

COMMONWEALTH COURT OF PENNSYLVANIA

SOUTHEAST PENNSYLVANIA
TRANSPORTATION AUTHORITY,

Petitioner,

v.

FAYE ANDERSON AND ALL THAT
PHILLY JAZZ,

Respondent

No. _____ C.D. 2024

**PETITION FOR REVIEW
(APPEAL FROM OFFICE OF OPEN RECORDS)**

I. Jurisdictional Statement.

1. This petition for review of a Final Determination issued by the Office of Open Records on December 20, 2023 (“Final Determination”), is addressed to the Court’s appellate jurisdiction pursuant to Section 1301(a) of the Right to Know Law, 65 P.S. § 67.1301(a) (“RTKL”) and Section 763(a)(2) of the Judicial Code, 42 Pa.C.S. § 763(a)(2). A copy of the Final Determination is attached hereto as Exhibit “A”.

2. This Court’s standard of review of a final determination of the Office of Open Records (“OOR”) is *de novo* and the scope of the review is plenary. *Hunsicker v. Pennsylvania State Police*, 93 A.3d 911, 913 n. 7 (Pa. Commw. 2014).

II. Parties

3. Petitioner Southeastern Pennsylvania Transportation Authority (“SEPTA”) is a Commonwealth Agency.

4. Respondent, Faye Anderson (“Ms. Anderson”) is an adult individual.

5. Respondent is a Requester for purposes of the RTKL.

III. Statement of Facts and Background

6. On August 1, 2023, Ms. Anderson submitted a Right to Know Law Request seeking:

- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between Southeastern Pennsylvania Transportation Authority, hereinafter SEPTA, employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and David Adelman, chairman of 76 Devcorp, regarding the proposal to build a sports arena on the 1000 block of Market Street, hereinafter 76 Place;*
- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and the Pennsylvania Department of Transportation, hereinafter PennDOT, and Langan Engineering and Environmental Services, Inc., hereinafter Langan, regarding 76 Place;*
- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and PennDOT and Langan regarding meetings about 76 Place;*
- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 27, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of Gensler Design, including Alex Chan regarding 76 Place;*
- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and Mayor Jim Kenney and his staff regarding 76 Place;*
- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and Councilmember Mark Squilla and his staff regarding 76 Place;*

- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer and representatives of CBL Real Estate LLC, including Tabb Bishop, Edward Hazzouri and Hadji Maloumian regarding 76 Place;*
- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer about meetings with representatives of CBL Real Estate LLC, including Tabb Bishop, Edward Hazzouri and Hadji Maloumian regarding 76 Place;*
- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Chief Leslie S. Richards and Operating Officer Scott Sauer, and Hercules Grigos and/or Katherine Missimer of Klehr Harrison Harvey Branzburg LLP regarding 76 Place;*
- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer about meetings with Hercules Grigos and/or Katherine Missimer of Klehr Harrison Harvey Branzburg LLP regarding 76 Place.*
- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and representatives of Harris Blitzer Sports & Entertainment, including Sherveen Baftechi, Nicole Ellis, Jonathan Fascitelli, David Gould, Jessica Granger, Alex Kafenbaum and Jim Leonard regarding 76 Place;*
- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of the Department of Planning and Development, including Anne Fadullon, Eleanor Sharpe and John Mondlak regarding 76 Place;*
- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager*

and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of the Department of Planning and Development, including Anne Fadullon, Eleanor Sharpe and John Mondlak regarding meetings about 76 Place;

- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 regarding “Philadelphia Weekly Connect” meetings about 76 Place;*
- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of Philadelphia Industrial Development Corporation, hereinafter PIDC, including Sam Rhoads regarding 76 Place;*
- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of PIDC, including Sam Rhoads regarding meetings about 76 Place;*
- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from March 1, 2023 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of PIDC, including Sam Rhoads regarding requests for proposals to independently evaluate 76 Place proposal;*
- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from March 1, 2023 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of PIDC, including Sam Rhoads regarding meetings about proposals to independently evaluate 76 Place proposal;*
- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from March 1, 2023 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of PIDC, including Sam Rhoads regarding appointments to advisory committee created to review and evaluate the responses for proposals to independently evaluate 76 Place proposal; and*

- *Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from March 1, 2023 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of PIDC, including Sam Rhoads naming members of advisory committee created to review and evaluate the responses for proposals to independently evaluate 76 Place proposal.*

7. On August 1, 2023, SEPTA’s Open Records Officer, Neil Petersen, invoked the agency’s right to a 30-day extension to respond to Ms. Anderson’s request pursuant to § 902 of the RTKL.

