

May 26, 2023

Sent via First Class Mail

Debbie Bookman
Office of the Prothonotary
Chester County Courthouse
201 W. Market Street, Suite 1425
West Chester, PA 19380-0989

**RE: Submission of Record in: *Coatesville Area School District v. Beth Ann Rosica*,
Chester County CCP No. 2023-03045-CS**

Dear Prothonotary Bookman:

We hereby submit the record in the above-referenced matter. Section 1303 of the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq.*, (“RTKL”), defines the Record on Appeal as “the record before a court shall consist of the request, the agency’s response, the appeal filed under section 1101, the hearing transcript, if any, and the final written determination of the appeals officer.” Pursuant to *Department of Transportation v. Office of Open Records*, 7 A.3d 329 (Pa. Commw. Ct. 2010), this record includes all “evidence and documents admitted into evidence by the appeals officer pursuant to Section 1102(a)(2).” The record in this matter consists of the following:

Office of Open Records Docket No. AP 2023-0389:

1. The appeal filed by Beth Ann Rosica (“Requester”) to the Office of Open Records (“OOR”), received February 22, 2023.
2. Official Notice of Appeal dated February 22, 2023, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
3. Coatesville Area School District’s (“District”) Entry of Appearance submitted on February 22, 2023.
4. Email chain dated February 22, 2023 through February 23, 2023, wherein the OOR confirms receipt of the District Entry of Appearance and responds to their procedural questions.
5. District email dated February 23, 2023, seeking additional time to make a submission.

6. OOR correspondence dated February 23, 2023, seeking additional time to issue the final determination in order to grant the District's extension request.
7. Requester correspondence received February 24, 2023, granting the extensions.
8. OOR correspondence dated February 24, 2023, confirming the extension and establishing submission deadlines.
9. District submission dated March 10, 2023.
10. The Final Determination issued by the OOR, dated March 31, 2023.

The OOR has discretion to hold a hearing on appeals filed but chose not to do so in this matter. Therefore, there is no transcript to transmit. Certification of the record in this case is attached to this letter. Please feel free to contact us for any reason in connection with this matter.

Sincerely,

A handwritten signature in cursive script, reading "Kyle Applegate".

Kyle Applegate
Chief Counsel

Attachments

cc: Beth Ann Rosica (Requester)
James J. Musial, Esq. (District)

**IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA**

COATESVILLE AREA SCHOOL DISTRICT, :

Petitioner :

v. :

BETH ANN ROSICA, :

Respondent :

CIVIL ACTION

No.: 2023-03045-CS

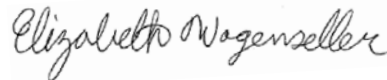
CERTIFICATION OF RECORD

I hereby certify the contents of the record transmitted with this Certification of Record pursuant to Pa.R.A.P. 1952 in *Beth Ann Rosica v. Coatesville Area School District*, OOR Dkt. AP 2023-0389, which is the subject of this appeal.

The record transmitted with this certification is generated entirely from the Office of Open Records database. It is our practice to scan in each and every document submitted in an appeal. Thus, no originals are being transmitted to this Court.

I certify that this filing complies with the provisions of the 'Public Access Policy of the Unified Judicial System of Pennsylvania Case Records of the Appellate and Trial Courts' that require filing confidential information and documents differently than non-confidential information and documents.

Also, my signature on this Certification of Record and on all other correspondence directed to the Court in connection with this matter may be electronic and not original. I hereby certified that this is my true and correct signature and that I have approved the use thereof for these purposes.



Elizabeth Wagenseller, Executive Director
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: 717) 346-9903
Fax: (717) 425-5343
Email: OpenRecords@pa.gov

Dated: May 26, 2023

**IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA**

COATESVILLE AREA SCHOOL DISTRICT,

Petitioner

v.

BETH ANN ROSICA,

Respondent

:
:
:
:
:
:
:

**CIVIL ACTION
No.: 2023-03045-CS**

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the Certified Record
upon the following persons via e-mail only as addressed below:

Beth Ann Rosica
338 West Miner Street
West Chester, PA 19382
barosica@hotmail.com

Michael I. Levin, Esq.
James J. Musial, Esq.
LEVIN LEGAL GROUP, P.C.
1301 Masons Mill Business Park
1800 Byberry Road
Huntingdon Valley, PA 19006
mlevin@levinlegallgroup.com
jmusial@levinlegallgroup.com



Faith Henry, Administrative Officer
Office of Open Records
333 Market St. 16th floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Fax: (717) 425-5343
Email: fahenry@pa.gov

Dated: May 26, 2023

**IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA**

COATESVILLE AREA SCHOOL DISTRICT,	:	
Petitioner	:	
v.	:	CIVIL ACTION
	:	No.: 2023-03045-CS
BETH ANN ROSICA,	:	
Respondent	:	
	:	

CERTIFIED RECORD

Kyle Applegate
Chief Counsel
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-224
Phone: (717) 346-9903
Fax: (717) 425-5343
Email: Kyapplegat@pa.gov

Dated: May 26, 2023

**IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA**

COATESVILLE AREA SCHOOL DISTRICT,	:	
	:	
Petitioner	:	
	:	
v.	:	CIVIL ACTION
	:	
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	:	
Respondent	:	
	:	

**TABLE OF CONTENTS
RECORD**

Beth Ann Rosica v. Coatesville Area School District, OOR Dkt. AP 2023-0389

1. The appeal filed by Beth Ann Rosica (“Requester”) to the Office of Open Records (“OOR”), received February 22, 2023.
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OOR Exhibit 1

From: no-reply@openrecordspennsylvania.com
To: barosica@hotmail.com
Subject: [External] PA Office of Open Records - Appeal Confirmation
Date: Wednesday, February 22, 2023 11:39:17 AM
Attachments: [oor_logo_email.png](#)

ATTENTION: *This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).*



You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Beth Ann Rosica
Company:	
Address 1:	338 West Miner Street
Address 2:	
City:	West Chester
State:	Pennsylvania
Zip:	19382
Phone:	484-431-2595
Email:	barosica@hotmail.com
Email2:	
Agency (list):	Coatesville Area School District
Agency Address 1:	3030 CG Zinn Road
Agency Address 2:	
Agency City:	Thorndale
Agency State:	Pennsylvania

Agency Zip:	19372
Agency Phone:	610-466-2400
Agency Email:	kileyp@casdschools.org
Records at Issue in this Appeal:	Coatesville Area School District denied all 6 parts of the RTK request. They failed to provide any documents responsive to the request.
Request Submitted to Agency Via:	e-mail
Request Date:	01/20/2023
Response Date:	02/22/2023
Deemed Denied:	No
Agency Open Records Officer:	Pam Kiley, Open Records Officer
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	Yes
Agree to permit the OOR additional time to issue a final determination:	No
Interested in resolving this issue through OOR mediation:	No
Attachments:	<ul style="list-style-type: none"> • CASD RTK.pdf • Rosica, Beth Ann - Response Letter.pdf • Rosica, Beth Ann - 7-Day Letter.pdf

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt

under any Federal or State law or regulation; and the request was sufficiently specific.



Coatesville Area School District

Inspiring. Educating. Advancing.

3030 C.G. Zinn Rd. Thorndale, PA 19372 | casdschools.org | 610-466-2400

February 22, 2023

Beth Ann Rosica
338 West Miner Street
West Chester, PA 19382

Dear Ms. Rosica:

This letter is in response to your Right-To-Know Law request submitted to the Coatesville Area School District (“School District”) on January 20, 2023. The School District is a local agency that is subject to the provisions in the Right-to-Know Law, Act of February 14, 2008, P.L. 6, 65 P.S. §§67.101 – 67.3104. The Right-to-Know Law requires disclosure of requested documents that are public record. A “record” is defined as:

Information, 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. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.

Section 101, 65 P.S. §67.101. There is a general presumption that a record is a public record if it is in the possession of the agency. A “public record” is a record, including a financial record,¹ that: (1) does not fall under an exemption listed in Section 708, 65 P.S. §67.708; (2) the record is not protected by a privilege such as attorney-client privilege or doctor-patient privilege; and (3) the record is not protected from disclosure under federal or state law or regulation or by judicial order or decree. *See* Section 102, 65 P.S. §67.702. If any of those three exceptions apply, then the record is not subject to disclosure under the Right-to-Know Law, and a request for access to such records may be denied.

