



# pennsylvania

OFFICE OF OPEN RECORDS

## FINAL DETERMINATION

**IN THE MATTER OF**

**TONY COOPER,  
Requester**

**v.**

**LYCOMING COUNTY,  
Respondent**

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**Docket No: AP 2022-0771**

### **INTRODUCTION**

Tony Cooper (“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 all public records and documents containing the Requester’s name. The County denied the Request, arguing the Request is 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 any further action.

### **FACTUAL BACKGROUND**

On February 28, 2022, the Request was filed, seeking:

All official public records/documents that contain [the Requester’s] name in the purview of [the] County, Old Lycoming [T]ownship and South Williamsport Police [Department].

Scope – All public records/documents that contain my name.

Time frame - Friday 22OCT21 – Present

Search Terms – Tony James Cooper, Tony Cooper, Tony, James, Cooper. Use and/or method for all scopes.

On March 1, 2022 the County invoked a thirty-day extension during which to respond. 65 P.S. § 67.902(b).

On March 29, 2022, the County denied the Request, arguing that the Request is insufficiently specific. 65 P.S. § 67.703.

On that same day, 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 30, 2022, the Requester submitted a position statement listing prior complaints he filed with the County and with state agencies and arguing that the information was submitted “to provide panoramic and make sure that decisions are not being made to withhold information based wrongfully on environmental factors.”

On April 21, 2022 the County submitted a position statement reiterating its grounds for denial.<sup>1</sup>

## 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.”

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<sup>1</sup> The submission period ended on April 18, 2022. Having received no submission from the County, in order to fully develop the record, the OOR extended the submission period until April 21, 2022. See 65 P.S. § 67.1102(b)(3) (“In the absence of a regulation, policy or procedure governing appeals under this chapter, the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute”).

*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)).

In this instance, the County argues the Request is insufficiently specific because the Request “fails to specify any subject matter for the records sought[,]” that the “scope of the [R]equest is too broad[,]” and that, although the Request has a finite timeframe, the timeframe is not narrow enough “because the [R]equest has no identified subject, and includes all documents in possession, custody, and control of the County.”<sup>2</sup>

The Requester argues that “[t]he [R]equest is well defined in scope with a timeframe, and search terms.” The Requester also argues that “[t]here are only two ‘Tony Cooper’s’ in [the] County and the other is [his] [s]on.”

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 at 824). In determining whether a particular request under the RTKL 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).

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<sup>2</sup> The County also argues that “ Old Lycoming Township[] and South Williamsport are separate agencies[,]” and “[t]o the extent the Requester seeks documents in the possession of agencies other than the County, the County is under no responsibility to produce them.” *See* 65 P.S. § 67.705. It is undisputed that Old Lycoming Township and South Williamsport are separate agencies from the County. Nothing in this Final Determination prevents the Requester from filing a RTKL request with those agencies, and if necessary, filing an appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

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. In *Carey*, the Commonwealth Court found a request for unspecified records (“all documents/communications”) related to a specific agency project (“the transfer of Pennsylvania inmates to Michigan”) that included a limiting timeframe was sufficiently specific “to apprise [the agency] of the records sought.” 61 A.3d 367. Second, the scope of the request must identify a discrete group of documents (e.g., type or recipient). *See Pa. Dep’t of Educ.*, 119 A.3d at 1125. Finally, “[t]he timeframe of the request should identify a finite period of time for which 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.*

While responding to a RTKL request must entail accuracy and a good faith effort to provide the records sought, it is not an exact science, and must also encompass reasonable discretion by the agency to identify and provide the requested information, particularly where the request is a broad one. When conducting the three-part balancing test for the instant Request, a review of the Request shows that it does not contain a subject but does contain keywords of various forms of the Requester’s name, contains an extremely broad scope, “[a]ll public records/documents[,]” and contains a finite timeframe, “[October 22, 2021] – Present.” *See Pa. Dep’t of Educ.*, 119 A.3d at 1125.

