



FINAL DETERMINATION

IN THE MATTER OF

**JULIETTE RIHL AND PUBLICSOURCE,
Requester**

v.

**ALLEGHENY COUNTY,
Respondent**

:
:
:
:
:
:
:
:
:
:
:

Docket No: AP 2020-2194

INTRODUCTION

Juliette Rihl, of PublicSource, (collectively the “Requester”) submitted a request (“Request”) to Allegheny County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking emails related to medical staff shortages at the Allegheny County Jail (“Jail”). The County denied the Request, arguing it was insufficiently specific. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted**, and the County is required to take additional action as directed.

FACTUAL BACKGROUND

On October 19, 2020, the Request was filed, seeking “emails sent by staff members of Allegheny County Jail to Laura Williams, Janet Bunts, or Tracy Kunca regarding a shortage of medical staff at Allegheny County Jail between Sept. 1, 2020 and Oct. 19, 2020.”

On October 27, 2020, the County denied the Request, arguing that it was insufficiently specific. 65 P.S. § 67.703.

On October 27, 2020, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On November 17, 2020, the County submitted a position statement reiterating its reason for denial. The County claims that the Request is insufficiently specific because “regarding a shortage of medical staff” does not identify a transaction or activity of the agency and does not point to a discrete group of documents, and that as the Jail employs over 600 people, the Request needs to specify employees, or categories of employees, whose messages should be disclosed. In support of its position, the County submitted the affidavit of Amanda Beadnell, the Executive Assistant to Warden Harper of the Jail.

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their

¹ On October 29, 2020, Requester granted the OOR an extension to December 7, 2020 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)”).

actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, the parties did not request a hearing; however, the OOR has the necessary information and evidence before it to properly adjudicate the matter.

The County is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the

evidence.” 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 County argues that the Request is insufficiently 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 interpreting a RTKL request, agencies should rely on the common meaning of words and phrases, as the RTKL is remedial legislation that must be interpreted to maximize access. *See Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at *16 (Pa. Commw. Ct. 2012) (citing *Bowling*, 990 A.2d 813).

In 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), and *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013). First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Pa. Dep’t of Educ.*, 119 A.3d at 1125. Second, the scope of the request must identify a discrete group of documents (e.g., type or recipient). *See Id.* at 1125. Third, “[t]he timeframe of the request should identify a finite period of time for which the records are sought.”² *Id.* at 1126. This factor is the most fluid and is dependent upon the request’s subject matter and scope. *Id.* Failure to identify a finite timeframe

² The County notes that it does not assert that the timeframe is insufficiently specific.

will not automatically render a sufficiently specific request overbroad; likewise, a short timeframe will not transform an overly broad request into a specific one. *Id.*

Additionally, while burden may be a factor in determining that a request is insufficiently specific, the fact that a request is burdensome does not, in and of itself, deem it overbroad. *See Pa. Dep't of Env'tl. Prot. v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012) (“The fact that a request is burdensome does not deem it overbroad”); *see also Ruggiero v. Lackawanna County*, OOR Dkt. AP 2014-0043, 2014 PA O.O.R.D. LEXIS 157 (“[A] request involving the detailed review of voluminous documents does not relieve the agency of its requirements to presume the records are open and available and respond in accordance with the RTKL.”).

Here, the County argues that the Request fails to identify a transaction or activity of the agency because the language “regarding a shortage of medical staff” does not identify a transaction or activity of the agency and it does not point to a discrete group of documents. The County explains:

For example, Ms. Rihl’s request did not advise the County whether she intended to receive only emails containing the words “a shortage of medical staff.” This request therefore requires the County to infer which search criteria to use, and then to evaluate each email to determine whether it is related to a shortage of medical staff. The Commonwealth Court has ruled that requests are not sufficiently specific when they require agencies to make judgments about the relation of documents to a request. *See Comm. v. Legere*, 50 A.3d 260 (Cmmw. Ct. 2012). In *Legere*, the court held that a request had a specific subject matter when it “requested a clearly defined universe of documents.” *Id.* at 265. Here, Ms. Rihl has not requested a clearly defined universe of documents.

However, the Request does clearly identify a subject matter – a medical staff shortage at the Jail – and a discrete group of documents – emails sent by Jail employees. While Ms. Beadnell attests that the Jail employs 635 individuals, the Request seeks the emails received by just 3 employees of the County. Regarding the concerns set forth by the County, there is no requirement in the RTKL or the Commonwealth Court’s three-part balancing test that a request provide search terms

for an agency; in fact, the provision of keywords does not guarantee that a request is sufficiently specific. *See Montgomery County v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012) (“incredibly broad” search terms do not provide a limiting subject matter). Accordingly, the Request provides sufficient specificity to guide the County’s search for records.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is required to provide all responsive records 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 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. 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.³ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: November 24, 2020

/s/ Erin Burlew

ERIN BURLEW, ESQ.
APPEALS OFFICER

Sent to: Juliette Rihl (via email only);
Maggie Shiels, Esq. (via email only)

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