8. On September 7, 2023, SEPTA provided a written response to Ms. Anderson’s request denying it in its entirety based on lack of specificity in accordance with Section 703 of the RTKL.

9. More specifically, Section 703 of the RTKL provides 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.

10. In its written response, SEPTA referred to the three-part balancing test established by the Commonwealth Court to determine whether a particular request is sufficiently specific under Section 703 of the RTKL (Specificity Test). *See Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121, 1124 (Pa. Commw. Ct. 2015).

11. SEPTA’s written response further explained the three-part balancing test, detailing:

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.* at 1125. Second, the scope of the request must identify a discrete group of documents (e.g., type or recipient). *Id.* Third, “[t]he timeframe of the request should identify a finite period of time for which the 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.*

12. SEPTA indicated in its written response that Ms. Anderson's request lacked specificity because:

...[i]n essence, each of your bulleted requests seeks any and all written documents in SEPTA's possession – regardless of the form or type of document – about very general topics between, among, or created by any and all of the 1000+ people SEPTA employes. Your requests do not sufficiently identify the transaction or activity for which the records are sought. *See Pa. Dep't of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015). Your requests also do not seek a discrete group of documents. *See Id.*

13. Because Ms. Anderson's request does not identify or describe the records she seeks with sufficient specificity to enable SEPTA to ascertain which records she is requesting, SEPTA denied her request in its entirety for lack of specificity in accordance with Section 703 of the RTKL.

14. Notably, within SEPTA's September 7, 2023 letter, SEPTA indicated that it would be happy to discuss ways in which Ms. Anderson could narrow or specify her request such that SEPTA could conduct a good faith search of its records.

15. Ms. Anderson did not contact undersigned counsel to narrow her request before timely filing her appeal with the Office of Open Records on September 21, 2023.

16. In its position statement before the Office of Open Records, SEPTA submitted additional evidence in support of its position – the Verified Statement of Allison DeMatteo, Manager of Records and Information at SEPTA, a copy of which is attached hereto as Exhibit "B."

17. Ms. DeMatteo's sworn statement further supported SEPTA's position that Ms. Anderson's request was insufficiently specific such that SEPTA could not conduct a good faith search of its records. *See Exhibit B.*

18. In an attempt to try to fulfill one of Ms. Anderson's request – the request seeking "records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic

impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between Southeastern Pennsylvania Transportation Authority, hereinafter SEPTA, employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and David Adelman, chairman of 76 Devcorp, regarding the proposal to build a sports arena on the 1000 block of Market Street, hereinafter 76 Place” – a total of 15,476 employee email mailboxes would need to be searched to capture the emails of all SEPTA employees. See Exhibit B.

19. Additionally, 2,200 SharePoint sites – an external software used by SEPTA to store non-email files – totaling 46.15 Terabytes of data would need to be searched to attempt to capture any and all non-email documents created by or in the possession of any and all SEPTA employees that are potentially responsive to Ms. Anderson’s above request. *See Exhibit B.*

20. In her role as Manager of Records and Information, Ms. DeMatteo conducted a search across all 15,476 user email mailboxes and 2,200 SharePoint sites for the fifteen-month time period indicated in Ms. Anderson’s request using search terms SEPTA selected of “76 Place” and “76 Devcorp.” *See Exhibit B.*

21. After running the above search across all employee email mailboxes, a total of 8,674 emails were returned, totaling 5.71 Gigabytes of data. *See Exhibit B.*

22. After conducting the above search across the 2,200 SharePoint sites, a total of 1,223 items – ranging in total page numbers per item – totaling 1.89 Gigabytes of data across 139 locations was returned. *See Exhibit B.*

23. The voluminous search results further support SEPTA’s position that Ms. Anderson’s request is insufficiently specific for SEPTA to conduct a good faith search of its records.

