



### **FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>JOHN DEMASI,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No: AP 2024-0840</b>
	:	
<b>UPPER DARBY TOWNSHIP,</b>	:	
<b>Respondent</b>	:	

### **FACTUAL BACKGROUND**

On March 26, 2024, John DeMasi (“Requester”) submitted a request (“Request”) to Upper Darby Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “[a]ll records relating to HUD<sup>1</sup> correspondence, disbursements, reimbursements, petitions for funds, audits and charitable donations for the time period listed. [1/1/2020-12/31/2022].” On March 27, 2024, the Township denied the Request, arguing that the Request was insufficiently specific, 65 P.S. § 67.703.

On March 27, 2024, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. Specifically, the Requester argues that the Township “has admitted it is in the possession of more than 69 boxes of HUD materials. Therefore, I have identified the specific document subjects relating to a specific type of document – HUD documents.”<sup>2</sup> The OOR invited both parties to supplement the record and directed the

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<sup>1</sup> Although not defined in the Request, the acronym “HUD” refers to the U.S. Department of Housing and Urban Development.

<sup>2</sup> The Requester further argues that he has “identified the timeframe as required by the OOR interpretation – the years 2020, 2021 and 2022.”

Township to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On April 5, 2024, the Township submitted its position statement reiterating its grounds for denial. In support of its argument, the Township argues that “there is a vague subject matter and scope.” The Township further explains that the 69 identified boxes “only contain documents prior to 2020 [and are] therefore not responsive to [the R]equest.” In support of its position, the Township submitted the attestation of Scott Alberts (“Alberts Attestation”), Open Records Officer for the Township.

On April 5, 2024, the Requester submitted a position statement refuting the Township’s position statement. The Requester argues, among other things, that “[t]he Township is putting such a burden for specificity on [this Request] that indeed the [Requester] would already have to know a specific document that exists and the parties on each document, which is contrary to the spirit of the [RTKL].”

### **LEGAL ANALYSIS**

The Township 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 Township is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The Township argues that “[u]pon reviewing the [R]equest, [it] was unable to identify any records because this [R]equest was vague, it did not identify a department, who the correspondence was between, what type of disbursements, reimbursements, audits and charitable donations the Requester was referring to. This was overly broad.” Alberts Attestation, ¶ 4.<sup>3</sup> The Township further explains that “the boxes that [the Requester] refers to contain documents prior to 2020 [and are therefore [] not responsive to [the R]equest.” *Id.* at ¶ 6.

Section 703 of the RTKL states that “[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” 65 P.S. § 67.703. When determining whether a particular request is sufficiently specific, the OOR uses the multifactor test employed by the Commonwealth Court in *Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015).

First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Id.* at 1125 (quoting 65 P.S. § 67.102). Second, “[t]he scope of the request must identify ‘a discrete group of documents, either by type ... or by recipient.’” *Id.* (quoting *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013)). Finally, “[t]he timeframe of the request should identify a finite period of time for which records are sought.” *Id.* at 1126 (citing *Carey, supra*). “The timeframe prong is, however, the most fluid of the three prongs, and whether or not the request’s timeframe is narrow enough is generally dependent upon the specificity of the request’s subject matter and scope.” *Id.*

The above factors are intended “to facilitate an analysis in order to determine whether an

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

agency can ascertain which records are being requested.... The subject matter, scope, and timeframe of a request are flexible, analytical elements, not evidentiary requirements.” *Pa. Dep’t of Health v. Shepherd*, No. 377 C.D. 2021, 2022 Pa. Commw. Unpub. LEXIS 207 \*6-7 (Pa. Commw. Ct. 2022), *appeal denied*, No. 334 MAL 2022, 2022 Pa. LEXIS 1862 (Pa. 2022). Finally, we must analyze the entirety of a request, as it is possible that portions of a request are insufficiently specific, while other portions provide sufficient guidance. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010) (noting “the valid part of the request was included in a laundry list of requested materials”).

Here, the Request seeks “all records relating to HUD correspondence, disbursements, reimbursements, petitions for funds, audits and charitable donations.” The subject matters are broad and do not identify a specific transaction or activity of the Township concerning HUD. The scope of the Request also does not identify a discrete type of records, instead seeking “all records”, including correspondence, nor does the Request identify any senders or recipients.<sup>4</sup> Finally, while the Request does provide a specified timeframe, that timeframe is for a lengthy time period of three years. In sum, the Request is insufficiently specific; while the Requester argues that he has “identified the specific document subjects relating to a specific type of document – HUD documents” and that the Township is “in possession of more than 69 boxes of HUD materials[.]” this argument ignores the lack of a defined subject matter (i.e. specific transaction or activity of the Township), a broad scope (i.e. lack of identity of senders or receivers), and a lengthy timeframe. *See, e.g., Montgomery County v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012) (concluding that a request which “does not identify specific individuals, email addresses, or even

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<sup>4</sup> The Request fails to identify a department within the Township that would aid the Township in its search to help limit the universe of potentially responsive records. *See Carey*, 61 A.3d at 372 (the scope of a request must identify “a discrete group of documents, either by type ... or by recipient.”).

departments, but requests any applicable emails sent from the County's domain to four other domains" was insufficiently specific); *see also Pa. Dep't of Educ.*, 199 A.3d at 1124-126 ("[a] request for a broad category of documents, such as all records, may be sufficiently specific if confined to a particular recipient or recipients"). Accordingly, based on the multifactor test for specificity, the OOR finds the Request insufficiently specific under Section 703 of the RTKL. 65 § 67.703.

However, nothing in this Final Determination prevents the Requester from filing a more specific request for the same information, and, if necessary, filing an appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1). We note that a requester is not required to identify a specific document in their request, but, under the RTKL, they must provide sufficient clarity with respect to subject matter, scope, and/or timeframe to enable an agency to search for documents.

### CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Township is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Delaware 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.<sup>5</sup> All documents or communications following the issuance of this Final Determination shall be sent to [oor-postfd@pa.gov](mailto:oor-postfd@pa.gov). This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

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

**FINAL DETERMINATION ISSUED AND MAILED: April 19, 2024**

*/s/ Lyle Hartranft*

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LYLE HARTRANFT, ESQ.  
APPEALS OFFICER

Sent via e-file portal to: John DeMasi; Scott Alberts, AORO; Kailie Melchior, Esq.