “People’s Light Theater[,]” “Alice in Wonderland[,]” “mask[,]” and “drag queen[.]” Item C also contains a broad scope, “emails, including attachments, text messages, as well as any electronic communications transmitted through any kind of chat or messaging software” from “any [District] staff or administrator” at three identified District elementary schools. Finally, Item C of the Request contains a finite timeframe of December 1, 2022, to December 22, 2022. *See Pa. Dep’t of Educ.*, 119 A.3d at 1125.

As discussed above, depending on the scope and subject matter of the Request, an approximately one-month timeframe may or may not be sufficiently limiting. As also discussed above, since the scope of Item C of the Request is identical to Items A and B of the Request, its scope serves to help guide the District in its search for responsive records. *See Pa. Dep’t of Educ.*, 119 A.3d at 1125.

¹⁰ The OOR notes that the District argues that certain information contained within the potentially responsive records is exempt from disclosure under Section 709(b)(6) of the RTKL as personally identifying information. *See* 65 P.S. § 67.708(b)(6)(A). This argument will be addressed later in this Final Determination.

Regarding the keywords—“People’s Light Theater[,]” “Alice in Wonderland[,]” “mask[,]” and “drag queen[,]”—listed in Item C of the Request in lieu of a subject matter, the keywords “mask” and “drag queen” are fairly broad. The keyword “mask” is very commonly used and is presented without the limiting parameter of a well-defined District transaction or activity. Similarly, without any clear relationship to a well-defined District transaction or activity, the keyword “drag queen” is broad. Conversely, “Alice in Wonderland” is much narrower than the keywords “mask” and “drag queen[.]” “Alice in Wonderland” is a common work of literature and film that could relate to a variety of District activities. Thus, “Alice in Wonderland” serves to aid the District in its search for potentially responsive records. Finally, as discussed above, no evidence was provided by the District to show that the distinct keyword “People’s Light Theater” does not indicate some business of the District. Further, as also previously discussed, the keyword “People’s Light Theater” serves to aid the District in its search for potentially responsive records.

As such, Item C of the Request meets the specificity requirements set forth in Section 703 of the RTKL insofar as it applies to the communications as described above during the timeframe of December 1, 2022, to December 22, 2022. *See* 65 P.S. § 67.703; *see also Iverson*, 50 A.3d 281, 284. Accordingly, the District must conduct a good faith search for responsive records, using the keywords “Alice in Wonderland” and “People’s Light Theater[,]” and provide the Requester with all responsive documents.¹¹

c. Item D of the Request is sufficiently specific in part

Like Item C of the Request, Item D of the Request shows that it does not contain a subject matter but, instead, contains the identical keywords, “People’s Light Theater[,]” “Alice in

¹¹ The OOR notes that the District argues that certain information contained within the records responsive to Item C of the Request is exempt from disclosure under Section 708(b)(6) of the RTKL as personally identifying information. *See* 65 P.S. § 67.708(b)(6)(A). As noted above, this argument will be addressed later in this Final Determination.

Wonderland[.]” “mask[.]” and “drag queen[.]” Item D also contain a relatively broad scope, “emails, including attachments, text messages, as well as any electronic communications transmitted through any kind of chat or messaging software” to or from “any [District] Administrative staff.” Finally, Item D of the Request contains a finite timeframe of December 1, 2022, to December 22, 2022. *See Pa. Dep’t of Educ.*, 119 A.3d at 1125.

As discussed above, an approximately one-month timeframe may or may not be sufficiently limiting. As also discussed above, since the keywords in Item D of the Request are identical to the keywords listed in Item C of the Request, the keywords “People’s Light Theater” and “Alice in Wonderland” serve to aid the District in its search for potentially responsive records.

Regarding the scope of Item D of the Request, since it differs only from Item C of the Request insofar as the named senders and recipients of the requested communications, only this component of scope, as set forth by the Commonwealth Court in *Pa. Dep’t of Educ.*, will be analyzed. 119 A.3d at 1125. Item D of the Request identifies the senders and recipients as “any [District] Administrative staff.” The District argues that it interpreted the senders and recipients “as referring to any (unidentified) administrator and his or her (unidentified) staff throughout the entire...District, including those unidentified individuals employed at the three elementary schools named in Part A, Part B and Part C of the Request.” When responding to a RTKL request an agency may interpret the meaning of a request for records, but that interpretation must be reasonable. *See Garland v. Pa. Dep’t of Env’tl. Prot.*, OOR Dkt. AP 2017-1490, 2017 PA O.O.R.D. LEXIS 1310; *Spatz v. City of Reading*, OOR Dkt. AP 2013-0867, 2013 PA O.O.R.D. LEXIS 513.

The OOR determines the reasonableness of an agency's interpretation from the text and context of the request alone because a request is not permitted to be altered on appeal.¹²

In this instance, Item D of the Request uses the term “Administrative staff[.]” The term administrative is defined “as relating to the management of a company, school, or other organization[.]”¹³ and, within the context of education, the term “administrative staff” is commonly associated with non-faculty positions. Accordingly, based on the plain meaning of the term “administrative staff[.]” the District's interpretation is unreasonable insofar as the District interpreted the term to include staff other than District administrators.