¹ Section 102, 65 P.S. §67.702, defines “financial record” as:

Any of the following:

- (1) Any account, voucher or contract dealing with:
 - (i) the receipt or disbursement of funds by an agency; or
 - (ii) an agency’s acquisition, use or disposal of services, supplies, materials, equipment or property.
- (2) The salary or other payments or expenses paid to an officer or employee of agency, including the name and title of the officer or employee.
- (3) A financial audit report. The term does not include work papers underlying an audit.

The Right-to-Know Law permits the School District to redact information not subject to disclosure from a record that would otherwise be considered a public record. *See* Section 706, 65 P.S. §67.706.² It is also important to recognize that the Right-to-Know Law does not require the School District to produce or create a document that does not exist. *See* Section 507, 65 P.S. §67.507.³ The School District is guided by the above-mentioned principles in responding to your request(s) for access to the records described below.

1. Your Request:

Part 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 teams, 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."

District's Response:

Your request is denied for the reasons that follow. Your request does not identify any records or public records of the School District and is insufficiently specific and overly broad. Records and public records are defined in the Right-to-Know Law as follows:

"Record." Information, 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.* The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.

² Section 706 states:

If an agency determines that a public record, legislative record or financial record contains information which is subject to access as well as information which is not subject to access, the agency's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The agency may not deny access to the record if the information which is not subject to access is able to be redacted. Information which an agency redacts in accordance with this subsection shall be deemed a denial under Chapter 9.

³ Section 507 provides that "[n]othing in this act shall be construed to modify, rescind or supersede any record retention policy or disposition schedule of an agency established pursuant to law, regulation, policy or other directive."

“Public record.” A record, including a financial record, of a Commonwealth or local agency that:

- (1) is not exempt under section 708;4
- (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or
- (3) is not protected by a privilege.

65 P.S. § 67.102 (Emphasis added).

“To establish that sought-after information is a public record, the requestor must meet a two-part test: (1) the information must document a transaction or activity of the agency, and (2) the information must be created, received, or retained in connection with the activity of the agency. *Pa. Office of Atty. Gen. v. Philadelphia Inquirer*, 127 A.3d 57, 60–61 (Pa. Cmwlth. 2015); *Philadelphia Dist. Attorney's Office v. Cwiek*, 169 A.3d 711, 717 (Pa.Cmwlth. 2017).

“The requirement that an email must document a “transaction or activity of the agency” is essential for a record to be a public record. What makes an email a “public record,” then, is whether the information sought documents an agency transaction or activity, and the fact whether the information is sent to, stored on or received by a public or personal computer is irrelevant in determining whether the email is a “public record.” *Pennsylvania Office of Atty. Gen. v. Philadelphia Inquirer*, 127 A.3d 57, 62 (Pa.Cmwlth. 2015).

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. *See Meguerian v. Office of the Attorney General*, 86 A.3d 924, 930 (Pa.Cmwlth 2013); *Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259 (Pa.Cmwlth 2012). Instead, the emails must document a transaction or activity of the agency. The same analysis applies equally to requests for text messages. *See, Kane v. Delaware Cty. District Attorney's Office*, OOR Dkt. AP 2018-1049, 2018 WL 3425356 (Pa.Off.Open Rec.).

The same applies with respect to your request for “text messages, as well as any electronic communications transmitted through any kind of chat or messaging software such as Slack, Microsoft teams, etc.” You have not identified any transaction or activity of the School District to which the requested material relates. Moreover, “In the context of a request filed under the RTKL, keywords generally are most useful when used to supplement a properly framed subject matter rather than to constitute the subject matter on their own.” *Polochko v. Executive Educ. Academy Charter Sch.*, OOR Dkt. AP 2018-1397, 2018 PA O.O.R.D. LEXIS 1220, at *9.

In addition, because you have not identified any transaction or activity associated with the requested material, your request is not sufficiently specific. The Right-to-Know Law requires 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. “[I]t is the requester’s responsibility to tell an agency what records he or she wants. *Mollick v. Twp. of Worcester*, 32 A.3d 859, 871 (Pa.Cmwlth. 2011) (cited in *Joan Myers Brown Academy v. Philadelphia Sch. Dist.*, OOR Dkt. AP 2021-2198 (Pa.Off.OpenRec.).

Your request also is insufficiently specific and overly broad because it fails to identify any “staff or administrator,” and is interpreted as encompassing every school district employee whose job location is one of the three schools named in your request -- for which there are 141 employees. See, e.g., *Winklosky v. Pennsylvania Office of Administration*, OOR Dkt. AP 2018-1438, 2018 WL 5906135 (Pa.Off.Open.Rec.) (Failure to identify specific individuals renders request insufficiently specific). Such a scope is “quite extensive” and overly broad. As recently stated in *Schulz v. Mifflin Sch. Dist.*, OOR Dkt. AP 2022-0780, 2022 WL 2067684, *5 (Pa.Off.Open Rec.):

“[T]he Request language also includes the very general and very broad category of District “Administrators,” that may implicate numerous District employees, depending on how an “Administrator” is defined under District job descriptions. The District's website indicates that the District is comprised of four elementary schools, two intermediate schools, one middle school, one junior high, and one high school, all of which would be staffed with varying types of “administrators.” Without identifying specific District administrators or providing a defined subject matter, the District is left to guess what email accounts should be searched. In this instance, the short timeframe does not save a request that fails to identify a subject matter. Therefore, we determine that the Request is more akin to *Mollick* and, therefore, is insufficiently specific in that it fails to seek a clearly defined universe of documents and without additional information to narrow the scope, the District is unable to conduct a meaningful search for responsive records.”

The references in your request to “staff” and “any electronic communications transmitted through any kind of chat or messaging software such as ...” are similarly insufficiently specific and overly broad.

Because your request does not seek material that meets the definition of either a “record” or a “public record, lacks specificity and is overly broad, the School District cannot reasonably determine which exemptions may apply to any particular material.

2. Your Request:

Part 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 teams, 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."

District's Response:

Your request is denied for the reasons that follow. Your request does not identify any records or public records of the School District and is insufficiently specific and overly broad. Records and public records are defined in the Right-to-Know Law as follows:

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includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.

“Public record.” A record, including a financial record, of a Commonwealth or local agency that:

- (1) is not exempt under section 708;4
- (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or
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65 P.S. § 67.102 (Emphasis added).

“To establish that sought-after information is a public record, the requestor must meet a two-part test: (1) the information must document a transaction or activity of the agency, and (2) the information must be created, received, or retained in connection with the activity of the agency. *Pa. Office of Atty. Gen. v. Philadelphia Inquirer*, 127 A.3d 57, 60–61 (Pa. Cmwlth. 2015); *Philadelphia Dist. Attorney's Office v. Cwiek*, 169 A.3d 711, 717 (Pa.Cmwlth. 2017).

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to tell an agency what records he or she wants. *Mollick v. Twp. of Worcester*, 32 A.3d 859, 871 (Pa.Cmwlth. 2011) (cited in *Joan Myers Brown Academy v. Philadelphia Sch. Dist.*, OOR Dkt. AP 2021-2198 (Pa.Off.OpenRec.)).

Your request also is insufficiently specific and overly broad because it fails to identify any “staff or administrator,” and is interpreted as encompassing every school district employee whose job location is one of the three schools named in your request -- for which there are 141 employees. See, e.g., *Winklosky v. Pennsylvania Office of Administration*, OOR Dkt. AP 2018-1438, 2018 WL 5906135 (Pa.Off.OpenRec.) (Failure to identify specific individuals renders request insufficiently specific). Such a scope is “quite extensive” and overly broad. As recently stated in *Schulz v. Mifflin Sch. Dist.*, OOR Dkt. AP 2022-0780, 2022 WL 2067684, *5 (Pa.Off.Open Rec.):

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Part C:

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In addition, because you have not identified any transaction or activity associated with the requested material, your request is not sufficiently specific. The Right-to-Know Law requires 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. “[I]t is the requester’s responsibility to tell an agency what records he or she wants. *Mollick v. Twp. of Worcester*, 32 A.3d 859, 871 (Pa.Cmwlth. 2011) (cited in *Joan Myers Brown Academy v. Philadelphia Sch. Dist.*, OOR Dkt. AP 2021-2198 (Pa.Off.OpenRec.).

