



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**JORDAN WILKIE AND WITF NEWS,  
Requester**

**v.**

**WEST SHORE SCHOOL DISTRICT,  
Respondent**

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**Docket No: AP 2024-1163**

### **FACTUAL BACKGROUND**

On March 8, 2024, Jordan Wilkie and WITF News (collectively “Requester”) submitted a request (“Request”) to the West Shore School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, stating:

This is a request for professional communications received or sent by West Shore School District (WSSD) Board President Heidi E. Thomas on her personal cell phone, personal email, WSSD-issued cell phone, and WSSD-issued email.

I request all records of communication related to WSSD business sent or received on Thomas’ devices or email accounts from 2/26/24 - 3/4/24 with any of the following parties.

Parties: Cheryl Allen, Kelly J. Brent, David R. Brinton, Brenda L. Cox, Mandy L. Davis, Brian K. Guistwhite, Christopher J. Kambic, Janice Martino-Gottshall, Jeffrey Piccola, Jeremy Samek, Abigail A. Tierney, Adam M. Trone, Randall Wenger.

On April 15, 2024, following a thirty-day extension, 65 P.S. § 67.902(b), the District denied the Request, arguing that the Request is insufficiently specific. *See* 65 P.S. § 67.703.

On May 6, 2024, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.<sup>1</sup> 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 May 16, 2024, the District submitted a position statement reiterating its grounds for denial. In support of its position, the District submitted the attestation, made subject to the penalties of 18 Pa.C.S. § 4904, of its Director of Federal Programs and Open Records Officer, Ryan Argot (“Argot Attestation”). The District also provided five pages of responsive email records to the Requester.

On May 30, 2024, in response to an inquiry by the OOR, the Requester submitted a statement arguing that there is a discrepancy between the records provided by the District and the Argot Attestation.<sup>2</sup> The Requester also argues that the Request is sufficiently specific but that the Requester was willing to shorten the timeframe of the Request from “Friday, March 1[,] [2024] to Monday, March 4[,] [2024].”

On June 5, 2024, in response to the arguments set forth in the Requester’s May 30, 2024 position statement, the District submitted the supplemental attestation, made subject to the penalties of 18 Pa.C.S. § 4904, of Ryan Argot (“Argot Supplemental Attestation”).

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<sup>1</sup> During the appeal, the Requester did not object to the OOR’s request for an extension of 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).”).

<sup>2</sup> The dates are included in the original Request.

## 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 appeal is moot in part**

During the appeal, the District provided five pages of responsive emails. Accordingly, insofar as the Requests seek the records provided, the appeal is dismissed as moot in part.<sup>3</sup> *See Chester Water Auth. v. Pa. Dep’t of Cmty. & Econ. Dev.*, 249 A.3d 1106, 1114 (Pa. 2021) (finding that a matter was settled by provision of records, and thus, “the controversy has been mooted”); *Kutztown Univ. of Pa. v. Bollinger*, 217 A.3d 931 (Pa. Commw. Ct. 2019)

### **2. Personal identification information was properly redacted from the records provided to the Requester on appeal**

The District argues that it properly redacted “personal and/or cell phone numbers” from the email records provided on appeal because the information is expressly exempt from disclosure pursuant to Section 708(b)(6) of the RTKL. *See* 65 P.S. § 67.708(b)(6)(i)(A); Argot Attestation, ¶¶ 27.

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<sup>3</sup> The redactions made to the responsive records will be discussed in the following section.

Section 708(b)(6) of the RTKL 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.*

Because “cellular or personal telephone numbers” are expressly exempt from disclosure under Section 708(b)(6) of the RTKL, the redactions made by the District are proper. *Id.*

### **3. The Request is sufficiently specific**

The District argues that the Request is insufficiently specific. *See* 65 P.S. § 67.703. Specifically, the District argues that “the Request is insufficiently specific because it contains an extremely broad subject matter (‘professional communications’ or ‘[District] business’) and a scope that ‘encompasses virtually all categories of communications that could possibly be sent by District Board members, related to the broad subject matters.’” *See* Argot Attestation, ¶¶ 11-12. The Requester argues that the Request is “adequately specific in scope.”

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.” *Id.* 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”).

