



FINAL DETERMINATION

IN THE MATTER OF

**BETTY SHINGLE,
Requester**

v.

**DONEGAL TOWNSHIP,
Respondent**

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Docket No: AP 2021-2007

INTRODUCTION

Betty Shingle (“Requester”) submitted a request (“Request”) to Donegal Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the “times covered in telephone communication – on the office land line and Heather Martin Wood’s, the office assistant, personal cell phone that is being used to conduct township business.” The Township denied the Request, arguing, among other things, that 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 in part** and **denied in part**, and the Township is required to take additional action as directed.

FACTUAL BACKGROUND

On September 14, 2021, the Request was filed, stating:

I am requesting the TIMES COVERED in telephone communication- on the office land line, and Heather Martin Wood’s, the office assistant, personal cell phone that is being used to conduct township business. The specific communication between office assistant, Heather Martin Wood, and any township supervisor, Iams, Martin,

Fidler, Shingle, Croft, and township solicitor Turturice, and road crew members. I am requesting the TIME spent on the aforementioned telephones for dates May 10, 2021-8-18-2021. Both Heather Martin Wood, the office assistant, and Supervisor Iams stated repeatedly in the publicly recorded township meeting that Heather Martin Wood's (Office Assistant) personal cell phone was being used to conduct township business. I'm requesting TIME spent on these phones for township business between the named individuals, and any related photos taken from Heather Martin Wood's (Office Assistant) cell phone of township computer screens, and/or township office desks- NOT personal information just township business.

On September 20, 2021, the Township denied the Request as insufficiently specific, 65 P.S. § 67.703, as seeking personal, rather than Township, records, and indicated that it does not possess any responsive records.

On September 21, 2021, 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 Township to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

The Township did not make a submission in this matter and has not submitted proof that it notified any third parties about this appeal. On October 4, 2021, the Requester submitted several videos in support of her 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 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. *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)).

1. Part of the request is sufficiently specific

In the present case, the Township did not participate on appeal; however, in its final response, the Township asserted 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.*

Here, the Request identifies the timeframe of May 10, 2021, through August 18, 2021. In part, it seeks photos of Township computer screens and/or Township office desks on Ms. Wood’s cell phone related to Township business. This portion of the Request is sufficiently specific because it provides a discrete group of documents, photos of Township computer screens and

office desks on a specific cell phone, for a specific time period. While there is not a clear subject matter, the very limited scope provides sufficient information for the Township to perform a search. A good faith search may require an Agency Open Records Officer to consult with other agency officials to determine if they possess responsive records. *Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011); *see also In re Silberstein*, 11 A.3d 629, 634 (Pa. Commw. Ct. 2011) (holding that it is “the open-records officer’s duty and responsibility” to both send an inquiry to agency personnel concerning a request and to determine whether to deny access). The OOR is mindful that an agency “shall not be required to create a record which does not currently exist...” 65 P.S. § 67.705. However, agencies have the burden of proving that a record does not exist, *Hodges*, 29 A.3d at 1192, and the Township has not met its burden of proof. The Township is therefore directed to conduct a good faith search for records as set forth in 65 P.S. § 67.901 and provide any records discovered as a result of that search. If no records are located as a result of this search, the Township shall inform the Requester of such in writing.

2. Part of the Request lacks sufficient specificity

The portion of the Request seeking “times covered” or “the time spent on the [personal cell phone and Township landline]” is insufficiently specific. While the Request mentions communications between Ms. Wood and Township supervisors, the Township solicitor and road crew members, it does not actually seek those communications. Rather it seeks the time spent on the phone – the scope of this portion of the Request is too broad as it does not identify any specific document or record requested, such as a call log. The requirement that a requester identify the scope of the documents sought in a request necessitates that a requester identify a discrete group of documents either by type or recipient. *Pittsburgh Post-Gazette*, 119 A.3d at 1125 (*citing Carey*, 61 A.3d at 372).

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted in part** and **denied in part**, and the Township is required to conduct a good faith search for pictures on the cell phone and provide the Requester with a statement describing the search and that no responsive records exist or provide all responsive records discovered as part of that search 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 or petition for review to the Washington County Court of Common Pleas. *See* 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 according to 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.¹ This Final Determination shall be placed on the website at: <https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 18, 2021

/s/ Erin Burlew

Erin Burlew, Esq.
APPEALS OFFICER

Sent to: Betty Shingle (via email only);
Heather Wood (via email only)

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