Your request also is insufficiently specific and overly broad because it fails to identify any “staff or administrator,” and is interpreted as encompassing every school district employee whose job location is one of the three schools named in your request -- for which there are 141 employees. See, e.g., *Winklosky v. Pennsylvania Office of Administration*, OOR Dkt. AP 2018-1438, 2018 WL 5906135 (Pa.Off.Open.Rec.) (Failure to identify specific individuals renders request insufficiently specific). Such a scope is “quite extensive” and overly broad. As recently stated in *Schulz v. Mifflin Sch. Dist.*, OOR Dkt. AP 2022-0780, 2022 WL 2067684, *5 (Pa.Off.Open Rec.):

“[T]he Request language also includes the very general and very broad category of District “Administrators,” that may implicate numerous District employees, depending on how an “Administrator” is defined under District job descriptions. The District’s website indicates that the District is comprised of four elementary schools, two intermediate schools, one middle school, one junior high, and one high school, all of which would be staffed with varying types of “administrators.” Without identifying specific District administrators or providing a defined subject matter, the District is left to guess what email accounts should be searched. In this instance, the short timeframe does not save a request that fails to identify a subject matter. Therefore, we determine that the Request is more akin to *Mollick* and, therefore, is insufficiently specific in that it fails to seek a clearly defined universe of documents and without additional information to narrow the scope, the District is unable to conduct a meaningful search for responsive records.”

The references in your request to “staff” and “any electronic communications transmitted through any kind of chat or messaging software such as ...” are similarly insufficiently specific and overly broad.

Because your request does not seek material that meets the definition of either a “record” or a “public record, lacks specificity and is overly broad, the School District cannot reasonably determine which exemptions may apply to any particular material.

4. Your Request:

Part 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 teams, 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."

District's Response:

Your request is denied for the reasons that follow. Your request does not identify any records or public records of the School District and is insufficiently specific and overly broad. Records and public records are defined in the Right-to-Know Law as follows:

“Record.” Information, 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*. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.

“Public record.” A record, including a financial record, of a Commonwealth or local agency that:

- (1) is not exempt under section 708;4
- (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or
- (3) is not protected by a privilege.

65 P.S. § 67.102 (Emphasis added).

“To establish that sought-after information is a public record, the requestor must meet a two-part test: (1) the information must document a transaction or activity of the agency, and (2) the information must be created, received, or retained in connection with the activity of the agency. *Pa. Office of Atty. Gen. v. Philadelphia Inquirer*, 127 A.3d 57, 60–61 (Pa. Cmwlth. 2015); *Philadelphia Dist. Attorney's Office v. Cwiek*, 169 A.3d 711, 717 (Pa.Cmwlth. 2017).

“The requirement that an email must document a “transaction or activity of the agency” is essential for a record to be a public record. What makes an email a “public record,” then, is whether the information sought documents an agency transaction or activity, and the fact whether the information is sent to, stored on or received by a public or personal computer is irrelevant in determining whether the email is a “public record.” *Pennsylvania Office of Atty. Gen. v. Philadelphia Inquirer*, 127 A.3d 57, 62 (Pa.Cmwlth. 2015).

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. *See Meguerian v. Office of the Attorney General*, 86 A.3d 924, 930 (Pa.Cmwlth 2013); *Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259 (Pa.Cmwlth 2012). Instead, the emails must document a transaction or activity of the agency. The same analysis applies equally to requests for text messages. *See, Kane v. Delaware Cty. District Attorney's Office*, OOR Dkt. AP 2018-1049, 2018 WL 3425356 (Pa.Off.Open Rec.).

The same applies with respect to your request for “text messages, as well as any electronic communications transmitted through any kind of chat or messaging software such as Slack, Microsoft teams, etc.” You have not identified any transaction or activity of the School District to which the requested material relates. Moreover, “In the context of a request filed under the RTKL, keywords generally are most useful when used to supplement a properly framed subject matter rather than to constitute the subject matter on their own.” *Polochko v. Executive Educ. Academy Charter Sch.*, OOR Dkt. AP 2018-1397, 2018 PA O.O.R.D. LEXIS 1220, at *9.

In addition, because you have not identified any transaction or activity associated with the requested material, your request is not sufficiently specific. The Right-to-Know Law requires 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. “[I]t is the requester’s responsibility to tell an agency what records he or she wants. *Mollick v. Twp. of Worcester*, 32 A.3d 859, 871 (Pa.Cmwlth. 2011) (cited in *Joan Myers Brown Academy v. Philadelphia Sch. Dist.*, OOR Dkt. AP 2021-2198 (Pa.Off.OpenRec.).

Your request also is insufficiently specific and overly broad because it fails to identify “any CASD Administrative staff,” and is interpreted as encompassing every administrator and their staff in the entire Coatesville Area School District. See, e.g., *Winklosky Winklosky v. Pennsylvania Office of Administration*, OOR Dkt. AP 2018-1438, 2018 WL 5906135 (Pa.Off.Open.Rec.) (Failure to identify specific individuals renders request insufficiently specific). Such a scope is “quite extensive” and overly broad. As recently stated in *Schulz v. Mifflin Sch. Dist.*, OOR Dkt. AP 2022-0780, 2022 WL 2067684, *5 (Pa.Off.Open Rec.):

“[T]he Request language also includes the very general and very broad category of District “Administrators,” that may implicate numerous District employees, depending on how an “Administrator” is defined under District job descriptions. The District’s website indicates that the District is comprised of four elementary schools, two intermediate schools, one middle school, one junior high, and one high school, all of which would be staffed with varying types of “administrators.” ** Without identifying specific District administrators or providing a defined subject matter, the District is left to guess what email accounts should be searched. In this instance, the short timeframe does not save a request that fails to identify a subject matter. Therefore, we determine that the Request is more akin to *Mollick* and, therefore, is insufficiently specific in that it fails to seek a clearly defined universe of documents and without additional information to narrow the scope, the District is unable to conduct a meaningful search for responsive records (asterisks added).”

[** Coatesville Area School District is comprised of two high schools, one middle school, one sixth grade center, five elementary schools and one cyber academy.]

The references in your request to “staff” and “any electronic communications transmitted through any kind of chat or messaging software such as ...” are similarly insufficiently specific and overly broad.

Because your request does not seek material that meets the definition of either a “record” or a “public record, lacks specificity and is overly broad, the School District cannot reasonably determine which exemptions may apply to any particular material.

5. Your Request:

Part 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 teams, 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."

District's Response:

Your request is denied for the reasons that follow. Your request does not identify any records or public records of the School District and is insufficiently specific and overly broad. Records and public records are defined in the Right-to-Know Law as follows:

“Record.” Information, 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*. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.

“Public record.” A record, including a financial record, of a Commonwealth or local agency that:

- (1) is not exempt under section 708;4
- (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or
- (3) is not protected by a privilege.

65 P.S. § 67.102 (Emphasis added).

“To establish that sought-after information is a public record, the requestor must meet a two-part test: (1) the information must document a transaction or activity of the agency, and (2) the information must be created, received, or retained in connection with the activity of the agency. *Pa. Office of Atty. Gen. v. Philadelphia Inquirer*, 127 A.3d 57, 60–61 (Pa. Cmwlth. 2015); *Philadelphia Dist. Attorney's Office v. Cwiek*, 169 A.3d 711, 717 (Pa.Cmwlth. 2017).

“The requirement that an email must document a “transaction or activity of the agency” is essential for a record to be a public record. What makes an email a “public record,” then, is whether the information sought documents an agency transaction or activity, and the fact whether the information is sent to, stored on or received by a public or personal computer is irrelevant in determining whether the email is a “public record.” *Pennsylvania Office of Atty. Gen. v. Philadelphia Inquirer*, 127 A.3d 57, 62 (Pa.Cmwlth. 2015).

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. See *Meguerian v. Office of the Attorney General*, 86 A.3d 924, 930 (Pa.Cmwlth 2013); *Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259 (Pa.Cmwlth 2012). Instead, the emails must document a transaction or activity of the agency. The same analysis applies equally to requests for text messages. See, *Kane v. Delaware Cty. District Attorney's Office*, OOR Dkt. AP 2018-1049, 2018 WL 3425356 (Pa.Off.Open Rec.).

