



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
ITAI VARDI AND THE ENERGY AND POLICY INSTITUTE, Requester	:	
	:	
	:	Docket No: AP 2021-0495
v.	:	
	:	
LYCOMING COUNTY, Respondent	:	
	:	

INTRODUCTION

Itai Vardi and the Energy and Policy Institute (collectively “Requester”) submitted a request (“Request”) to Lycoming County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking emails. The County partially 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 **denied**, and the County is not required to take further action.

FACTUAL BACKGROUND

On February 26, 2021, the Request was filed, seeking:

Any and all emails to and from (including cc’s and bcc’s) for each of the following:
 1) [C]ommissioner Scott Metzger, 2) Commissioner Tony Mussare, and 3) Commissioner Richard Mirabito, from 10.01.2020 to the date of processing of this request, and which contain any or all of the following 3 terms in the email body and/or subject line and/or the ‘to,’ ‘from,’ ‘CC,’ or ‘BCC’ lines:

“@pasenategop.com, “pahousegop.com”, “Yaw”. Please include all attachments and the entire threads in which responsive emails may be found.

On March 2, 2021, the County denied the Request, arguing that it was insufficiently specific.

On March 11, 2021, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. 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 March 23, 2021, the County submitted a position statement reiterating its grounds for denial.

On March 23, 2021, the Requester submitted additional argument in support of his appeal.

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 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 decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party requested a hearing.

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 asserts 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.” 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.” *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 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.*

The Request does not identify a subject matter, but rather keywords. 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 it 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).

Here, the keyword list is two domain names and “Yaw.” The County asserts that there are over 400 possible senders or recipients for “@pahousegop.com” alone. These broad keywords do not sufficiently limit the context of the Request or provide a subject matter. The scope is too broad and while there is a finite timeframe, the Request essentially requires the County to search all three Commissioners’ emails for a five-month time period. The OOR has previously found that a request for a keyword search where the keywords do not reasonably indicate some business of an agency, over the course of nineteen months, was insufficiently specific. *Palochko v. Executive Education Academy Charter Sch.*, OOR Dkt. AP 2018 1397, 2018 PA O.O.R.D. LEXIS 1220. The OOR has also held that a request for a keyword search over the course of two years is insufficiently specific where the keywords consisted only of four names. *LeConte-Spink v. Butler County*, OOR Dkt. AP 2018-1268, 2018 PA O.O.R.D. LEXIS 1018. However, the OOR has found such keyword lists specific where they relate to well-known matters of agency business and the request identifies senders and recipients. *See Benzing v. City of Pittsburgh*, OOR Dkt. AP 2018-0188, 2018 PA O.O.R.D. LEXIS 383; *Winklosky v. Pa. Office of Admin.*, OOR Dkt. AP 2018-1438, 2018 PA O.O.R.D. LEXIS 1391; *Seybert v. West Chester Univ. Of Pa.*, OOR Dkt. AP 2018-2102. Here, the keywords are not related to well-known matters of agency business such that the broad scope and timeframe would be overcome. The County has demonstrated that the Request is insufficiently specific; however, nothing in this Final Determination prevents the Requester from filing a more specific RTKL request for the same information, and if necessary, filing an appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the County 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 Lycoming 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.¹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: April 7, 2021

/s/ Erin Burlew

ERIN BURLEW, ESQ.
APPEALS OFFICER

Sent to: Itai Vardi (via email only);
Austin White, Esq. (via email only)

¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).