



**pennsylvania**  
OFFICE OF OPEN RECORDS

**FINAL DETERMINATION**

<b>IN THE MATTER OF</b>	:	
	:	
<b>DONALD FEIGHERY,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No: AP 2024-1278</b>
	:	
<b>PENNSYLVANIA DEPARTMENT OF</b>	:	
<b>CORRECTIONS,</b>	:	
<b>Respondent</b>	:	

**FACTUAL BACKGROUND**

On March 21, 2024, Donald Feighery (“Requester”), an inmate at SCI-Albion, submitted a request (“Request”) to the Pennsylvania Department of Corrections (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking, “d[oc]uments on any and all ‘FALSE Positive Urine Analysis Tests’ for SCI Albion and the testing equipment maintenance standards.”

On April 26, 2024, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Department denied the Request, arguing that part of the Request is insufficiently specific and asserted that the Request for “testing equipment maintenance standards” does not seek records under the RTKL.

On May 10, 2024,<sup>1</sup> the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On May 30, 2024, the Department submitted a position statement reiterating that the Request is insufficiently specific and the Requester improperly modified the Request by including the timeframe of five years from 2019 to present. However, the Department’s appeal submission lacked any reference to the Request for “testing equipment maintenance standards.” On June 3, 2023, the OOR sought clarification as to the Department’s position regarding the part of the Request seeking equipment maintenance standards. On June 6, 2024, in response to the OOR’s inquiry, the Department submitted an additional position statement that claims the Requester did not appeal that particular issue and therefore, it was unnecessary to provide any evidence on appeal as to responsive records sought for that portion of the Request. The Department adds, in a footnote, that the Department denied that portion of the Request because it did not seek records under the RTKL.

### **LEGAL ANALYSIS**

The Department 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 Department 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-

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<sup>1</sup> The “prisoner mailbox rule” extends to all appeals for pro se prisoners. The Requester’s appeal to the OOR was postmarked May 10, 2024. *Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

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 sufficient under Section 1101(a)(1)**

In its additional position statement, the Department argues that the Requester failed to contest the denial regarding the portion of the Request that sought “the testing equipment maintenance standards” and claims that issue is not currently before the OOR.

Section 1101(a)(1) of the RTKL requires requesters to “state the grounds upon which the requester asserts that the record is a public record...and...address any grounds stated by the agency for...denying the request.” 65 P.S. § 67.1101(a)(1). A general statement “that the records are public records that ‘do not qualify for any exemptions under [S]ection 708, are not protected by privilege, and are not exempted under any Federal or State law or regulation,’ is sufficient” to satisfy the requirements of Section 1101(a)(1). *See Pa. Dep’t of Corr. v. Office of Open Records*, 18 A.3d 429, 434 (Pa. Commw. Ct. 2011) (“[I]t is appropriate and, indeed, statutorily required that a requester specify in its appeal to Open Records the particular defects in an agency’s stated reasons for denying a RTKL request”). Pursuant to this section, the Commonwealth Court has held that a requester must “state why the records [do] not fall under the asserted exemptions and, thus, [are] public records subject to access.” *See Saunders v. Pa. Dep’t of Corr.*, 48 A.3d 540, 543 (Pa. Commw. Ct. 2012).

In this instance, the Requester utilized OOR’s standard appeal form when submitting this instant appeal. The appeal form states: “By submitting this appeal, I am appealing the Agency’s denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State

law or regulation; and the request was sufficiently specific.” The OOR has consistently found that this statement is sufficient to satisfy a requester’s burden under Section 1101(a) of the RTKL. 65 P.S. § 67.1101(a)(1); *see Barnett v. Pa. Dep’t of Pub. Welfare*, 71 A.3d 399 (Pa. Commw. Ct. 2013); *Duquette v. Gettysburg Area Sch. Dist.*, OOR Dkt. AP 2024-0378, 2024 PA O.O.R.D. LEXIS 675. Additionally, on his appeal form, the Requester identifies “testing equipment maintenance standards” as one set of records at issue in the appeal. Therefore, the Requester adequately challenge the Department’s denial of the portion of the Request seeking testing equipment maintenance standards. *See* 65 P.S. § 67.1101(a)(1).

## **2. Part of the Request is insufficiently specific**

The Department claims that part of the Request that seeks “d[oc]uments on any and all ‘FALSE Positive Urine Analysis Tests’ for SCI Albion” is insufficiently specific. The Department also asserts that the Requester improperly tried to narrow the Request’s timeframe to the previous five years on appeal to make the Request more 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 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 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").