The same applies with respect to your request for “text messages, as well as any electronic communications transmitted through any kind of chat or messaging software such as Slack, Microsoft teams, etc.” You have not identified any transaction or activity of the School District to which the requested material relates. Moreover, “In the context of a request filed under the RTKL, keywords generally are most useful when used to supplement a properly framed subject matter rather than to constitute the subject matter on their own.” *Polochko v. Executive Educ. Academy Charter Sch.*, OOR Dkt. AP 2018-1397, 2018 PA O.O.R.D. LEXIS 1220, at *9.

In addition, because you have not identified any transaction or activity associated with the requested material, your request is not sufficiently specific. The Right-to-Know Law requires 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. “[I]t is the requester’s responsibility to tell an agency what records he or she wants. *Mollick v. Twp. of Worcester*, 32 A.3d 859, 871 (Pa.Cmwlth. 2011) (cited in *Joan Myers Brown Academy v. Philadelphia Sch. Dist.*, OOR Dkt. AP 2021-2198 (Pa.Off.OpenRec.).

The references in your request to “any electronic communications transmitted through any kind of chat or messaging software such as ...” is insufficiently specific and overly broad as well.

Because your request does not seek material that meets the definition of either a “record” or a “public record, lacks specificity and is overly broad, the School District cannot reasonably determine which exemptions may apply to any particular material.

Notice of your Right to Appeal:

If you disagree with any of the above determinations, you may file an appeal with the Office of Open Records within fifteen (15) business days of the mailing date of the School District’s response.⁴

⁴ Section 1101(a)(1), 65 PS. §67.1101, provides that:

If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Office of Open Records or judicial, legislative or other appeals officer designated under section 503(d) within 15 business days of the mailing date of the agency’s response or within 15 business days of a deemed denial. The appeal shall state the grounds upon which the requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request.

We thank you for your continued interest in our School District.

Sincerely,

A handwritten signature in blue ink that reads "Pam Kiley". The signature is written in a cursive, flowing style.

Pamela Kiley
Open Records Officer



January 26, 2023

Beth Ann Rosica
338 West Miner Street
West Chester, PA 19382

Re: Right-to-Know Request received January 20, 2023

Dear Ms. Rosica:

This letter is in response to your request for certain records and documents received by the School District on January 20, 2023. Your request is being reviewed, and we hereby notify you of our need for an extension of time for the reasons noted below. We will respond within thirty (30) days of the date of this letter.

The need for more time is for the following reasons:

1. A legal review is necessary to determine whether the record is a record subject to access under the Right-to-Know Law; and
2. A timely response to the request for access cannot be accomplished due to staffing limitations.

We thank you for your interest in our School District.

Sincerely,

Pamela Kiley
Open Records Officer



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Coatesville Area School District (Attn: AORO)

Date of Request: 1/20/23 Submitted via: ☒ Email ☐ U.S. Mail ☐ Fax ☐ In Person

PERSON MAKING REQUEST:

Name: Beth Ann Rosica Company (if applicable): _____

Mailing Address: 338 West Miner Street

City: West Chester State: PA Zip: 19382 Email: barosica@hotmail.com

Telephone: 484-431-2595 Fax: _____

How do you prefer to be contacted if the agency has questions? ☐ Telephone ☒ Email ☐ U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

Please see attached

DO YOU WANT COPIES? ☐ Yes, printed copies (*default if none are checked*)

☒ Yes, electronic copies preferred if available

☐ No, in-person inspection of records preferred (*may request copies later*)

Do you want certified copies? ☐ Yes (*may be subject to additional costs*) ☒ No

RTKL requests may require payment or prepayment of fees. See the [Official RTKL Fee Schedule](#) for more details.

Please notify me if fees associated with this request will be more than ☐ **\$100 (or)** ☒ **\$ 50**.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? ☐ Yes ☐ No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: ☐ Granted ☐ Partially Granted & Denied ☐ Denied Cost to Requester: \$ _____

☐ Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record.

More information about the RTKL is available at <https://www.openrecords.pa.gov>

Form updated Feb. 3, 2020

Part 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 teams, 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."

Part 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 teams, 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."

Part 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 teams, 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."

Part 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 teams, 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."

Part 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 teams, 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."

OOR Exhibit 2

NOTICE OF DEADLINES

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **March 24, 2023**.

The timeline for this RTKL appeal may be extended by the OOR during the appeal. This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **March 3, 2023**.

If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.

Due to delays in U.S. mail, we urge agencies and requesters to use email or the E-File Appeal Portal for all communications with the OOR to the extent possible.

Presently, the OOR is receiving postal mail on a limited basis. Accordingly, we urge agencies and requesters to use email for all communication with the OOR to the extent possible.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.

February 22, 2023

Via Email Only:

Beth Ann Rosica
338 West Miner Street
West Chester, PA 19382
barosica@hotmail.com

Via Email Only:

Pamela Kiley
Agency Open Records Officer
Coatesville Area School District
3030 C.G. Zinn Road
Coatesville, PA 19372
openrecords@casdschools.org
kileyp@casdschools.org

----- **RE: OFFICIAL NOTICE OF APPEAL - Rosica v. Coatesville Area School District OOR Dkt. AP 2023-0389** -----

Dear Parties:

Review this information and all enclosures carefully as they affect your legal rights.

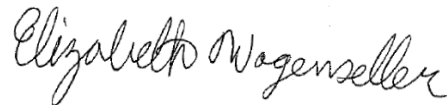
The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. on February 22, 2023. A binding Final Determination (“FD”) will be issued pursuant to the timeline required by the RTKL, **please see the attached information for more information about deadlines.**

Notes for both parties (more information in the enclosed documents):

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

----- If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal. -----

Sincerely,



Elizabeth Wagenseller
Executive Director

Enc.: Description of RTKL appeal process
Assigned Appeals Officer contact information
Entire appeal as filed with OOR

The Right-to-Know Law Appeal Process

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOR pursuant to the statutory timeline, subject to the notice of deadlines enclosed herein. If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents.

Submissions to the OOR **Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer.** Please contact the Appeals Officer as soon as possible.

Any information provided to the OOR must be provided to all parties involved in this appeal. Information submitted to the OOR will not be considered unless it is also shared with all parties.

Include the docket number on all submissions.

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

It is strongly advised that attorneys and other party representatives **file an Entry of Appearance** by contacting the Appeals Officer or completing the form at <https://www.openrecords.pa.gov/Appeals/EntryOfAppearance.cfm>.

NOTE TO AGENCIES: In cases assigned to the E-File Portal, if an Entry of Appearance is not filed, the AORO is responsible to inform attorneys and other party representatives of all docket activity.

Generally, submissions to the OOR — other than *in camera* records — will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

Agency Must Notify Third Parties **If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; or are held by a contractor or vendor, the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.**

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer or completing the form at <https://www.openrecords.pa.gov/Appeals/DIPRequest.cfm>. (see 65 P.S. § 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

A third party's failure to participate in a RTKL appeal before the OOR

may be construed as a waiver of objections regarding release of requested records.

NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.

Statements of Fact & Burden of Proof

Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, openrecords.pa.gov.

Any evidence or legal arguments not submitted or made to the OOR may be waived.

Preserving Responsive Records

The agency must preserve all potentially responsive records during the RTKL appeal process, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

Mediation

The OOR offers a mediation program as an alternative to the standard appeal process. To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.



APPEALS OFFICER:

Erika Similo, Esq.

CONTACT INFORMATION:

**Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234**

FACSIMILE:

(717) 425-5343

EMAIL:

esimilo@pa.gov

**Preferred method of contact and
submission of information:**

**EMAIL
(Except cases assigned to the E-File
Appeal Portal)**

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.
Please include the case name and docket number on all submissions.**

**You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot
speak to parties individually without the participation of the other party.**

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review
prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff
are also available to provide general information about the appeals process by calling (717) 346-9903.



IN THE MATTER OF

_____,
Requester

v.