24. SEPTA's position statement to the OOR also further detailed why Ms. Anderson's request failed to meet the three-part balancing test articulated in *Pa. Dep't of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015).

25. More specifically, SEPTA detailed that Ms. Anderson's request did not identify a discrete group of documents because, among other things, she sought documents between, among, created by, or in the possession of any and all of SEPTA's thousands of employees.

26. The Office of Open Records issued a Final Determination granting in part and denying in part Ms. Anderson's appeal on December 20, 2023. *See* Exhibit A.

27. In its Final Determination, the Office of Open Records agreed that portions of Ms. Anderson's request did not meet the specificity requirements of Section 703 of the RTKL; however, the OOR ruled that portions of the request satisfied the specificity requirements. *See* Exhibit A.

28. More specifically, the OOR ordered SEPTA to provide Ms. Anderson with those documents which the OOR determined were sufficiently specific including "invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs, and costs estimates." *See* Exhibit A.

29. Any other documents not specifically identified in her requests were not required to be produced. *See* Exhibit A.

30. The OOR also ordered SEPTA to produce emails and letters by and between all of the numerous named individuals imbedded within her 20 -bulleted requests¹. *See* Exhibit A.

¹The OOR also indicated that Items 2 and 3 of Ms. Anderson's request were not sufficiently specific. *See* Exhibit A.

31. Importantly, the OOR Final Determination states that "...SEPTA is required to conduct a good faith search as set forth in this Final Determination and provide *all responsive records* identified within thirty days." (emphasis added). *See* Exhibit A.

32. The OOR's Final Determination, therefore, does not allow for the withholding or redaction of any responsive document pursuant to exemptions under the RTKL. *See* Exhibit A.

33. In response to the Final Determination, SEPTA conducted a preliminary search for potentially responsive documents.

34. A review of those documents revealed that numerous documents implicate various exemptions contemplated under the RTKL – including confidential or propriety information (708(b)(11)), predecisional deliberations (708(b)(10)), or could pose security concerns on behalf of SEPTA (708(b)(3)).

35. SEPTA respectfully requests that this Honorable Court reverse the below Order in its entirety because the request lacks sufficient specificity pursuant to Section 703 of the RTKL.

36. In the alternative, if this Honorable Court holds that Ms. Anderson's request (or portions thereof) is sufficiently specific, SEPTA respectfully requests that this Court issue an order that explicitly provides SEPTA with leave to identify documents which SEPTA avers should be withheld pursuant to exemptions under the RTKL and permit SEPTA to submit competent evidence through sworn statements in support thereof.

37. SEPTA acknowledges that a review of the validity of the exceptions and evidence in support thereof may be conducted by this Honorable Court pursuant to its plenary power, or by the Office of Open Records upon remand.

WHEREFORE, Petitioner, Southeastern Pennsylvania Transportation Authority, respectfully requests this Honorable Court review and reverse the determination of the Office of Open Records in its Final Determination.

Respectfully submitted,

Dated: January 19, 2024

/s/Mark E. Gottlieb

Mark E. Gottlieb (26595)

Justine A. Baakman (319735)

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CERTIFICATE OF SERVICE

I, Mark Gottlieb, do hereby certify that on this 19th day of January 2024, I have served the foregoing Petition or Review of Southeastern Pennsylvania Transportation Authority by filing the petition electronically through the Court's PACFILE and upon the following as follows in satisfaction of Pa.R.A.P. 121:

Via e-mail and U.S. Mail

Faye Anderson
All that Philly Jazz
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andersonatlarge@gmail.com

Via e-mail and U.S. Mail

Angela Edris, Esq.
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Pennsylvania Office of Open Records
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oor-postfd@pa.gov

