



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
CHRIS FURMAN,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2024-0519
	:	
PITTSBURGH SCHOOL DISTRICT,	:	
Respondent	:	

FACTUAL BACKGROUND

On December 21, 2023, Chris Furman (“Requester”) submitted a request (“Request”) to the Pittsburgh School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

All records regarding[,] referring or re[la]ted to protecting confidential records and student information in the main office at [Pittsburgh] CAPA from other students who are in the office. This [R]equest includes, but is not limited to[:]

[1.] [A]ny applicable policies, memos, notes or direct[i]ves[;] and

[2.] [E]mails, texts and messages by, between and among [a]dministration, staff and faculty (including school security) and communication to anyone ou[t]side the District for the calendar years 2022 and 2023.

On February 2, 2024, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the District partially granted the Request, providing records responsive to Item 1 of the

Request. The District denied Item 2 of the Request, arguing that Item 2 was insufficiently specific, 65 P.S. § 67.703.

On February 23, 2024, the Requester filed an appeal with 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 the District to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On March 7, 2024, the District submitted copies of its attempts to obtain responsive records from a District employee on sabbatical for records potentially responsive to Item 2 of the Request.² On March 7, 2024, the Requester submitted a position statement, asserting the Request is specific.³

On March 14, 2024, the District submitted a position statement reiterating its grounds for denial of Item 2 of the Request. The District additionally argues that additional records responsive to Item 1 of the Request do not exist in its possession, custody or control and Item 2 of the Request is overly burdensome to the District. In support of its position, the District submitted an attestation made subject to the penalties of unsworn falsification to authorities, 18 Pa.C.S. § 4904, authored by Nicole Wingard Williams, Esq. (“Williams Attestation”), the District’s Assistant Solicitor and Agency Open Records Officer (“AORO”).

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

¹ The Requester granted the OOR a 30-day extension 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).”).

² Said employee claimed the potentially responsive records were confidential; however, no explanation was provided by the employee as to how the potentially responsive records were confidential.

³ The Requester also disputed the District’s interpretation of its contact with the District employee; however, the Requester withdrew this averment in a second submission made on March 7, 2024.

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)). Likewise, “[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

1. Item 2 of the Request is insufficiently specific

The District argues that Item 2 of the Request is insufficiently specific due to the broad scope and lengthy timeframe. The Requester asserts that the scope and timeframe are defined and, as a result, the Request is sufficiently specific.

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 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).

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 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").

In support of the District's position, the Williams Attestation indicates, in relevant part, the following:

5. Upon review [of Item 2] of the Request, I was unable to identify a scope, because the [R]equest seeks all records of all of the over 4,000 employees of the [District], including communications with unnamed individuals outside of the [District].

6. Upon review [of Item 2] of the Request, I noted the approximately two-year time frame, which is extremely lengthy.

7. The lack of scope coupled with the length of the [R]equest would likely result in the identification of thousands of potentially responsive documents requiring review and many judgements to determine what records are responsive, imposing an undue burden on the [District].

...

17. I advised that the [District] run a preliminary email search of records. This search was not meant to indicate that the [District] was able to determine the records being sought due to the lack of scope, and lengthy timeframe, but rather to determine the magnitude of the email portion [of Item 2] of the Request. I instructed that the search be conducted of all District issued email inboxes for emails received during the period of 1/1/22 – 12/21/23 relating to "confidential"

and “CAPA” and “main office” [or] “student records” and “CAPA” and “main office.”

18. The [District’s] Technology Department performed the search outlined above. The search generated 19.89 GB of data consisting of 8,396 items. The number of results reinforced the [District’s] belief that [Item 2 of] the Request lacks the required specificity.

19. The [District’s] Human Resources Department provided me with the number of employees employed with the [District] as of October 1st of each year covered by ... [Item 2 of the] [R]equest. The data is as follows: 2021-2022 school year – 4,541 employees; 2022-2023 school year – 4,453 employees; 2023-2024 school year – 4,230 employees. Again, the number of individual employees whose paper records would have to be searched reinforced the [District’s] belief that the Request lacks the required specificity.

20. [Item 2 of] [t]he Request, as written, does not provide sufficient specificity to enable the [District] to conduct a meaningful search for responsive records because the [R]equest lacks a scope that would provide the necessary context to narrow the search.

21. Collecting and reviewing every document that was identified in the preliminary email search without more context as to scope and narrowing of the requested time frame would be extremely time consuming and would impose an unreasonable burden on the [District].

22. [Item 2 of] [t]he Request, as written, would require numerous judgements to be made as to what [District] documents are responsive to [Item 2 of] the Request.

23. [Item 2 of] [t]he Request, as written, would require review and redaction of all records, as the potentially responsive records would, in my opinion a[s] the [District’s AORO] for the last ten (10) years, include records containing personal identification information protected under both the Family Educational Privacy and Rights Act (FERPA) and the RTKL, personal medical information, student names, and information protected by an individual’s constitutional right to privacy, at a minimum, all exempt under the RTKL.

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 District 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)).