_____,
Agency

:
:
:
:
:
:
:
:
:
:

OOR Dkt. AP _____

Please accept my appearance for the _____ in the above captioned case.
(Requester/Agency)

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Attorney: _____

Firm: _____

Address: _____

Email: _____

Phone #: _____

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

OOR Exhibit 3



IN THE MATTER OF	:	
	:	
BETH ANN ROSICA	:	
Requester	:	
	:	
v.	:	OOR Dkt. AP
	:	2023-0389
	:	
COATESVILLE AREA SCHOOL DISTRICT,	:	
Agency	:	

Please accept my appearance for the Agency, the Coatesville Area School District in the above captioned case.

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Attorney: JAMES J. MUSIAL, Esq.

Firm: LEVIN LEGAL GROUP, P.C.

Address: 1301 Masons Mill Business Park, 1800 Byberry Road, Huntingdon Valley, PA 19006

Email: jmusial@levinlegallgroup.com

Phone #: 267-857-4935

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

OOR Exhibit 4

From: [Similo, Erika](#)
To: [James Musial](#)
Cc: barosica@hotmail.com; [Kiley, Pamela](#)
Subject: RE: [External] OOR Appeal - AP 2023-0389
Date: Thursday, February 23, 2023 9:10:00 AM

Dear Attorney Musial:

The OOR received your entry of appearance sent via our e-filing portal. Our administrative staff created a log-in for you, which you should've received. You can access the E-File Appeal Portal at <https://www.openrecords.pa.gov/portal/login.cfm>. If you have not received your credential, use the Reset Password.

A User Guide can be found by visiting https://www.openrecords.pa.gov/Documents/Appeals/E-File_AppealPortal-UserGuide.pdf.

If you have any questions or need assistance with the portal, technical issues can be directed to the OOR at openrecords@pa.gov.

Going forward, I will use the portal to contact the parties and I ask that the parties kindly do the same. Also, I do want to let the parties know that when something is submitted by the parties, through the portal, the submission does not immediately appear on the docket. I must first review the document, then accept it, then post it to the docket, which then may take up to hour or more to post. However, we do work diligently to ensure everything submitted through the portal is posted to the docket as soon as possible.

Thank you for your cooperation,



Erika Similo
Appeals Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: [\(717\) 346-9903](tel:(717)346-9903)
Fax: (717) 425-5343
[@OpenRecordsPA](https://openrecords.pa.gov)

-
-

From: James Musial <JMusial@levinlegalgroup.com>
Sent: Wednesday, February 22, 2023 5:43 PM
To: Similo, Erika <esimilo@pa.gov>
Cc: barosica@hotmail.com; Kiley, Pamela <Kileyp@casdschools.org>

Subject: [External] OOR Appeal - AP 2023-0389

ATTENTION: *This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).*

Dear Ms. Similo :

As this is my first time entering my appearance via the OOR portal, this is to advise that I have just uploaded my Entry of Appearance and a copy is attached here.

Please advise if I require my own login to the Portal for future submissions.

Thank you.

James J. Musial

James J. Musial
LEVIN LEGAL GROUP, P.C.
1301 Masons Mill Business Park
1800 Byberry Road
Huntingdon Valley, PA 19006

Office Phone: 215-938-6378
(Direct) 267-857-4935
Office Fax: 215-938-6375
jmusial@levinlegalgroup.com

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Although email is a convenient way of communicating, there are drawbacks to email. First, it may not be secure or confidential. Second, there is no certainty or guarantee that email will be delivered to our inbox or that it won't be mistakenly deleted. Therefore, if you are concerned at all about the lack of confidentiality, do not use email to transmit communications to us and tell us about your concerns so that we can accommodate your needs. Further, to our clients, we cannot accept any assignment by email alone, unless you hear from us that we received the email and will be acting on it. If there is anything that we are expected to do, and you have not heard from us promptly acknowledging receipt of the assignment and agreement to perform the work, please ensure that you contact us and talk to a "live" person to ensure that we received the assignment. Thank you

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PRIVILEGED INFORMATION/CONFIDENTIALITY NOTICE:

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OOR Exhibit 5

From: [James Musial](#)
To: [Similo, Erika](#)
Cc: barosica@hotmail.com; [Kiley, Pamela](#)
Subject: RE: [External] OOR Appeal - AP 2023-0389
Date: Thursday, February 23, 2023 10:07:43 AM

Dear Ms. Similo:

Thank you for this information. I note in the documents served with the Appeal that any request for additional time must be submitted asap.

That being the case, and given my current workload, may I respectfully request an additional 7 days to submit the School District's Response.

James J. Musial

James J. Musial
LEVIN LEGAL GROUP, P.C.
1301 Masons Mill Business Park
1800 Byberry Road
Huntingdon Valley, PA 19006

Office Phone: 215-938-6378
(Direct) 267-857-4935
Office Fax: 215-938-6375
jmusial@levinlegalgroup.com

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Although email is a convenient way of communicating, there are drawbacks to email. First, it may not be secure or confidential. Second, there is no certainty or guarantee that email will be delivered to our inbox or that it won't be mistakenly deleted. Therefore, if you are concerned at all about the lack of confidentiality, do not use email to transmit communications to us and tell us about your concerns so that we can accommodate your needs. Further, to our clients, we cannot accept any assignment by email alone, unless you hear from us that we received the email and will be acting on it. If there is anything that we are expected to do, and you have not heard from us promptly acknowledging receipt of the assignment and agreement to perform the work, please ensure that you contact us and talk to a "live" person to ensure that we received the assignment. Thank you

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From: Similo, Erika <esimilo@pa.gov>
Sent: Thursday, February 23, 2023 9:11 AM

OOR Exhibit 6

February 23, 2023

Via Email Only:

Beth Ann Rosica
338 West Miner Street
West Chester, PA 19382
barosica@hotmail.com

Via Email Only:

James J. Musial, Esq.
1301 Masons Mill Business Park
1800 Byberry Road
Huntingdon Valley, PA 19006
jmusial@levinlegalgroup.com

Pamela Kiley
Agency Open Records Officer
Coatesville Area School District
3030 C.G. Zinn Road
Coatesville, PA 19372
openrecords@casdschools.org
kileyp@casdschools.org

RE: Rosica v. Coatesville Area School District OOR Dkt. AP 2023-0389

Dear Parties:

The Office of Open Records (“OOR”) is in receipt of Attorney Musial’s request to extend the submission in the above-referenced appeal period by seven days, until March 10, 2023. To grant the request, the OOR also would need to request a corresponding extension of the timeframe for the issuance of a final determination beyond the thirty-day statutory period.

Pursuant to the RTKL, the Requester is the party from whom permission is needed to extend the timeframe for the issuance of a final determination beyond the thirty-day statutory period. Accordingly, we request an additional week for the OOR to reach a decision in this matter.

Requester Rosica—would you agree to extend the due date such that a Final Determination will be issued on or before March 31, 2023? Please let me know via the OOR's portal if you agree to this extension as soon as possible so we can amend our docket accordingly.

If the OOR does not receive a receive a response from the Requester on or before 5:00 p.m. Friday, February 24, 2023, the OOR will proceed with the understanding that the Requester does not object to the extension of time and the docket will be amended accordingly.

Thank you for your attention to this matter.

Sincerely,

Sincerely,

/s/ Erika Similo

Erika Similo

OOR Exhibit 7

I, Beth Ann Rosica, the requestor, grant the Coatesville Area School District an additional seven days for their response, and subsequently grant the OOR an additional seven days to make a final determination by March 31, 2023. If you have any questions, please let me know. Thank you.

OOR Exhibit 8

February 24, 2023

Via Email Only:

Beth Ann Rosica
338 West Miner Street
West Chester, PA 19382
barosica@hotmail.com

Via Email Only:

James J. Musial, Esq.
1301 Masons Mill Business Park
1800 Byberry Road
Huntingdon Valley, PA 19006
jmusial@levinlegallgroup.com

Pamela Kiley
Agency Open Records Officer
Coatesville Area School District
3030 C.G. Zinn Road
Coatesville, PA 19372
openrecords@casdschools.org
kileyp@casdschools.org

RE: Rosica v. Coatesville Area School District OOR Dkt. AP 2023-0389

Dear Parties:

I am writing to confirm Requester Rosica's consent to an extension of time until March 31, 2023 for the OOR to issue its Final Determination in the above-referenced matter.