/s/ Mark E. Gottlieb

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EXHIBIT A



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
FAYE ANDERSON AND ALL	:	
THAT PHILLY JAZZ,	:	
Requester	:	
	:	Docket No: AP 2023-2268
v.	:	
	:	
SOUTHEASTERN PENNSYLVANIA	:	
TRANSPORTATION AUTHORITY,	:	
Respondent	:	

FACTUAL BACKGROUND

On August 1, 2023, Faye Anderson (“Requester”) submitted a request (“Request”) to the Southeastern Transportation Authority (“SEPTA”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[Item 1] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between Southeastern Pennsylvania Transportation Authority, hereinafter SEPTA, employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and David Adelman, chairman of 76 Devcorp, regarding the proposal to build a sports arena on the 1000 block of Market Street, hereinafter 76 Place;

[Item 2] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and the Pennsylvania Department of Transportation, hereinafter PennDOT, and Langan Engineering and Environmental Services, Inc., hereinafter Langan, regarding 76 Place;

[Item 3] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and PennDOT and Langan regarding meetings about 76 Place;

[Item 4] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 27, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of Gensler Design, including Alex Chan regarding 76 Place;

[Item 5] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and Mayor Jim Kenney and his staff regarding 76 Place;

[Item 6] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and Councilmember Mark Squilla and his staff regarding 76 Place;

[Item 7] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer and representatives of CBL Real Estate LLC, including Tabb Bishop, Edward Hazzouri and Hadji Maloumian regarding 76 Place;

[Item 8] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer about meetings with representatives of CBL Real Estate LLC, including Tabb Bishop, Edward Hazzouri and Hadji Maloumian regarding 76 Place;

[Item 9] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Chief Leslie S. Richards and Operating

Officer Scott Sauer, and Hercules Grigos and/or Katherine Missimer of Klehr Harrison Harvey Branzburg LLP regarding 76 Place;

[Item 10] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer about meetings with Hercules Grigos and/or Katherine Missimer of Klehr Harrison Harvey Branzburg LLP regarding 76 Place.

[Item 11] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and representatives of Harris Blitzler Sports & Entertainment, including Sherveen Baftechi, Nicole Ellis, Jonathan Fascitelli, David Gould, Jessica Granger, Alex Kafenbaum and Jim Leonard regarding 76 Place;

[Item 12] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of the Department of Planning and Development, including Anne Fadullon, Eleanor Sharpe and John Mondlak regarding 76 Place;

[Item 13] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of the Department of Planning and Development, including Anne Fadullon, Eleanor Sharpe and John Mondlak regarding meetings about 76 Place;

[Item 14] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 regarding “Philadelphia Weekly Connect” meetings about 76 Place;

[Item 15] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of Philadelphia Industrial Development Corporation, hereinafter PIDC, including Sam Rhoads regarding 76 Place;

[Item 16] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of PIDC, including Sam Rhoads regarding meetings about 76 Place;

[Item 17] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from March 1, 2023 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of PIDC, including Sam Rhoads regarding requests for proposals to independently evaluate 76 Place proposal;

[Item 18] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from March 1, 2023 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of PIDC, including Sam Rhoads regarding meetings about proposals to independently evaluate 76 Place proposal;

[Item 19] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from March 1, 2023 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of PIDC, including Sam Rhoads regarding appointments to advisory committee created to review and evaluate the responses for proposals to independently evaluate 76 Place proposal; and

[Item 20] Records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from March 1, 2023 to July 31, 2023 between SEPTA employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of PIDC, including Sam Rhoads naming members of advisory committee created to review and evaluate the responses for proposals to independently evaluate 76 Place proposal.

On September 7, 2023, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), SEPTA denied the Request as insufficiently specific. 65 P.S. § 67.703.

On September 21, 2023, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed SEPTA to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On September 28, 2023, SEPTA requested an extension of time to October 17, 2023 to respond to the appeal, indicating that it had reached out to the Requester in an attempt to amicably resolve the appeal, but that no response from the Requester had yet been received. On September 29, 2023, the OOR granted SEPTA’s extension request.

