



FINAL DETERMINATION

IN THE MATTER OF

**ROBERT RICEDORF,
Requester**

v.

**WEST DONEGAL TOWNSHIP,
Respondent**

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Docket No: AP 2022-0711

INTRODUCTION

Robert Ricedorf (the “Requester”) submitted a request (“Request”) to West Donegal Township (“Township”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records of the West Donegal Township Fire and EMS Commission. The Township denied the Request, arguing the request seeks answers to questions and 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 Township is not required to take any further action.

FACTUAL BACKGROUND

On March 3, 2022,¹ the Request was filed, seeking:²

As residents and business owners of West Donegal and Mount Joy Township, we are requesting to view, in-person, the records of the West Donegal Township Fire and EMS Commission. We are also requesting that representatives of the Commission be present, so that we can interact face-to-face and are better able to gain a thorough understanding of the records.

¹ The Request was received by the Township on March 4, 2022.

² The Request was filed in the form of a letter.

The definition of a Commission is an authority that performs acts and duties in a prescribe manner on the behalf of its citizens. The seeking of the records is focused on, but not limited to, the Commission's formal written charter, historical and active chairperson and members, members background knowledge, purpose, objectives, process definitions, deliverables, agendas, meeting minutes and actions.

In parallel with seeking the Commission's defined stated records, the residents and business owners of West Donegal and Mount Joy Township are particularly interested in seeking the records from the Commission regarding their internal interactions, functions, acts and managerial system to release capital money to the Rheems Fire Department.

...

The residents and business owners...request that the records that are being solicited for in-person viewing and face-to-face interaction with the West Donegal Township Fire and EMS Commission take place during a weekday at seven o'clock pm so all citizens that want to participate can attend to view and hear the documentary information.

It is our understanding that the West Donegal Township Manager John Yoder and West Donegal Township Supervisor Ralph Horne are the only Township Officials on the Township's Fire and EMS Commission. Therefore, we expect that the face-to-face disclosure of the records and the understanding be unveiled by them.

On March 10, 2022, the Township denied the Request, arguing that the Request does not seek records, but rather asks questions and is insufficiently specific. *See* 65 P.S. § 67.703.

On March 22, 2022, the Requester appealed to the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure.³ 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. 65 P.S. § 67.1101(c).

On April 12, 2022, the Township submitted a position statement reiterating its grounds for denial. In support of its position, the Township submitted the statement made under penalty of perjury of John Yoder, III, Manager and Open Records Officer of the Township.

³ The Requester provided the OOR with additional time to issue a final determination in this matter. *See* 65 P.S. § 67.1101(b)(1).

On April 18, 2022, the Requester submitted a position statement raising his concerns with the Township's submission calling the submission "very alarming, shocking, disturbing, expected, manipulative, and most important an embarrassment."

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)). Likewise, “[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

The Township asserts that, to the extent that the Request could be considered a request for records, it 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 seeks “the records of the West Donegal Township Fire and EMS Commission” and “the records is focused on, but not limited to, the Commission’s formal written charter, historical and active chairperson and members, members background knowledge, purpose, objectives, process definitions, deliverables, agendas, meeting minutes and actions.” In *Pa. State Police v Office of Open Records*, the Commonwealth Court held that the portion of a request seeking “any and all records, files or communications” related to vehicle stops, searches, and seizures was insufficiently specific under Section 703 of the RTKL, and that only the portion of the request seeking a particular type of document - - manuals related to vehicle stops, searches, and seizures - - was sufficiently specific. 995 A.2d 515, 517 (Pa. Commw. Ct. 2010). Much like *Pa. State Police*, here, the portion of the Request seeking records is insufficiently specific as it would require the Township to make a judgment call as to which records the Request is seeking. See *Pa. Dep’t of Env’tl. Prot. v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012) (concluding a request seeking “a clearly-defined universe of documents” spanning almost four years was sufficiently specific because there [were] no judgments to be as to whether the documents [were] “related” to the request); cf. *Campbell v. Bellefonte Area School District*, OOR Dkt. AP 2019-

0205, 2019 PA O.O.R.D. LEXIS 386 (holding that a request for emails related to calendar booking activity of an individual for a work-related matter is insufficiently specific as it requires an agency judgment call to determine what emails may relate to the identified activities).

Here, the Request seeks all records of the West Donegal Township Fire and EMS Commission. The Request does indicate a specific a timeframe and has an extremely broad scope with no limiting factors nor does the Request provide a subject matter or keywords to help limit a search. In sum, a Request that seeks “all records” and does not provide a subject matter or keywords to guide the Township in its search, is insufficiently specific to enable the Township to ascertain which records are being requested. *See Winklosky v. Pa. Office of Admin.*, OOR Dkt. AP 2018-1438, 2018 PA O.O.R.D. LEXIS 1391 (“Seeking all records related to a topic or topic 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”). However, the Requester is not prohibited from filing a new RTKL request that provides additional details concerning records that are sought.⁴

CONCLUSION

For the foregoing reasons, the 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 Lancaster 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

⁴ The Township also submitted evidence that, to the extent records can be identified, many of the responsive records do not exist. *See Yoder* attestation at ¶¶ 11 and 13-17.

OOR is not a proper party to any appeal and should not be named as a party.⁵ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: 24 May 2022

/s/ Lyle Hartranft
Lyle Hartranft, Esq.
Appeals Officer

Sent to: Robert Ricedorf (via email only);
John Yoder, III, AORO (via email only);
Josele Cleary, Esq. (via email only)

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