Accordingly, the District's request to extend the submission period is granted and both parties will have until March 10, 2023 to provide submissions in this matter.

Thank you both for your cooperation.

Sincerely,

/s/ Erika Similo

Erika Similo

OOR Exhibit 9

**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS**

In the Matter of :

BETH ANN ROSICA, :
Requester, :
 : Docket No.: AP 2023-0389

v. :

COATESVILLE AREA SCHOOL DISTRICT, :
Respondent.

**RESPONDENT’S BRIEF IN SUPPORT OF ITS DENIAL
AND IN OPPOSITION TO REQUESTER’S APPEAL**

Respondent, Coatesville Area School District (“Respondent” or “School District”), through its undersigned counsel, files this response in opposition to the Right-to-Know Law Appeal filed by Requester, Beth Ann Rosica (“Requester” or “Rosica”).

I. Background

Requester submitted the applicable Right-to-Know Law request (“Request”) to the School District on January 20, 2023. The Request included five separate requests. (See, Requester’s Standard Right-to-Know Law Request Form.) By letter of January 26, 2023, the School District’s Open Records Officer informed Requester pursuant to Section 902 of the Right-to-Know Law (“RTKL”) that her Request had been received and the District would require up to an additional 30 days to provide a written response. The Open Records Officer advised Requester that the extension was required to conduct a legal review and due to staffing limitations. (See, January 26, 2023, letter filed in OOR portal.) The District’s Open Records Officer formally responded to each part of the Request in her February 22, 2023, Response Letter. (See, February 22, 2023, letter filed in OOR portal.) Requester has appealed the District’s responses to each of her five requests, asserting that “the records requested are public records in the possession, custody or control of the

Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.” (See, Requester’s Appeal Form filed in the OOR portal.) The School District cited specific reasons along with citation to supporting legal authority in denying each of Requester’s five requests, pursuant to Section 903(2) of the RTKL. 65 P.S. § 67.903(3). In sum, none of Requester’s appeal issues have merit.

II. Legal Argument/Analysis

Respondent hereby incorporates by reference, as though fully set forth herein, the Open Records Officer’s February 22, 2023, Response Letter setting forth the School District’s denials of Requester’s requests. The five requests were indicated by Requester as “Part A” through “Part E,” respectively. In addition, the School District asserts the further reasons set forth below in support of its denials. See, *Levy v. Senate of Pennsylvania*, 65 A.3d 361, 383 (Pa. 2013) (agency during appeal may raise additional reasons for denial not raised in its initial written denial of a RTKL request).

For ease of reference, the following is a recitation of Ms. Rosica’s requests:

Part 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 teams, 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."

Part 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 teams, 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."

Part 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 teams, 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."

Part 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 teams, 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."

Part 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 teams, 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."

A. Parts A, B and C of the Request

Part A and Part B of the overall request are identical, except that Part A provides a timeframe consisting of the month of September 2022, and Part B provides as its timeframe the month of October 2022. Part A and Part B both provide a single keyword/phrase: "People's Light Theater." Part C of the request is identical to Part A and Part B, except that it provides a timeframe of December 1, 2022, to December 22, 2022, and it includes three additional key words/phrases: "Alice in Wonderland," "mask" and

“drag queen.” Accordingly, the Open Records Officer provided identical responses in denying the Part A, Part B and Part C requests, on the basis that they do not identify any records or public records of the School District and are insufficiently specific and overbroad. (See February 22, 2023, response letter.) In addition to the specific reasons with supporting legal authority cited in the District’s response letter, it is noteworthy that not only do the requests fail to identify a single individual at any of the three elementary schools, no “staff” or “administrator” at any of the three schools would have any authority to act on behalf of the School District in any case, and Requester has identified none. In accordance with well-established law, an email sent by an agency employee who lacks authority to act on behalf of the agency would not constitute a “record” under the RTKL in the first instance. See, *Easton Area School Dist. v. Baxter*, 35 A.3d 1259, 1264 (Pa.Cmwlth. 2012), appeal denied, 54 A.3d 350 (Pa. 2012) (citing/discussing 65 P.S. § 67.102 (“Definitions”)). Any such email sent by an employee who lacks authority to act on behalf of the School District “would not be a documentation of a transaction or activity of [the School District]” *Id.*, at 1262 (quoting *In re Silberstein*, 11 A.3d 629, 633 (Pa.Cmwlth. 2011)) (emphasis in original) (emails of an individual with no authority to act alone on behalf of the agency are not records of an agency and are not public records). “[N]or would the record have been created, received or retained pursuant to law or in connection with a transaction, business or activity of [the School District]” *Id.* (emphasis in original).

Request Part A, Part B and Part C each are insufficiently specific and overly broad not only because they fail to identify any School District employee, let alone any employee having authority to act on behalf of the School District, but also because Requester has failed to “meet [the] two-part test [that] ...(1) the information must document a transaction or activity of the agency, and (2) the information must be created, received or retained in connection with the activity of the

agency.” (*Pa. Office of Atty. Gen. v. Philadelphia Inquirer*, 127 A3d 57, 60-61 (Pa.Cmwlth 2015)).

Part A, Part B and Part C of the Request are not limited to seeking emails that conceivably could constitute a “record” under the RTKL. The requests plainly seek emails of unidentified employees (a) regardless of an employee’s lack of authority to act on behalf of the School District, (b) regardless of whether they would document a transaction or activity of the School District, (c) regardless of whether they would have been created, received or retained pursuant to law or in connection with a transaction, business or activity of the School District, (d) regardless of whether they would be purely personal in nature, and (e) regardless of whether they would have been sent or received via their own personal electronic devices or email addresses.

As written, the Part A, Part B and Part C requests are not even limited to seeking emails (a) sent by employees using School District-issued computers or other electronic devices, or (b) sent by employees using School District-issued email addresses. Nevertheless, in *Pennsylvania Office of Atty. Gen. v. Philadelphia Inquirer*, 127 A.3d 57 (Pa.Cmwlth. 2015), the Court held that even emails sent to or from employees using their agency email addresses did not constitute “records” under the RTKL because they did not document a “transaction or activity of the agency.” *Id.*, at 62-63 (citing *Mollick v. Township of Worcester*, 32 A.3d 859 (Pa.Cmwlth. 2011)). The Court quoted from its decision in *Easton Area School Dist. v. Baxter*, *supra*, that “*personal emails* that do not [document a transaction or activity of an agency] are simply not records” under the RTKL. *Id.*, at 62 (emphasis added). “Section 102 of 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.” *Mollick*, *supra* at 872 (emphases added).

In further support of its denial of Part A, Part B and Part C on the grounds that the requests are insufficiently specific and overbroad, undersigned counsel submits the Affidavit of Counsel

attached hereto as Exhibit A” in support of the fact stated in the Open Records Officer’s response letter that the three named elementary schools have a combined staff, including administrators, of **141 employees**. (See Open Records Officer’s responses to Part A, Part B and Part C set forth in her February 22, 2023 response letter.)

In light of the insufficient specificity and overbroad scope of the Part A, Part B and Part C requests, the School District also asserts the additional RTKL exemption from production:

“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 is exempt.”

65 P.S. §67.708(b)(6)(A) (italics added).

B. Part D of the Request

Part D of the Request is identical to Part C of the Request, except that instead of seeking emails “to and/or from any CASD staff or administrator” at each of the three named elementary schools, Part D requests emails “to and/or from any CASD Administrative staff” – which is interpreted as referring to any (unidentified) administrator and his or her (unidentified) staff throughout the entire School District, including those unidentified individuals employed at the three elementary schools named in Part A, Part B and Part C of the Request. Accordingly, the Open Records Officer’s response to Part D is mostly identical to her responses to Parts A, B and C, including the citations to *Winklosky* (i.e., failure to identify specific individuals renders request insufficiently specific) and *Schulz* (i.e., reference to “Administrators” is insufficiently specific and “very broad” and could implicate numerous District employees). In addition, the Open Records Officer’s response to Part D included an internal footnote stating that the School District includes two high schools, one middle school, one sixth grade center, four elementary schools and one cyber academy. (See Response letter at Part D.) In other words, similar to the facts

in *Schulz* where the subject school district was comprised of nine schools, Coatesville Area School District is comprised of 10 schools. (This information is accessible from the School District's website at casdschools.org, by clicking on "Our Schools" under the drop-down "Menu" at the top of the homepage.) The Request is even more insufficiently specific and overbroad in scope presently, as Requester refers even more broadly to "Administrative staff," which would include not only "Administrators" but also any related "staff."