On October 17, 2023, SEPTA submitted a position statement reiterating its grounds for denial. SEPTA argues that the Request’s subject matter is overly broad in that “76 Place” is “a very broad topic involving many different departments and issues within SEPTA.” SEPTA further contends that the Request does not provide key words or search terms for it to use. SEPTA also maintains the scope of the Request is also too broad in that the Request essentially seeks “all records” from “any and all” of its 10,000+ employees. SEPTA claims that its position is further supported by its test search for records responsive to Item 1 of the Request, which produced 8,674 emails and 1,223 SharePoint site items. As part of its submission, SEPTA submitted the attestation of its Manager of Records and Information, Allison DeMatteo.

The Requester also filed a position statement on October 17, 2023. The Requester argues that the Request is specific in that it identifies specific individuals and activities of the agency, and that a discrete universe of documents is defined by a clear subject matter and finite timeframe. Among other things, the Requester asserts that the Request seeks records about a single topic –

¹ The Requester granted the OOR additional time to issue a 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 Philadelphia 76ers’ proposal to build a sports arena on the 1000 block of Market Street [*i.e.* 76 Place].” The Requester also disputes SPETA’s argument that it would need to search for records from all of its employees and maintains that SEPTA should know which of its employees were involved with the project. The Requester contends that, to the extent that certain portions of her Request are determined to be insufficiently specific, SEPTA should still be required to fulfill those parts that are specific.

LEGAL ANALYSIS

SEPTA is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the SEPTA 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)).

Section 703 of the RTKL states that “[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” When interpreting a RTKL request, agencies should rely on the common meaning of words and phrases, as the RTKL is remedial legislation that must be interpreted to maximize access. *See Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at *16 (Pa. Commw. Ct. 2012) (citing *Bowling*, 990 A.2d 813). In determining whether a particular request 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). Specifically, the OOR examines to what extent the request sets forth (1) the subject matter of the request; (2) the scope of documents sought; and (3) the timeframe for which records are sought. *Pa. Dep't of Educ.*, 119 A.3d at 1124-25. Finally, “[t]he fact that a request is burdensome does not deem it overbroad, although it may be considered as a factor in such a determination.” *Pa. Dep't of Env'tl. Prot. v. Legere*, 50 A.3d at 265.

First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Id.* at 1125. 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 to be 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. “The 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.*

In support of its argument that the Request is insufficiently specific, SEPTA provides an attestation from its Manager of Records, Ms. DeMatteo, who affirms the following:

1. I currently serve as Manager of Records and Information at SEPTA.
2. In my capacity as the Manager of Records and Information at SEPTA, I am responsible for management of electronically-stored documents and information on behalf of SEPTA.

3. In my capacity as the Manager of Records and Information at SEPTA, I am responsible for managing and conducting searches for electronically-stored information and documents at SEPTA when such information is requested – whether via RTKL requests or ongoing litigation matters.

4. In my role as the Manager of Records and Information at SEPTA, I am familiar with the [Request].

5. In order to attempt to fulfill [the Request], all employee email mailboxes – which totaled 15,476 mailboxes as of October 2023 – would need to be searched to capture the emails of all SEPTA employees.

6. Additionally, all SharePoint sites – which totaled 2,216 sites and approximately 46 Terabytes of data as of October 2023 – would need to be searched to attempt to capture any and all non-email documents created by or in the possession of any and all SEPTA employees that are potentially responsive to [the Request].

7. By way of further explanation, SharePoint is a software used by SEPTA to store its non-email files.

8. In my role as Manager of Records and Information, I conducted a search across the 15,476 user email mailboxes and 2,216 SharePoint sites for the fifteen-month time period indicated using search terms SEPTA selected of “76 Place” and “76 Devcorp.”

9. After running the above search across all employee email mailboxes, a total of 8,674 emails were returned, totaling 5.71 Gigabytes of data.

10. After conducting the above search across 2,216 SharePoint sites, a total of 1,223 items – ranging in total page numbers per item – totaling 1.89 Gigabytes of data across 139 locations was returned.