A review of Item 2 of the Request shows that it includes a broad scope, i.e., all emails, texts and messages and communications sent among all District employees and officials, as well as those sent to non-District entities. Further, the Request includes a finite, but lengthy, timeframe—two years. *See Pa. Dep’t of Educ.*, 119 A.3d at 1125. The OOR has held that requests are insufficiently specific because they provide no context to guide a search for responsive records when the scope is very broad and the timeframe is lengthy. *See Veditago v. N. Lebanon Sch. Dist.*, OOR Dkt. AP 2021-2496, 2022 PA O.O.R.D. LEXIS 170 (finding that requests seeking all electronic communication between the Governor, the Pennsylvania Department of Health and Education, the County Department of Health and certain agency officials and communication among agency officials for a period of almost 21 months was insufficiently specific); *see also Winklosky v. Pa. Office of Admin.*, OOR Dkt. AP 2018-1438, 2018 PA O.O.R.D. LEXIS 1391 (“[s]eeking all records related to a topic or topics 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”).

While the District performed an email search that produced 8,396 items, that fact alone does not make the request sufficiently specific. *See Pa. Dep’t of Educ.*, 119 A.3d at 1126, n.8.; *compare Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259 (Pa. Commw. Ct. 2012), *appeal denied*, 54 A.3d 350 (Pa. 2012) (noting that “the request was obviously sufficiently specific because the School District has already identified potential records included within the request”). The Request contains a broad scope and lengthy timeframe, and it does not provide a sufficient context to guide a search for responsive records. The subject matter – “protecting confidential records and student

information in the main office at [Pittsburgh] CAPA from other students who are in the office” – is not narrow enough to offset the broad scope and lengthy timeframe. Further, the District has submitted evidence that, because of the large number of potential email records and District employees, to conduct a search would require a vast amount of time, resources, and effort, rendering Item 2 of the Request insufficiently specific. *See Montgomery Cnty. v. Iverson*, 50 A.3d 281, 283 (Pa. Commw. Ct. 2012) (“An open-ended request that gives an agency little guidance regarding what to look for may be so burdensome that it will be considered overly broad.”) (*en banc*). Accordingly, based on the plain language of Item 2 of the Request and the evidence presented, the OOR finds Item 2 of the Request to be insufficiently specific; however, nothing in this Final Determination prevents the Requester from filing a more specific RTKL request for the same information, and if necessary, filing an appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).⁴

2. The District demonstrated it does not possess additional records responsive to Item 1 of the Request

The District asserts that other than the records provided in response to Item 1 of the Request, no further records responsive to Item 1 exist in the District’s possession, custody or control. In response to a request for records, “an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the record[.]” 65 P.S. § 67.901. While the RTKL does not define the term “good faith effort,” in *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, the Commonwealth Court stated:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession... When records are not in an agency’s physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors ... After obtaining

⁴ As Item 2 of the Request is insufficiently specific, this Final Determination will not address the issue raised concerning the potentially responsive records in the possession of the District employee on sabbatical.

potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff'd*, 243 A.3d 19 (Pa. 2020).

An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency's records, that it has conducted a search reasonably calculated to uncover all relevant documents. *See Burr v. Pa. Dep't of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

Here, the Item 1 of the Request seeks any policies, memos, notes or directives that relate to protecting confidential records and student information in the District main office from other students in the office. In support of the District's argument that it does not possess any additional records responsive to Item 1, the Williams Attestation indicates, in relevant part, as follows:

3. Upon receipt of the Request, I forwarded a copy to Dr. Melissa Pearlman, then-Principal [of the District] who I determined to be the individual most likely at the [District] to be in possession of records relating to faculty concerns at [the District].

...

8. I met with Dr. Pearlman to identify records potentially responsive to the Request and we were only able to identify the policies sought by Requester.

9. I also contacted the [District's] Human Resources Department to determine if they were able to identify any records being sought by Requester. They stated that the Department did not have any records....

...

13. On January 31, 2024, I contacted Mr. Bill Hileman, President of the Pittsburgh Federation of Teachers, to inquire as to whether he had any records responsive to the Request....

14. Mr. Hileman responded that he did not have any records responsive to the [R]equest....

The District's attestation is authored by the District's AORO, an individual with knowledge of the District's records. The District has demonstrated that its AORO conducted a good faith search for records related to Item 1 of the Request, which included inquiries with relevant District personnel. Based on the evidence provided, the District has demonstrated that it does not possess additional records responsive to Item 1 of the Request. There has been no sufficient evidence provided that otherwise contradicts the statements offered by the District in the attestation submitted. *See Pa. Dep't of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022). Therefore, the District has met its burden of proof that additional records responsive to Item 1 of the Request do not exist.⁵ *Hodges*, 29 A.3d at 1192.

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the District 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 Allegheny 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; 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.⁶ 65 P.S. § 67.1303. All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

⁵ The OOR makes no determination as to whether additional records *should* exist, as our inquiry is limited to only whether or not records are "in existence and in possession of the ... agency at the time of the right-to-know request." *Moore*, 992 A.2d at 909; *see also* 65 P.S. § 67.705.

⁶ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: April 24, 2024

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent to: Chris Furman (via portal only)
Annmarie Harr, Esq. (via portal only)
Nicole Wingard Williams, Esq. (via portal only)