Furthermore, the School District hereby incorporates by reference Section II (A), above, of this Brief.

C. Part E of the Request

Part E of the Request is identical to Part D of the Request, except that instead of seeking emails "to and/or from any CASD Administrative staff," Part E requests emails "to and/or from any CASD Board member." The Open Records Officer's response to Part E is similar to her response to Part D, except of course that there are no references to "Administrators" or "staff." Nevertheless, as set forth and supported with appropriate legal authority in her response letter, the Part E request similarly does not seek material that meets the definition of a "record" or a "public record," and is insufficiently specific and overly broad. Requester has failed to "meet [the] two-part test [that] ...(1) the information must document a transaction or activity of the agency, and (2) the information must be created, received or retained in connection with the activity of the agency." (*Pa. Office of Atty. Gen. v. Philadelphia Inquirer*, 127 A3d 57, 60-61 (Pa.Cmwlth 2015)).

Moreover, because it does not identify a transaction or activity of the School District, the request is not a request for a record or public record of the School District See, e.g., *Pennsylvania Dept. of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121, 1126 (Pa.Cmwlth. 2015): "What the

Request fails to specify, however, is the subject matter of the request—*i.e.*, the transaction or activity of the agency for which Requester seeks information. In other words, it is a fishing expedition.”

This same Commonwealth Court holding equally applies with respect to Part A through Part D of the Request.

III. Conclusion

Based upon all the foregoing, including incorporation by reference of the Open Records Officer’s February 22, 2023, response letter, the School District’s denial of each part of the largely duplicative RTKL Request is and was proper. The School District’s denial of the Request should be upheld.

Respectfully submitted,

LEVIN LEGAL GROUP, P.C.

/s/ *James J. Musial*

James J. Musial (PA 71100)
1301 Masons Mill Business Park
1800 Byberry Road
Huntingdon Valley, PA 19006
Phone: (215) 938-6378
jmusial@levinlegallgroup.com
*Attorneys for Respondent Coatesville Area
School District*

Date: March 10, 2023

Exhibit “A”

Exhibit “A”

**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS**

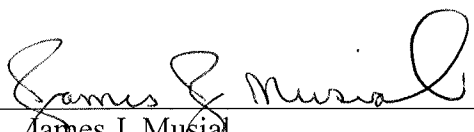
In the Matter of	:	
BETH ANN ROSICA,	:	
Requester,	:	
	:	Docket No.: AP 2023-0389
v.	:	
COATESVILLE AREA SCHOOL DISTRICT,:	:	
Respondent.	:	

Affidavit of James J. Musial

1. I, James J. Musial, am an adult individual, employed as an attorney by Levin Legal Group, P.C., legal Counsel to Coatesville Area School District (“School District”).
2. On February 17, 2023, the School District’s Open Records Officer, Pamela Kiley, emailed to me three spreadsheets listing by number the job class or name and the school building of each individual employee of Caln Elementary School, East Fallowfield Elementary School and Kings Highway Elementary School, respectively, that are the subject of Requester’s Part A, Part B and Part C requests.
3. True and correct copies of these three spreadsheets are attached to this Affidavit.
4. I have counted the number of employees listed on each of the spreadsheets for these three elementary schools, and the totals are 52 (Caln Elementary), 38 (East Fallowfield) and 51 (Kings Highway) – for a combined total of 141 employees.

I, James J. Musial, hereby certify that the foregoing facts are true and correct to the best of my knowledge and belief and are made subject to 18 Pa.C.S.A. §4904 (relating to unsworn falsifications to authorities).

Date: 3/9/2023

Signature: 
James J. Musial

Staff ID	Staff Name	Class	Building	Staff Status	Employment Status
11193	ALICIA D AARONSON	AIDE 6.5 HRS	CALN ELEMENTARY	Active	Full-time
14564	RACHEL V ALBANESE	TEACHER	CALN ELEMENTARY	Active	Full-time
10774	CATHY A ALMOND	AIDE 4.5 HRS	CALN ELEMENTARY	Active	Part-time
14494	DENA BONINU	TEACHER	CALN ELEMENTARY	Active	Full-time
14532	JODI CHUBB	TEACHER	CALN ELEMENTARY	Active	Full-time
12076	CHARLENE J COPPADGE	TEACHER	CALN ELEMENTARY	Active	Full-time
12098	REBECCA DAUGHERTY	TEACHER	CALN ELEMENTARY	Active	Full-time
14072	AUBREY L DEFAZIO	TEACHER	CALN ELEMENTARY	Active	Full-time
10797	MICHAEL D DEHAUT	TEACHER	CALN ELEMENTARY	Active	Full-time
14132	CAREN M DIAMOND	TEACHER	CALN ELEMENTARY	Active	Full-time
11211	MEGAN L DIPIANO	TEACHER	CALN ELEMENTARY	Active	Full-time
14548	BRENDA EDWARDS	UTILITY WORKER 3 HRS	CALN ELEMENTARY	Active	Part-time
14511	JULIANNA ESKRIDGE	TEACHER	CALN ELEMENTARY	Active	Full-time
14261	RENEE M FLORES	TEACHER	CALN ELEMENTARY	Active	Full-time
13177	FELESHA L FOGG	TEACHER	CALN ELEMENTARY	Active	Full-time
12071	DANA R GALLIS	SECRETARY 250 DAYS	CALN ELEMENTARY	Active	Full-time
14351	ASHLEY N GORTON	ESY/SUMMER SCHOOL	CALN ELEMENTARY	Active	Part-time
14514	MIRANDA A GREELEY	TEACHER	CALN ELEMENTARY	Active	Full-time
14352	OLLIAH W HOLMES	EXTRA DUTY	CALN ELEMENTARY	Active	Part-time
14358	NICOLE P JAMIESON	ESY/SUMMER SCHOOL	CALN ELEMENTARY	Active	Part-time
14435	GRACE LARKO	TEACHER	CALN ELEMENTARY	Active	Full-time
14516	JEANETTE R LENNON	PRINCIPALS	CALN ELEMENTARY	Active	Full-time
12506	PABLO A LOESCHER-VELAZQUEZ	TEACHER	CALN ELEMENTARY	Active	Full-time
12166	TIMOTHY J LONG	TEACHER	CALN ELEMENTARY	Active	Full-time
14554	SHAWN L LUSCHENAT	AIDE 2.5 HRS	CALN ELEMENTARY	Active	Part-time
12308	MARY A MAINS	AIDE 6.5 HRS	CALN ELEMENTARY	Active	Full-time
11519	MARISA MASISHIN	TEACHER	CALN ELEMENTARY	Active	Full-time
12866	JONATHAN R MAXWELL	TEACHER	CALN ELEMENTARY	Active	Full-time
12682	BRYAN T MCCONNELL	TEACHER	CALN ELEMENTARY	Active	Full-time
12385	MARY ANN MCWILLIAMS	UTILITY WORKER 5.5 HRS	CALN ELEMENTARY	Active	Part-time
13625	PAMELA K MITCHELL	TEACHER	CALN ELEMENTARY	Active	Full-time
10942	ANNETTE M MULL	CAFETERIA/COOK MANAGER	CALN ELEMENTARY	Active	Full-time
14472	SAMANTHA PATRICK	TEACHER	CALN ELEMENTARY	Active	Full-time