Based on the OOR’s review of the Request, and the arguments and evidence that have been submitted by the parties, we conclude that, while there are portions of the Request that do not meet the specificity requirements of Section 703 of the RTKL, there are also parts of the Request that do, and therefore, the Request is sufficiently specific in part. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010) (finding certain parts of the underlying RTKL request sufficiently specific).

1. Items 1, 4-13 and 15 -20 are partially specific.

For each of the Items in the Request, a finite timeframe is identified. Items 1 through 16 include a 15-month timeframe (April 2022-July 2023) and Items 17 through 20 specify a 4-month timeframe (March 2023-July 2023).

A subject matter is also present for each Item of the Request, including “76 Place,” “meetings about 76 place,” “meetings with representatives” of certain entities, “Philadelphia Weekly Connect” meetings about 76 Place,” “requests for proposals to independently evaluate 76 Place proposal,” “meetings about proposals to independently evaluate 76 Place proposal,” “appointments to advisory committee created to review and evaluate the responses for proposals to independently evaluate 76 Place,” and “members of advisory committee created to review and evaluate the responses for proposals.” In its position statement, SEPTA acknowledges that “76 Place” refers to “the potential stadium being considered by the Philadelphia 76’ers to be built in and around 11th and Market Streets in Philadelphia;” thus, SEPTA understands the subject matter of the Request. However, SEPTA argues that the subject matter is overly broad and that it involves many different departments and issues within SEPTA.

The Request itself defines “76 Place” as “the proposal to build a sports arena on the 1,000 block of Market Street.” Contrary to SEPTA’s argument that the Request does not sufficiently identify a subject matter, we find that the subject matters identified in each of the Items of the Request are sufficient to alert SEPTA as to the particular topic about which records are sought. *See also Anderson v. City of Philadelphia Planning Commission*, OOR Dkt. No. AP 2023-1840, 2023 PA O.O.R.D. LEXIS 2694. In certain instances, as discussed below, the subject matter is further limited by other parts of the Request.

Next, SEPTA argues that the scope of the Request is also overly broad because it fails to identify a discrete group of documents that are sought and, furthermore, that such documents are sought from “any and all” SEPTA employees. With regard to Items 1-13 and 15 -20, we would agree, with certain exceptions. Each of those Items seek “[r]ecords, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates.”

In *Pa. State Police v. Office of Open Records*, the Commonwealth Court held that the portion of a request seeking “any and all records, files or communications” related to vehicle stops, searches and seizures was insufficiently specific under Section 703 of the RTKL, and that only the portion of the request seeking a particular type of document--manuals related to vehicle stops, searches, and seizures--was sufficiently specific. 995 A.2d 515, 517 (Pa. Commw. Ct. 2010). Accordingly, *Pa. State Police* establishes that a determination may be made that a request is sufficiently specific, but only in part. Here, the Request specifically identifies some of the types of records sought – “invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates.” Thus, as to these records only, the Request provides guidance to SEPTA as to the specific types of records sought. To the extent any other types of records are sought, however, the Request is not sufficiently specific.

The Request also broadly identifies the senders and recipients of the documents requested, seeking the specified documents “between SEPTA employees” and others, including staff and employees of other agencies and entities. The evidence substantiates that SEPTA has more than 15,476 user email mailboxes and 2,216 SharePoint sites which could be implicated by Item 1 of the Request alone. Notwithstanding that, parts of the Request also list specifically named senders and recipients “between” whom the specified records were exchanged or shared. For example,