This item of the Request seeks any and all records related to false positive drug screens from SCI-Albion, but does not identify a discrete group or type of record sought, nor does it identify senders or recipients of the records. Furthermore, although the Request identifies a general subject matter (*i.e.*, false positive urine analysis tests), as further explained below, the Request does not include a timeframe for which records are sought. As a result, the Request does not provide the Department with sufficient detail to enable the Department to ascertain what particular records are being sought. Section 703 of the RTKL prevents a requester from forcing an agency to undertake a "fishing expedition" where it is obligated to examine vast tracts of records and make determinations such as who the participants to the requested communications could be. *See Pa. Dep't of Educ.*, 119 A.3d at 1126. As such, the scope of the Request weighs in favor of insufficient specificity.

Notably, the Requester includes a timeframe for the Request on appeal in an attempt to make the Request more specific. However, the OOR has repeatedly held that a requester may

not modify, explain or expand a request on appeal. *See Pa. State Police*, 995 A.2d 515 at 516 (Pa. Commw. Ct. 2010); *Michak v. Pa. Dep't of Pub. Welf.*, 56 A.3d 925 (Pa. Commw. Ct. 2012) (holding that “where a request[e]r requests a specific type of record...the request[e]r may not, on appeal argue that an agency must instead disclose a different record in response to the request”). Instead, the OOR’s review on appeal is confined to the Request as initially written, and any modification of the Request on appeal was not considered. Therefore, the lack of timeframe along with the broad scope of records sought renders this item of the Request insufficiently specific. *See Dep’t of Educ.*, 119 A. 3d at 1126 (the request that sought all emails of the Acting Secretary of Education over a one-year period, “without limiting the subject matter of the [r]equest in any meaningful way...is, therefore, insufficiently specific under Section 703 of the RTKL”); *see also Minnich v. West Manchester Township*, 5 OOR Dkt. AP 2023-0254, 2023 PA O.O.R.D. LEXIS 727; *Haverstick and Kleinbard LLC v. Pa. Gaming Control Bd.*, OOR Dkt. AP 2023-2057, 2023 PA O.O.R.D. LEXIS 2312. Accordingly, based on the multifactor test for specificity, the OOR finds this part of the Request insufficiently specific under Section 703 of the RTKL. 65 P.S. § 67.703.<sup>2</sup>

### **3. The Request seeks records under the RTKL**

In the Department’s initial response to the Request, the Department claims that the portion of the Request that sought “the testing equipment maintenance standards” does not seek records as defined under the RTKL.<sup>3</sup> *See* 65 P.S. § 67.102 (defining “record”). Although the Department’s first appeal submission was silent on this issue, on June 6, 2024, in response to an inquiry from the OOR, the Department submitted a supplemental position statement, reiterating only, in a

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<sup>2</sup> 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). *See Hollinger v. Adams County*, OOR Dkt. AP 2013-0283, 2013 PA O.O.R.D. LEXIS 180.

<sup>3</sup> The Department cites to 65 P.S. § 67.506(d)(1).

footnote, that the Department denied that portion of the Request because it did not seek records under the RTKL.

A “record” is defined as “information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.” 65 P.S. § 67.102. To determine if certain material is a record, the RTKL imposes a two-part inquiry: (1) does the material document a “transaction or activity of the agency”; and (2) if so, was the material “created, received or retained ... in connection with a transaction, business or activity of [an] agency.” *Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1034-35 (Pa. Commw. Ct. 2011). Because the RTKL is remedial legislation, the definition of a record must be liberally construed. *Id.*; *Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at \*13 (Pa. Commw. Ct. 2012).

During this appeal, the Department did not provide any evidence regarding the portion of the Request which seeks “testing equipment maintenance standards.” The Department failed to demonstrate on appeal how this portion of the Request does not seek records under the RTKL and, on its face, the Request seeks information or a record regarding the standards for testing equipment maintenance. *See, e.g., Mogollon v. Pa Dep’t of Corr.*, OOR Dkt. AP 2022-2663, 2023 PA O.O.R.D. LEXIS 184 \*; *Wishnefsky v. Pa Dep’t of Corr.*, OOR Dkt. 2014-1963, 2015 PA O.O.R.D. LEXIS 45 \* (holding drug testing policy manuals are records); *Abolitionist Law Center v. Pa. Dep’t of Gen. Servs.*, OOR Dkt. 2015-2233, 2015 PA O.O.R.D. LEXIS 2121 \* (holding maintenance manuals are records). As such, we find that the Request seeks records under the

RTKL and the Department must conduct a good faith search reasonably calculated to locate responsive records.

### CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the Department is required to provide the responsive records, as described above, or an affidavit or statement under penalty of perjury that the records do not exist 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.<sup>4</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>.

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

*/s/ Damian J. DeStefano*

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DAMIAN J. DESTEFANO  
APPEALS OFFICER

Sent to: David Feighery, SCI-Albion, #AM9746 (via portal and U.S. mail), Andrew Filkosky, AORO (via portal only); Ralph Salvia, Esq. (via portal only)

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<sup>4</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).