Here, the Request contains a very broad subject matter—District “business”—a narrow scope, identifying both the type of records sought—communications sent via cell phone or email—the sender and recipients of the communications, and a short, finite timeframe of February 26, 2024 to March 4, 2024. *See Pa. Dep’t of Educ.*, 119 A.3d 1121.

The Request’s broad subject matter is not fatal to the Request’s specificity. *See Methacton Sch. Distr. v. Office of Open Records*, 250 C.D. 2021, 2021 Pa. Commw. Unpub. LEXIS 670 (Pa. Commw. Ct. 2021). However, without a narrow subject matter, the Request’s scope and timeframe must guide the District in its search for potentially responsive records. *See Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259, 1265 (Pa. Commw. Ct. 2012), *appeal denied*, 54 A.3d 350 (Pa. 2012); *see also Shepherd, supra*.

In *Easton Area School District v. Baxter*, the Commonwealth Court found that a request

for all emails sent or received by any of nine school board members, the superintendent, and the school's general resource account over a thirty-day period was sufficiently specific because it identified the type of record requested, involved a small number of email addresses, and because it contained a short, finite timeframe. *Id.* Similarly, here, the Request seeks electronic communications sent between a group of fourteen named individuals for a period of approximately one week. The Request's short timeframe and narrowly defined scope provide the District with set parameters within which to search for responsive records. Moreover, as detailed below, the District conducted a search and provided responsive records to the Requester, without providing evidence that searching for responsive records is so overly burdensome to render the Request insufficiently specific.<sup>4</sup> Accordingly, the instant Request meets the requirements of Section 703 of the RTKL. *See* 65 P.S. § 67.703; *see also e.g., DeMasi v. Upper Darby Twp.*, OOR Dkt. AP 2024-0752, 2024 PA O.O.R.D. LEXIS 1058; *DeMasi v. Upper Darby Twp.*, OOR Dkt. AP 2024-0959; 2024 PA O.O.R.D. LEXIS 1074.

**4. The District demonstrated that no additional responsive records exist within its possession, custody or control**

The District argues that no additional responsive records exist within its 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

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<sup>4</sup> In certain situations, the ability to identify responsive records demonstrates that a request is sufficiently specific. *See Baxter*, 35 A.3d at 1265 (noting that “the request was obviously sufficiently specific because the School District has already identified potential records included within the request”). However, the mere “identification of potentially responsive records ... is not sufficient to satisfy Section 703 of the RTKL on its own.” *See Pa. Dep't of Educ.*, 119 A.3d at 1126 n.8. Here, however, the Request contains a subject matter, short timeframe and narrowly defined scope. Thus, independent of the District's identification of responsive records, the Request meets the requirements of Section 703 of the RTKL. *See* 65 P.S. § 67.703.

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 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).

In support of the District’s position, the Argot Attestation states:

17. ...[D]uring the pendency of this Appeal, I made a good faith effort to locate records that may be responsive to the Request.
18. The District does not issue a cell phone to any of its Board Members, including Ms. Thomas.
19. Accordingly, no responsive communications on a District-issued cell phone exist[.]
20. The District conducted a search of its email server for any communications between Ms. Thomas and an individual with an email address associated with the Independence Law Center over a time period that included the applicable dates.
21. This search was designed to locate any communications between Ms. Thomas and Janice Martino-Gottshall, Jeremy Samek, Randall Wenger, and Cheryl Allen from Ms. Thomas's District-issued email account.
22. No emails were identified.

23. In addition, I contacted Ms. Thomas and requested that Ms. Thomas review her personal devices for emails and text messages with the individuals identified in the Request for the period identified in the Request.
24. Ms. Thomas reported that she did not possess any responsive records.
25. Finally, the District conducted a search of its email server for communications sent by Ms. Thomas to the other Board Members and/or emails sent by Board Members to Ms. Thomas for the [eight]-day period identified in the Request.
26. This search resulted in the identification of [five]-pages of emails which will be provided to the Requester....