while Item 1 seeks records between SEPTA's employees and David Alderman, Chairman of 76 Corp., Item 1 also specifically identifies two SEPTA employees, General Manager and CEO Leslie Richards and Chief Operating Officer, Scott Sauer, to which the Request pertains. There is no evidence before us to suggest that conducting a search for records exchanged between the specifically named individuals would be overly burdensome or result in the identification of an unreasonable number of responsive records. As such, where specific senders and recipients are identified in the Request, those Items of the Request are sufficiently specific as to the specific individuals named. *Anderson, supra.* Those named individuals, in conjunction with the specifically identified types of documents and time frames, should adequately limit the scope of the Request to allow SEPTA to conduct a search for responsive records. The Items of the Request identifying specific senders/recipients include Item 1 (SEPTA employees...General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and David Adelman, chairman of 76 Devcorp), Item 4 (SEPTA employees... General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and ... Alex Chan), Item 5 (SEPTA employees...General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and Mayor Jim Kenney), Item 6 (SEPTA employees...General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and Councilmember Mark Squilla), Item 7 (SEPTA employees...General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer and representatives of CBL Real Estate LLC, ... Tabb Bishop, Edward Hazzouri and Hadji Maloumian), Items 8 and 10 (SEPTA employees...General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer), Item 9 (SEPTA employees...General Manager and CEO Chief Leslie S. Richards and Operating Officer Scott Sauer, and Hercules Grigos and/or Katherine Missimer of Klehr Harrison Harvey Branzburg LLP), Item 11 (SEPTA employees...General

Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and representatives of Harris Blitzer Sports & Entertainment...Sherveen Baftechi, Nicole Ellis, Jonathan Fascitelli, David Gould, Jessica Granger, Alex Kafenbaum and Jim Leonard), Items 12 and 13 (SEPTA employees...General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and employees of the Department of Planning and Development...Anne Fadullon, Eleanor Sharpe and John Mondlak), Items 15, 16, 17, 18, 19, and 20 (SEPTA employees...General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and...Sam Rhoads [of PIDC]). To the extent that the Request attempts to identify senders and recipients as anything other than specifically named individuals, such as “staff” (Items 5 and 6), or generally as representatives or employees of entities, it is not specific enough in the context of the Request to aid SEPTA in its search. *See Anderson, supra.* These scopes and the general subject matter suffice to apprise SEPTA of the documents to be produced regardless of whether the timeframe is four or fifteen months. *Id.*

It is worth noting that unlike the “emails” and “letters” that are requested, the other documents identified - invoices, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates – are somewhat narrower in scope in that they do not necessarily require a sender or recipient to be understood in the specificity paradigm. However, here, Items 1, 4-13 and 15 -20 all exclusively seek records sent “between” persons or entities. Without further elaboration in the Request, this language must entail being shared or exchanged “between” the two groups/individuals listed. To the extent that the Requester intended otherwise, nothing in this Final Determination prevents her from filing a new Request.

In conclusion, Items 1, 4-13 and 15 -20 are partially specific as to the identified types of documents, and specifically named individuals and specified timeframes, and SEPTA is directed

to conduct a good faith search for records responsive to those parts of those Items of the Request. However, as noted above, to the extent that a type of record is not specifically identified or an individual person is not named, the Request is not sufficiently specific.

2. Items 2 and 3 of the Request are not specific.

Items 2 and 3 of the Request seek records between SEPTA and PennDOT, a Commonwealth agency, and SEPTA and an engineering firm, Langan Engineering and Environmental Services, Inc. Although those Items identify two SEPTA employees which may have sent or received the specific records named, the Request fails to identify any specific senders or recipients for PennDOT or Langan. While not necessarily fatal in all circumstances, the lack of identifying senders or recipients for PennDOT and Langan in this instance prevents Items 2 and 3 from having a limited enough scope and therefore makes those Items insufficiently specific.² See *Anderson, supra*.

3. Item 14 is sufficiently specific in part.

Item 14 of the Request seeks “[r]ecords, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates... regarding “‘Philadelphia Weekly Connect’ meetings about 76 Place” for a 15-month timeframe. While this Item has a time frame along with a subject matter, the scope as it pertains to emails and letters is overly broad in that there are no senders, recipients or records custodians identified for a somewhat lengthy time period. See *Anderson, supra*. With regard to the remaining specifically named documents, however, (*i.e.* invoices, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates) senders and recipients are not a prerequisite and the types

² The websites for Langan and the Pennsylvania Department of Transportation indicate that Langan has 1,600 employees and the Department has nearly 12,000 employees. <https://www.langan.com/about/who-we-are> (last accessed on 12/13/23) and <https://www.penndot.pa.gov/about-us/pages/default.aspx> (last accessed on 12/13/23).