14537	CARRIE A PATTERSON	UTILITY WORKER 3 HRS	CALN ELEMENTARY	Active	Part-time
14089	JESSICA M POWELL-COHEN	TEACHER	CALN ELEMENTARY	Active	Full-time
10750	VERONICA D RAINER	TEACHER	CALN ELEMENTARY	Active	Full-time
11751	JAMIE L RITTER	TEACHER	CALN ELEMENTARY	Active	Full-time
14561	MARY K SABATINO	TEACHER	CALN ELEMENTARY	Active	Full-time
14493	GINA M SCHMOYER	TEACHER	CALN ELEMENTARY	Active	Full-time
12189	JAMIE M SCHULER	TEACHER	CALN ELEMENTARY	Active	Full-time
12309	MARGARET L SEBASTIANELLI	TEACHER	CALN ELEMENTARY	Active	Full-time
13873	HEATHER N SHANNON	TEACHER	CALN ELEMENTARY	Active	Full-time
12569	JOANNE M SHECKELLS	AIDE 6.5 HRS	CALN ELEMENTARY	Active	Full-time
14252	TEHMINA F SIDDIQUI	AIDE 3.25 HRS	CALN ELEMENTARY	Active	Part-time
14431	SARAH L SODEN	TEACHER	CALN ELEMENTARY	Active	Full-time
14558	THERESA A TABAKELIS	TEACHER	CALN ELEMENTARY	Active	Full-time
14549	EVELYN A WALDRON	UTILITY WORKER 3 HRS	CALN ELEMENTARY	Active	Part-time
12065	WENDY S WEBSTER	ATTENDANCE SECRETARY 189 DAY	CALN ELEMENTARY	Active	Full-time
14401	AMANDA WEEKS	AIDE 3.25 HRS	CALN ELEMENTARY	Active	Part-time
14086	EMILY M WELSH	TEACHER	CALN ELEMENTARY	Active	Full-time
10559	BARBARA J WILSON	TEACHER	CALN ELEMENTARY	Active	Full-time
10767	LORI A WITMAN	TEACHER	CALN ELEMENTARY	Active	Full-time

Staff ID	Staff Name	Building	Staff Status	Employment Status
13423	JESSICA A ADAMS	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
14345	MARTINA J BAILEY	EAST FALLOWFIELD ELEMENTARY	Active	Part-time
14136	LISA M BARLOW	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
13800	JACLYN Q BERNARDO	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
14222	JOANN BILLMAN	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
14486	CHRISTINE BINGHAM	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
14488	NATALIE BOETTGER	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
11533	NICHOL BUCKWASH	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
14307	TENNILLE N BUNCH	EAST FALLOWFIELD ELEMENTARY	Active	Part-time
10769	KATHLEEN S BUOHL	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
14113	BRITTANY T BURGIS	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
11025	CHRISTINE A CUMENS	EAST FALLOWFIELD ELEMENTARY	Active	Retired
14131	JENNA A CZIBIK	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
11154	DANA M DISANDS	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
14191	SARAH C DUCKO	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
12325	TYLER R DUPRE	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
14135	SUSAN C ERTOLL	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
12701	SANDRA DEE FROST	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
10740	BETTY A HILTON	EAST FALLOWFIELD ELEMENTARY	Active	Part-time
11977	BETTY D HINES	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
13477	VICTORIA E KLINE	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
10988	LISA M KONCHEL	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
13538	BREANNA M KRISTON	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
14112	ALYSSA M LOMBARDO	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
10855	HEATHER E MCBALL	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
14145	AUBREY D MCELROY	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
14528	ASHLEY E MORGAN	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
14334	APRIL C MULLEN	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
11368	SHEILA M NORTON	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
13798	TIFFANY H RAMIREZ	EAST FALLOWFIELD ELEMENTARY	Active	Part-time
10129	JESSICA E ROBERTS	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
14473	JANELLE RODRIGUEZ	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
13153	PATRICIA LYNN STOVER	EAST FALLOWFIELD ELEMENTARY	Active	Full-time

14446 DAWN TAYLOR	EAST FALLOWFIELD ELEMENTARY	Active	Part-time
14517 KAITLIN L WALLS	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
13632 FRANCIS WASHINGTON SR	EAST FALLOWFIELD ELEMENTARY	Active	Part-time
13896 MELISSA V WILLIS	EAST FALLOWFIELD ELEMENTARY	Active	Full-time
12221 ALYECE V ZIEGLER	EAST FALLOWFIELD ELEMENTARY	Active	Full-time

Staff ID	Staff Name	Class	Building	Staff Status	Employment Status
14223	ELIZABETH A BENNETT	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
11715	TABITHA M BENTLEY	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
11288	HEATHER S BOWMAN	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
11118	COREY L BRACKIN	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
14214	ALLISON N BROOKS	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
13808	PHYLLIS M BROWNE	ESY/SUMMER SCHOOL	KINGS HIGHWAY ELEMENTARY	Active	Part-time
13474	KRISTEN N CAIN	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
12204	WILLIAM J CHALFANT	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
14327	CATHERINE A CHANUDET	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
14497	KATHARINE R CINBERG	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
14467	DARA L CRANE	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
11362	KELLY C CRUNKLETON	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
14490	KATHLEEN M EDWARDS	UTILITY WORKER 3.5 HRS	KINGS HIGHWAY ELEMENTARY	Active	Part-time
13401	ABBY GARZIA	AIDE 5.75 HRS	KINGS HIGHWAY ELEMENTARY	Active	Part-time
11367	LISA GATANO-SWISHER	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
14346	ERIN G GILGER	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
13284	MATTHEW J GRANNELLS	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
12185	LEILA D GRIGGS	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
11493	ELIZABETH A HACKMEISTER	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
13469	CARMEN MARISOL HARPEL	AIDE 5.75 HRS	KINGS HIGHWAY ELEMENTARY	Active	Part-time
13900	CAROL J HENGEL	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
14342	AUTUMN E HILL	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
10903	ROSE MARIE JELKE	CAFETERIA/COOK MANAGER	KINGS HIGHWAY ELEMENTARY	Active	Part-time
12578	RHONDA A JUHAS	HEALTH ASSISTANTS 6.5 HRS	KINGS HIGHWAY ELEMENTARY	Active	Full-time
12550	MARIA R KAUFFMAN	AIDE 4.75 HRS	KINGS HIGHWAY ELEMENTARY	Active	Part-time
13821	MELISSA A KEEN	AIDE 5.75 HRS	KINGS HIGHWAY ELEMENTARY	Active	Part-time
14350	MADELINE M KREISER	ESY/SUMMER SCHOOL	KINGS HIGHWAY ELEMENTARY	Active	Part-time
14328	KATHERINE L LANDIS	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
12214	KIRSTIN D MALONEY	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
14271	KATHY A MARSHALL	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
11901	CARA S MAYAN	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
14529	KELSEY R MCINTYRE	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
13472	MICHELLE M MERCIER	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time

11045 BRIDGETTE A MILES	PRINCIPALS	KINGS HIGHWAY ELEMENTARY	Active	Full-time
14476 THERESE M MITCHELL	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
12395 AMANDA M MUNDY	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
13871 SEAN D NICHOLS	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
13294 MICHELE OLLIS	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
14070 ELIZABETH S PANDOSH	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
14361 ASHLYN M PHIFER	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
14552 CHRISTINA PLATT	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
11696 CYNTHIA K POYER	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
11418 JULIE B REGENSKI	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
14379 CHRISTOPHER REICHERT	CERTIFIED SUPERVISORS	KINGS HIGHWAY ELEMENTARY	Active	Full-time
13869 THORA E SCHLOSSER	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
13910 CHERYL A SCHROEDER	UTILITY WORKER 5.25 HRS	KINGS HIGHWAY ELEMENTARY	Active	Part-time
14262 DEBORAH A SMOKER	UTILITY WORKER 4 HRS	KINGS HIGHWAY ELEMENTARY	Active	Part-time
11186 MARGARET A TABAKELIS	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
14452 MELANIE TOWN	TEACHER	KINGS HIGHWAY ELEMENTARY	Active	Full-time
14418 AMIE J WATTS	SECRETARY 250 DAYS	KINGS HIGHWAY ELEMENTARY	Active	Full-time
14408 GABRIELLA A ZAMUDIO-FLORES	ATTENDANCE SECRETARY 189 DAY	KINGS HIGHWAY ELEMENTARY	Active	Resigned

CERTIFICATE OF SERVICE

I, James J. Musial, counsel for Respondent Coatesville Area School District, hereby certify that on March 10, 2023, the foregoing RESPONDENT'S BRIEF IN SUPPORT OF ITS DENIAL AND IN OPPOSITION TO REQUESTER'S APPEAL was filed with the Office of Open Records via the OOR's portal docket where it is accessible for viewing and downloading by Requester.

/s/ *James J. Musial*

James J. Musial

OOR Exhibit 10



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).