Using keywords in place of a subject matter is not fatal to a request; however, the keywords provided must serve to limit the universe of potentially responsive records and must help to guide the agency in its search. *See 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”). In *Office of the Governor v. Engelkemier*, the request sought all emails sent and received by the Governor’s Chief of Staff for a five-and-a-half-month period where the requester provided a list of 109 search terms to guide the search, including names of public officials and employees, as well as topics such as “2015-2016 budget,” “Senate Republicans,” “Liquor Privatization,” and “Expenses.” In finding the request sufficiently specific, the Court stated:

A keyword list is not necessarily a substitute for a properly-defined subject matter(s) -- i.e., a particular transaction or activity of an agency. If terms on a list are too general or too broad, a requester runs the risk that the request will be rejected for lack of specificity, if not by the agency then by the OOR or this Court. A clearly-defined subject matter, such as ‘liquor privatization,’ by contrast, has a better chance of passing the specificity test.

48 A.3d 522, 531 (Pa. Commw. Ct 2016). Therefore, the Court found that, although the keyword list was lengthy and broad, the fact that the request had a narrow timeframe and scope, along with the Office’s response stating that it was producing records, meant that the request was sufficiently specific. *Id.* at 532.

In the instant Request, the keywords used are “Tony James Cooper, Tony Cooper, Tony, James, [and] Cooper.” The County argues that “[a] search for records responsive to the request would require the County to search for and examine every record created, received, or retained by the County over the course of the past six months, without any indication of the subject matter of the records.” In support of its position the County cites *Mollick v. Twp. of Worcester*, where the Commonwealth Court stated that “it would place an unreasonable burden on an agency to examine all its emails for an extended time period without knowing, with sufficient specificity, [to] what [County] business or activity the request is related.” 32 A.3d 859 (Pa. Commw. Ct. 2011). The

County also argues that, “[h]ere, there is no context for which the search can be narrowed – the [R]equest is simply for “all records.” See *Montgomery Cty. v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012) (subject matter must be provided so that there is context within which the search may be narrowed); see also *Vardi v. Lycoming County*, OOR Dkt. AP 2021-0495, 2021 PA O.O.R.D. LEXIS 533. Finally, the County argues that “[t]here is no way for the County to narrow the scope of the records – [the Request] would require the County to search for and examine every record created, received, or retained by the County over the course of the past six months without any indication from the requester as to what he is searching for.”

While a request that requires an agency to review many documents does not, itself, render a request insufficiently specific,<sup>3</sup> the OOR finds the County’s argument that the search terms in the instant Request do not provide enough context to narrow the search persuasive because the keywords do not relate to a transaction or a business activity of the County. See *Mollick*, 32 A.3d 859.

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. See *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. Additionally, in *Vardi*, which is relied on by the County, the OOR

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<sup>3</sup> See *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 [to] respond in accordance with the RTKL”); *Falcetta v. Grove City Area Sch. Dist.*, OOR Dkt. AP 2018-0908, 2018 PA O.O.R.D. LEXIS 908.

determined that a request for a keyword search over the course of approximately five months is insufficiently specific where the keywords consisted of two domain names and one name. OOR Dkt. AP 2021-0495, 2021 PA O.O.R.D. LEXIS 533. However, the OOR has found 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 County business and the scope of the Request is extremely broad. The Request seeks “[a]ll official public records/documents that contain [the Requester’s] name[,]” without the limiting parameters of either the type of record sought or the sender and/or recipient of the records. Without a subject matter, keywords that are related to well-known matters of County business, or a narrow scope to help limit the vast universe of potentially responsive records, the Request’s six-month timeframe is not short enough to render the Request specific enough to provide the County with sufficient context to determine which records are potentially responsive to the Request. *See Pa. Dep’t of Educ.*, 119 A.3d at 1125; *see also Pa. Dep’t of Env’tl. Prot. v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012). Accordingly, the County 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.<sup>4</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: May 4, 2022**

*/s/ Erika Similo*

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APPEALS OFFICER  
ERIKA SIMILO, ESQ.

Sent to: Tony Cooper (via email only);  
Stephen C. Hartley, Esq. (via email only);  
Matthew A. McDermott (via email only)

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<sup>4</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).