When limiting the senders and receivers of the requested correspondence to the individuals classified by the District as administrators, the OOR recognizes that administrators are the highest tier District employees. In *Keystone*, which is referenced above, the Commonwealth Court found a request “for all correspondence through all mediums, electronic and written, sent and received by four named individuals, [including the Department's former Secretary], over a 48-day timeframe” to be insufficiently specific. No. 1631 C.D. 2018, 2020 Pa. Commw. Unpub. LEXIS 8 (Pa. Commw. Ct. 2020).¹⁴ In doing so, the Court found that the request in that case “place[d] an unreasonable burden on [the] Department to compile all correspondence sent and received by the highest tier of employees at [the] Department.” *Id.* at 55. In *Keystone*, the Commonwealth Court also acknowledged that the number of records likely within the possession of an agency and the likelihood that those communications contain exempt information are a consideration when performing the specificity balancing test. *Id.*

¹² See *Pa. State Police v. Off. of Open Records*, 995 A.2d 515 (Pa. Commw. Ct. 2010); *Staley v. Pittsburgh Water & Sewer Auth.*, OOR Dkt. AP 2010-0275, 2010 PA O.O.R.D. LEXIS 256 (stating that “a requester may not modify the original request as the denial, if any, is premised upon the original request as written”).

¹³ See <https://www.merriam-webster.com/dictionary/administrative> (last accessed March 21, 2023).

¹⁴ The OOR cites for its persuasive value.

The Court’s analysis in *Keystone* is persuasive here because the senders specified in the Request are the top-level District staff and, the District argues that it is comprised of ten schools, which places an unreasonable burden on the District to search for responsive records. However, as previously discussed, the District did not provide evidence of that burden or that it is unable to conduct the requested keyword search. Therefore, because the Request seeks a clearly defined universe of documents and because the Request identifies the senders and recipients of the communications, its scope serves to help guide the District in its search for responsive records. *See Pa. Dep’t of Educ.*, 119 A.3d at 1125.

Therefore, on balance, Item D of the Request meets the specificity requirements set forth in Section 703 of the RTKL insofar as it applies to the communications as described above to and from the individuals classified by the District as administrators during the timeframe of December 1, 2022, to December 22, 2022. *See* 65 P.S. § 67.703; *see also Iverson*, 50 A.3d 281, 284. Accordingly, the District must conduct a good faith search for responsive records, using the keywords “Alice in Wonderland” and “People’s Light Theater[,]” and provide the Requester with all responsive documents.¹⁵

d. Item E of the Request is sufficiently specific in part

When conducting the three-part balancing test for Item E of the Request, a review shows that it does not contain a subject matter but, instead, contains the same keywords as Items C and D of the Request—“People’s Light Theater[,]” “Alice in Wonderland[,]” “mask[,]” and “drag queen[.]” Item E contains a somewhat broad scope, “emails, including attachments, text messages, as well as any electronic communications transmitted through any kind of chat or messaging

¹⁵ The OOR notes that the District argues that certain information contained within the records responsive to Item D of the Request is exempt from disclosure under Section 708(b)(6) of the RTKL as personally identifying information. *See* 65 P.S. § 67.708(b)(6)(A). As noted above, this argument will be addressed later in this Final Determination.

software” to or from “any [District] Board member.” Finally, Item E of the Request contains a finite timeframe of December 1, 2022, to December 22, 2022. *See Pa. Dep’t of Educ.*, 119 A.3d at 1125.

As previously discussed, the keywords “People’s Light Theater” and “Alice in Wonderland” serve to aid the District in its search for potentially responsive records. Also, regarding the scope of Item E of the Request, it differs only from the previously discussed Items insofar as the communications’ identified senders and recipients. Item E of the Request identifies the senders and recipients of the requested communications as “any [District] Board member[,]” which is a concrete list to aid the District in its search for responsive records. Therefore, given its relatively short, finite timeframe, Item E of the Request meets the specificity requirements set forth in Section 703 of the RTKL. *See* 65 P.S. § 67.703. Accordingly, the District must conduct a good faith search for responsive records, using the keywords “Alice in Wonderland” and “People’s Light Theater[,]” and provide the Requester with all responsive documents.¹⁶

3. The District may redact information expressly exempt from disclosure pursuant to Section 708(b)(6) of the RTKL

The District argues that records responsive to the Request likely contain personal identification information that is exempt from disclosure under Section 708(b)(6) of the RTKL, 65 P.S. § 67.708(b)(6)(A).

Section 708(b)(6)(i)(A) expressly exempts from disclosure “[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.” *Id.* Accordingly, insofar as the responsive

¹⁶ The OOR notes that the District argues that certain information contained within the records responsive to Item E of the Request is exempt from disclosure under Section 708(b)(6) of the RTKL as personally identifying information. *See* 65 P.S. § 67.708(b)(6)(A). As noted above, this argument will be addressed later in this Final Determination.

records contain information that is expressly exempt from disclosure pursuant to Section 708(b)(6)(i)(A) of the RTKL, the District may redact that information.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and, within thirty days, the District is required to conduct keyword searches for “People’s Light Theater” for Items A and B, and “People’s Light Theater” and “Alice in Wonderland” for Items C, D, and E, and provide all responsive records, with the redaction of any information made exempt under Section 708(b)(6)(i)(A) of the RTKL. 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 Chester 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.¹⁷ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: March 31, 2023

/s/ Erika Similo

APPEALS OFFICER
ERIKA SIMILO

Sent via OOR e-filing portal to: Beth Ann Rosica
James J. Musial, Esq.
Pamela Kiley

¹⁷ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).