



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

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**PATRICK BOWEN,
Requester**

v.

Docket No: AP 2024-1323

**PENNSYLVANIA OFFICE OF
ADMINISTRATION,
Respondent**

FACTUAL BACKGROUND

On May 15, 2024, Patrick Bowen (“Requester”) submitted a request (“Request”) to the Pennsylvania Office of Administration (“Office” or “OA”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

Any and all letters, memos, emails, text messages, metadata, maps, books, tapes, photographs, film or sound recordings, information stored or maintained electronically, and data-processed or image-processed documents created, sent or received by any Commonwealth agency pertaining to the fictitious name company “The Other Side of the Fence” (Dept of State registration number 6549050) or any of its agents, owners or employees between 5/1/2016 and the present date.

On May 21, 2024, the Office denied the Request, arguing that the subject matter of the Request was not sufficiently specific. 65 P.S. § 67.703.

On May 21, 2024, 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 Office to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On May 30, 2024, the Office submitted a position statement, reiterating its reasons for denial. The Office specifically states that the Request fails the multifactor test to determine whether a request is sufficiently specific and does not provide enough guidance to determine which records are being requested. The Office also attempts to preserve its right to raise arguments and exemptions against disclosure if the Request is found to be sufficiently specific. In support of its position, the Office submitted the attestations of the Office’s Agency Open Records Officer (“AORO”), Wha Lee Strohecker (“Strohecker Attestation”).¹

On May 31, 2024, the Requester submitted a responsive position statement. The Requester states that the Request seeks twelve discrete record types, does not obligate the Office to search the records of other Commonwealth agencies, and seeks information about one specific entity. The Requester argues that since he provided the Department of State’s registration number for the entity about which he seeks information, the Office can easily obtain information about this entity from the Department of State’s website.

LEGAL ANALYSIS

The Office 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 Office is required to demonstrate, “by a preponderance of the

¹ 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 Office has acted in bad faith, “the averments in the attestation should be accepted as true.” *McGowan v. Pa. Dep’t of Envtl. 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)).

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 Office reasonably interpreted the Request

The Office argues that the Request inappropriately obligates it to search for records of other Commonwealth agencies when it asks for records “created, sent or received by any Commonwealth agency pertaining to the fictitious name company ‘The Other Side of the Fence’ ...” In response, the Requester states that “[t]he [R]equest does not state that OA needs to obtain records from other agencies, only to furnish records in its possession addressed to or originating from other agencies.” *See* Requester’s Position Statement.

Here, the Requester asked for records “created, sent or received by any Commonwealth agency.” Based on a plain reading of the Request language, the Office reasonably interpreted the Request as seeking documents of any Commonwealth agency – including those possessed by another Commonwealth agency – and not only the records of another Commonwealth agency that are in the possession of the Office. In response, the AORO states that the Office does not have the ability to search for records of all Commonwealth agencies. Strohecker Attestation ¶ 14. However, the Office is not required to search for, or obtain, records in the possession of other Commonwealth agencies, and the Request must necessarily be limited to those records in the possession, custody or control of the Office.

2. The Office proved that the Request is insufficiently specific

The Office argues that the Request is insufficiently specific regarding the subject matter and scope of the Request, and it seeks records over a long period of time, thereby making it impossible for the Office to ascertain what records are being requested. 65 P.S. § 67.703. 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).

While responding to a RTKL request must entail accuracy and a good faith effort to provide the records sought, it is not an exact science, and must also encompass reasonable discretion by the agency to identify and provide the requested information, particularly where the request is a broad one.

In this instance, the Office contends that the Request fails the first prong of the multifactor test because it does not identify a subject matter with sufficient specificity to allow the Office to ascertain the records that are being requested. The Office states that the Request does not specify a transaction or activity of the OA to give context for the AORO to narrow the search for records. The Office states that it employs over 2,300 individuals and provides human resource and information technology services to agencies under the Governor's jurisdiction. Strohecker Attestation ¶¶ 9-10. Furthermore, the Request also asks the Office to provide records pertaining to a "fictitious name company "The Other Side of the Fence" (Dept of State registration number 6549050) or any of its agents, owners or employees." The Requester notes that by providing the Department of State registration number, he has enabled the Office to research his request to obtain the relevant information.

While the Request provides the name of a company, it does not otherwise identify any transaction or activity of the Office. Therefore, the subject matter of the Request is not specific enough to discern the information that is being requested. *Pa. Dep't of Envtl. Prot. v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012) (en banc). As a result, the Request does not meet the requirements of the first prong of the multifactor test.

Since none of the parts of the three-part test are independently determinative of whether a request meets the specificity requirement, it is necessary to apply the other two parts of the test to the Request. *Methacton Sch. Dist. v. Office of Open Records*, 250 C.D. 2021, 2021 Pa. Commw.

Unpub. LEXIS 670 (Pa. Commw. Ct. 2021) (A request’s failure to contain a subject matter is not fatal to its specificity; rather, “[t]he absence of a stated subject matter is but one factor to consider in determining whether [a] request is sufficiently specific.”). Here, the scope of the Request lists a variety of record types, but does not sufficiently limit any senders or recipients or identify the author(s) of the documents. Further, the Request clearly seeks, at least in part, records outside of the possession, custody or control of the Office. Therefore, the language of the Request does not sufficiently narrow the scope of the Request to a discrete set of records.

Lastly, the timeframe of the Request is also not sufficiently specific in that it requests records over an eight-year period. An eight-year timeframe could lend specificity to an otherwise narrow request, but in this case, the eight-year timeframe does not assist in making the broad request sufficiently specific.

Therefore, a review of the Request shows that it does not include a specific subject matter or scope, and the timeframe of the Request is too broad to help narrow the overly broad subject matter and scope. The test enunciated in *Pa. Department of Education* supports a finding that the Request is not sufficiently specific under Section 703 of the RTKL to enable the Office to conduct a search for responsive records. See *Jonas v. New Hanover Twp.*, OOR Dkt. AP 2024-0153, 2024 PA O.O.R.D. LEXIS 380; *Michalski v. Pa. Dep’t of Corr.*, OOR Dkt. AP 2024-0023, 2024 PA O.O.R.D. LEXIS 283.² However, nothing in this determination prevents the Requester from filing a new RTKL request with the Office that meets the requirements of 65 P.S. § 67.703, and if necessary, filing an appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

² The Office did not raise any additional grounds for denial but instead attempted to reserve its right to raise exemptions if the Request was found to be sufficiently specific.

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the Office 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 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-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: June 18, 2024

/s/ Daneen L. Miller-Smith

DANEEN L. MILLER-SMITH, ESQ.
APPEALS OFFICER

Sent via OOR portal to:
Patrick Bowen
Wha Lee Strohecker, AORO
Vera Kanova, Esq.

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