



FINAL DETERMINATION

IN THE MATTER OF

**KEVIN DORSEY,
Requester**

v.

**BUKINGHAM TOWNSHIP,
Respondent**

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Docket No: AP 2021-0455

INTRODUCTION

Kevin Dorsey (“Requester”) submitted a request (“Request”) to Buckingham Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking emails between the Township and a property management company. The Township 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 Township is not required to take any further action.

FACTUAL BACKGROUND

On February 1, 2021, the Request was filed, seeking:

All emails that have been sent to or from Buckingham Township Office[i]als, Clerks, and other staff to or from Nancy Mapes at Continental Property Management. Additional[l]y, all other emails that have been sent to or from other individuals at Conti[n]ental Property Man[a]gement. Nancy Mapes['] email address is [redacted]@cpm975.com. For the additional personnel you can look for any emails that utilize the @cpm975.com domain. All records that are currently in the Township[']s email system and archival system for these individuals [are] requested.

On February 4, 2021, the Township invoked a thirty-day extension of time to respond. *See* 65 P.S. § 67.902. On March 4, 2021, the Township denied the Request, arguing that it is insufficiently specific. *See* 65 P.S. § 67.703.

On the same day, 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 Township to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On March 25, 2021, the Township submitted a position statement reiterating its grounds for denial, along with the affidavit of Dana Cozza, Esq., the Township's Open Records Officer. On the same day, the Requester submitted an argument, and the Township responded.

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. *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

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).

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

The Township 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. 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 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 Township argues that the Request is not sufficiently specific to enable it to identify responsive records. *See* 65 P.S. § 67.703. 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.

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). Similarly, an extremely short timeframe will not rescue an otherwise overbroad request. *Cf. Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259, 1265 (Pa. Commw. 2011) (finding request for all emails sent or received by any school board member in thirty-day period to be sufficiently specific because of short timeframe), *appeal denied*, 54 A.3d 350 (Pa. 2012).

Here, while the Request does identify emails sent between Township employees and Ms. Mapes, it also includes all employees of Continental Property Management. On appeal, the Requester argues that property management is the subject matter; however, while it may be inferred from the fact that the Request sought emails to and from a property management company

that the Request was generally related to property management, the fact remains that the Request does not actually identify a specific transaction or activity to guide a search for responsive records.² Further, the Request does not contain a limited timeframe. While the Requester argues on appeal that he specified that the timeframe was limited by the Township's record retention policy, the Request is devoid of such language. By specifying "all records" in the "Township[]"s email system and archival system," the Request suggests a lengthy timeframe.

The OOR has consistently held that requests seeking communications between multiple parties with no subject matter are insufficiently specific, and the Commonwealth Court has held that only a short timeframe can rescue a request with no subject matter. *See Baxter*, 35 A.3d at 1265; *Calabro v. Southeast Delaware County Sch. Dist.*, OOR Dkt. AP 2018-0180, 2018 PA O.O.R.D. LEXIS 327 (request seeking all emails between school board members for a four-month period is not sufficiently specific). Accordingly, as the Request identifies no transaction or activity and is not limited to a short timeframe, it is insufficiently specific to enable the Township to respond.

CONCLUSION

For the foregoing reasons, Requester's appeal is **denied**, and the Township 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 Bucks 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

² Because a requester may not modify or expand upon a request on appeal, the OOR's review is confined to the Request as originally written. *See McKelvey v. Office of the Attorney Gen.*, 172 A.2d 122, 127 (Pa. Commw. Ct. 2016); *Smith Butz, LLC v. Dep't of Environ. Protection*, 142 A.3d 941, 945 (Pa. Commw. Ct. 2016).

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: May 11, 2021

/s/ Blake Eilers

Blake Eilers, Esq.
Appeals Officer

Sent to: Kevin Dorsey (via email);
Dana Cozza, Esq. (via email);
Lori Wicen (via email)

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