of records themselves potentially suggest where SEPTA might conduct its search for such records. For example, invoices and cost estimates, to the extent they exist, might reasonably be located in a financial or planning department. Contrary to the other Items, Item 14 does not seek any documents exchanged between a group of senders and recipients. Thus, as to “invoices, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates,” Item 14 of the Request is specific enough to enable SEPTA to conduct a good faith search. While responding to a RTKL request requires accuracy and a good faith effort to provide all of the records sought, it is not an exact science, and must also encompass reasonable discretion and interpretation by the agency to identify and provide the requested information, particularly where the request is a broad one. *Williams v. West York Borough Police Department*, OOR Dkt. AP 2023-0644, 2023 PA O.O.R.D. LEXIS 841. To the extent that Item 14 seeks emails or letters, or records other than those mentioned above, that Item of the Request is not sufficiently specific.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and SEPTA is required to conduct a good faith search as set forth in this Final Determination and provide all responsive records identified within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per 65 P.S. § 67.1303, but as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.³ All documents or communications following the issuance of this Final Determination shall be sent to [oor-](#)

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

postfd@pa.gov. This Final Determination shall be placed on the OOR website at:
<http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: December 20, 2023

/s/ Angela Edris

APPEALS OFFICER
ANGELA EDRIS

Sent via OOR Appeals Portal to: Faye Anderson;
Justine Baakman, Esq.

EXHIBIT B

Verified Statement of Allison DeMatteo
Southeastern Pennsylvania Transportation Authority

I, Allison DeMatteo, serve as Manager of Records and Information at Southeastern Pennsylvania Transportation Authority (“SEPTA”), and I am authorized to execute this verified statement. I state the following to the best of my knowledge, information and belief under penalty of perjury pursuant to 18 Pa.C.S. § 4904 relating to unsworn falsification of authorities:

1. I currently serve as Manager of Records and Information at SEPTA.
2. In my capacity as the Manager of Records and Information at SEPTA, I am responsible for management of electronically-stored documents and information on behalf of SEPTA.
3. In my capacity as the Manager of Records and Information at SEPTA, I am responsible for managing and conducting searches for electronically-stored information and documents at SEPTA when such information is requested – whether via RTKL requests or ongoing litigation matters.
4. In my role as the Manager of Records and Information at SEPTA, I am familiar with the August 1, 2023 Right to Know Law Request submitted by Ms. Anderson, seeking, among other things, *“records, including but not limited to, invoices, emails, letters, reports, feasibility studies, traffic impact studies, architectural designs and cost estimates from April 1, 2022 to July 31, 2023 between Southeastern Pennsylvania Transportation Authority, hereinafter SEPTA, employees, including General Manager and CEO Leslie S. Richards and Chief Operating Officer Scott Sauer, and David Adelman, chairman of 76 Devcorp, regarding the proposal to build a sports arena on the 1000 block of Market Street, hereinafter 76 Place.”*
5. In order to attempt to fulfill Ms. Anderson’s above request, all employee email mailboxes – which totaled 15,476 mailboxes as of October 2023 – would need to be searched to capture the emails of all SEPTA employees.
6. Additionally, all SharePoint sites – which totaled 2,216 sites and approximately 46 Terabytes of data as of October 2023 – would need to be searched to attempt to capture any and all non-email documents created by or in the possession of any and all SEPTA employees that are potentially responsive to Ms. Anderson’s above request.
7. By way of further explanation, SharePoint is a software used by SEPTA to store its non-email files.
8. In my role as Manager of Records and Information, I conducted a search across the 15,476 user email mailboxes and 2,216 SharePoint sites for the fifteen-month time period indicated using search terms SEPTA selected of “76 Place” and “76 Devcorp.”

9. After running the above search across all employee email mailboxes, a total of 8,674 emails were returned, totaling 5.71 Gigabytes of data.

10. After conducting the above search across 2,216 SharePoint sites, a total of 1,223 items – ranging in total page numbers per item – totaling 1.89 Gigabytes of data across 139 locations was returned.

By: Allison DeMatteo on 17 October 2023

Allison DeMatteo
Southeastern Pennsylvania Transportation Authority
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