



FINAL DETERMINATION

IN THE MATTER OF

**MATT STROUD,
Requester**

v.

**CITY OF PITTSBURGH,
Respondent**

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Docket No: AP 2020-2359

INTRODUCTION

Matt Stroud (“Requester”) submitted a request (“Request”) to the City of Pittsburgh (“City”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records containing certain keywords or phrases. The City denied the Request, arguing that it is insufficiently specific, and the Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied**, and the City is not required to take any further action.

FACTUAL BACKGROUND

On September 23, 2020, the Request was filed, seeking:

1. Emails sent/received between Jan 1, 2018 and today by William Peduto, Timothy McNulty, and Dan Gilman:
 - To or from anyone with an email address containing the URL publicsource.org;
 - Containing the keywords “Public Source” and/or “PublicSource” (search should not be case sensitive)

2. All reports, dossiers, or documents - files in .doc, .odt, or .pdf form - compiled regarding the nonprofit news outlet PublicSource or containing the keywords “Public Source” or “PublicSource” between Jan. 1, 2018 and today.

On September 24, 2020, the City invoked a thirty-day extension of time to respond to the Request. 65 P.S. § 67.902. On October 30, 2020, the City denied the Request, arguing that it is insufficiently specific, *see* 65 P.S. § 67.703.

On November 18, 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 City to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On December 10, 2020, the City submitted a position statement reiterating its grounds for denial. On December 21, 2020, the Requester submitted a position statement in response, and on January 7, 2021, the City submitted a rebuttal.

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 LLC 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 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. 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request”

¹ The Requester provided the OOR with additional time to issue a final determination in this matter. *See* 65 P.S. § 67.1101(b)(1).

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 City is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in 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. 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. 65 P.S. § 67.708(b).

Section 708 of the RTKL clearly 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 City argues that the Request is not sufficiently specific to enable it to identify responsive records. *See* 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 under the RTKL is sufficiently specific, the OOR applies a three-part balancing test set forth 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). The OOR examines to what extent the request identifies (1) the subject matter of the request; (2) the scope of documents sought; and (3) the timeframe for which records are sought. *Pa. Dep't of Educ.*, 119 A.3d at 1125. Finally, “[t]he fact that a request is burdensome does not deem it overbroad, although it may be considered as a factor in such a determination.” *Pa. Dep't of Env'tl. Prot. v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012).

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. The subject matter should provide a context to narrow the search. *Id.* (citing *Montgomery County v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012) (*en banc*)). Second, the scope of the request must identify a discrete group of documents (e.g., type or recipient). *Id.* Finally, “[t]he timeframe of the request should identify a finite period of time for which records are sought.” *Id.* at 1126. “The timeframe prong is ... 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.*

Failure to identify a finite timeframe will not render an otherwise sufficiently specific request overbroad. *See Pa. Hous. Fin. Agency v. Ali*, 43 A.3d 532, 536 (Pa. Commw. 2012) (concluding request for proposals and sales agreements relating to two specific projects that did not specify timeframe was sufficiently specific). Likewise, a short timeframe will not transform an overly broad request into a specific one. *Pa. Dep’t of Educ.*, 119 A.3d at 1125.

The fact that a request uses keywords in place of a subject matter is not necessarily fatal to the request, but broad keywords alone do not provide a sufficient limiting context. *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); *Slaby v. City of Pittsburgh*, OOR Dkt. AP 2017-0142, 2017 PA O.O.R.D. LEXIS 238 (“A keyword list 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”). Finally, a broad keyword search may still be sufficiently specific where a request specifies senders or recipients of emails. *See Office of the Governor v. Engelkemier*, 148 A.3d 522, 532-33 (Pa. Commw. Ct. 2016) (holding that “although [the] keyword list is lengthy and in some respects broad, in consideration of the narrow timeframe and scope of the [request] . . . [the] request, on balance, meets the specificity requirement...”); *cf. Iverson*, 50 A.3d 281 (finding that a request with no timeframe, a broad scope, and some “incredibly broad” keywords was insufficiently specific).

The OOR has previously found that a request for a keyword search where the keywords do not reasonably involve some business of an agency, over the course of nineteen months, was insufficiently specific. *Palochko v. Executive Educ. Academy Charter Sch.*, OOR Dkt. AP 2018-1397, 2018 PA O.O.R.D. LEXIS 1220; *see also LeConte-Spink v. Butler County*, OOR Dkt. AP 2018-1268, 2018 PA O.O.R.D. LEXIS 1018 (finding that a request for a keyword search over the

course of two years was insufficiently specific where the keywords consisted only of four names), *but see Benzing v. City of Pittsburgh*, OOR Dkt. AP 2018-0188, 2018 PA O.O.R.D. LEXIS 383 (finding that a keyword was sufficiently specific where the terms related to well-known matters of agency business and the request identifies senders and recipients).

Here, the Request contains a limited scope: emails sent between three identified individuals and PublicSource, as well as all reports, dossiers, or documents. However, with the possible exception of the compilation of information about PublicSource, the Request does not identify a transaction or activity of the City. While the compilation of information regarding a particular subject could be considered an agency activity, a general reference to the compilation of information about a news outlet does not adequately identify a transaction or activity of the City. The Requester argues that the subject matter of the Request is the communications between PublicSource and the City; however, those parameters define the scope of the Request and do not identify any particular transaction or activity of the City. The Requester also argues that the relationship between the City and PublicSource is the subject matter of the Request; however, an unspecified relationship between individuals or the City as a whole and a corporate entity does not constitute a limiting subject matter. More importantly, the Request is devoid of either the word “relationship,” or any suggestion of a specific relationship. *See McKelvey v. Office of the Attorney Gen.*, 172 A.2d 122, 127 (Pa. Commw. Ct. 2016) (holding that a requester may not modify or expand upon a request on appeal); *Smith Butz, LLC v. Dep’t of Environ. Protection*, 142 A.3d 941, 945 (Pa. Commw. Ct. 2016). Finally, the Request provides a lengthy timeframe of two years and nearly 10 months. In consideration of the broad keywords, lengthy timeframe, and failure to identify any particular agency transaction or activity, the Request fails the three-prong test set forth

by the Commonwealth Court. *See Pa. Dep't of Educ.*, 119 A.3d at 1126. As a result, the Request is insufficiently specific to enable the City to respond.

CONCLUSION

For the foregoing reasons, Requester's appeal is **denied**, and the City 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.² This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: January 26, 2021

/s/ Blake Eilers
Blake Eilers, Esq.
Appeals Officer

Sent to: Matt Stroud (via email only);
Celia Liss, Esq. (via email only)

² *See Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).