See Argot Attestation, ¶¶ 17-26. In further support of the District's position, the Argot

Supplemental Attestation states:

15. ...Page 2 of the [a]ttachment [to the Requester's May 30, 2024 position statement ("Attachment")]] shows an email sent by Heidi Thomas from her District-issued email address to Superintendent Stoltz, the District's former Solicitor Brooke Say and board members on March 1, 2024 regarding "an informative workshop with a professional advisor."
16. While no board members are identified in the "To:" or "CC:" portion of the email, the Board Members were blind copied on this email.
17. For example, pages 3, 4 and 5 of the Attachment show the responses of three board members to this email.
18. In addition, while Ms. Tierney's response (Page 1 of the Attachment) is not a direct reply to Ms. Thomas's email (Page 2 of the Attachment), it references an email sent by Ms. Thomas on March 1, 2024 about an "informational workshop" conducted by a "professional advisor."
19. Accordingly, when the District submitted its position statement and attestation, I believe that Ms. Tierney was responding to Ms. Thomas's March 1, 2024 email (Page 2 of the Attachment) that was sent to Ms. Tierney's personal email account from Ms. Thomas's District- issued email account.
20. Subsequent to Requester raising...concerns about a discrepancy, however, I contacted the District Director of Technology and Media Services, Steve Vogelsang, and asked him to locate Ms. Thomas's March 1, 2024 email (Page 2 of the Attachment) and determine the email addresses that were blind copied.



21. Mr. Vogelsang reviewed the email and confirmed that Ms. Thomas's March 1, 2024 email (Page 2 of the Attachment) was sent to Ms. Tierney's personal email address.
22. Mr. Vogelsang showed me the email that was sent to Ms. Tierney's personal email address.
23. Mr. Vogelsong's search also indicated that Ms. Thomas sent three simultaneous and identical versions of her March 1, 2024 email (Page 2 of the Attachment). One included Ms. Tierney's personal email address as a blind copy. Another included the District-issued email addresses of board members Trone, Brent, Brinton, Davis and Cox as blind copies. A third included the District-issued email addresses of board members Guistwhite and Kambic as blind copies.
24. Accordingly, Ms. Tierney's March 4, 2024 email (Page 1 of the Attachment) is also a response to Ms. Thomas's March 1, 2024 email (Page 2 of the Attachment)[,] which was sent to Ms. Tierney's personal email address from Ms. Thomas's District-issued email address.
25. In my opinion, this search confirms that there is no discrepancy between Ms. Tierney's email (Page 1 of the Attachment) and Ms. Thomas' report to me that she found no responsive records on her personal devices.

See Argot Supplemental Attestation, 15-25.

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 acted in bad faith or that additional responsive records exist, "the averments in [the statements] 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)).

Here, the Argot Attestations are authored by the District's Open Records Officer who familiar with the records and who personally conducted the searches for records responsive to the instant Request. *See Argot Attestation*, ¶¶ 1-2, 17, 23. The Argot Attestation affirms that "[t]he District does not issue a cell phone to any of its Board Members, including Ms. Thomas[;]" and,

thus, no cell phone communications exist within the District’s possession. *See* Argot Attestation, ¶¶ 18-19. The Argot Attestation also affirms that the District “conducted...search[s] of its email server for communications” for the timeframe identified in the Request between Ms. Thomas and the individuals named in the Request and that the only responsive records yielded by the search were five pages of emails between Ms. Thomas and the other members of the District Board members. *See* Argot Attestation, ¶¶ 20-26. Further, the Argot Supplemental Attestation explains the perceived discrepancy and affirms that the District’s search addressed the issue. *See* Argot Supplemental Attestation, 15-25. Moreover, no evidence has been presented to contradict the Argot Attestations or to show that additional records responsive to the Request do, in fact, exist. *See Pa. Dep’t of Health v. Mahon*, 283 A.3d 929 (Pa. Commw. Ct. 2022) (concluding that, in the absence of countervailing evidence, an agency may satisfy its burden of proving a record does not exist by submitting “either an unsworn attestation by the person who searched for the record or a sworn affidavit of nonexistence of the record”).

Accordingly, based on the evidence presented, the District has demonstrated that no additional records responsive Request exist within its possession, custody or control. *See Hodges*, 29 A.3d at 1192 (Pa. Commw. Ct. 2011).

### CONCLUSION

For the foregoing reasons, the appeal is **denied in part** and **dismissed as moot in part**, 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 or petition for review to the York 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 according to court rules as per Section 1303 of the RTKL, 65 P.S. §

67.1303, but as the quasi-judicial tribunal that adjudicated 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 website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: June 14, 2024**

*/s/ Erika Similo*

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APPEALS OFFICER  
ERIKA SIMILO

Sent via OOR portal to: Jordan Wilkie  
Christopher L. Voltz, Esq.  
Ryan Argot

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