IN THE MATTER OF  
KRAEMER, MANES & ASSOCIATES, LLC, Requester  
v.  
UPPER DARBY SCHOOL DISTRICT, Respondent  

INTRODUCTION  
Kraemer, Manes & Associates, LLC (“Requester”), a law firm, submitted a request (“Request”) to the Upper Darby School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 et seq., seeking records relating to certain contracts. The District denied the Request, arguing 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 denied, and the District is not required to take any further action.

FACTUAL BACKGROUND  
On August 31, 2017, the Request was filed, seeking certified copies of “all records relating to any and all contracts between Squid Wire and Upper Darby School District, as well as any and all bond records for the project.” On October 11, 2017, after taking a thirty-day extension, 65 P.S.
§ 67.902, the District responded, denying the Request as insufficiently specific. See 65 P.S. § 67.703.

On October 30, 2017, the Requester appealed to the OOR, arguing that the Request was sufficiently specific. The OOR invited both parties to supplement the record and directed the District to notify any third parties of their ability to participate in this appeal. See 65 P.S. § 67.1101(c).

On November 10, 2017, the District responded, arguing that the Requester had attempted to alter the Request on appeal and reiterating their argument that the Request is insufficiently specific.

**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

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1 The District invoked the extension on September 11, 2017; however, it was closed on September 1, 2017 and September 5, 2017. Therefore, the District timely invoked the extension within five business days of the Request’s receipt. See 65 P.S. § 67.902(b)(1).

2 The Requester also granted the OOR an additional thirty days to adjudicate the appeal. See 65 P.S. § 67.1101(b)(1).
to resolve an appeal. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* The decision to hold a hearing is discretionary and non-appealable. *Id.; Giurintano v. Pa. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, neither party requested a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate the matter.

The District is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in 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. The Requester may not alter the Request on appeal

On appeal, the Requester submitted a position statement which reads, in relevant part,

To our knowledge, [Squid Wire] only has one general contract with Upper Darby. However, for more specificity, the contract we are requesting is related to the work [Squid Wire] did for Upper Darby from early 2017 throughout the summer, continuing until now.... We request the group of documents relating to [Squid Wire]’s general contract for work done with regards to IT hardware and software in 2017.

However, the Request as submitted does not include these details. A requester may not modify, explain or expand a request on appeal. See Pa. State Police v. Office of Open Records, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010); Staley v. Pittsburgh Water & Sewer Auth., OOR Dkt. AP 2010-0275, 2010 PA O.O.R.D. LEXIS 256 (“A requester may not modify the original request as the denial, if any, is premised upon the original request as written.”) Therefore, the OOR’s review on appeal is confined to the Request as written. See Brown v. Pa. Turnpike Comm’n, OOR Dkt. AP 2011-1287, 2011 PA O.O.R.D. LEXIS 998.

2. The Request is insufficiently specific

On appeal, the District argues 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.” 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 813). 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). Finally, “[t]he fact that a request is burdensome does not deem it overbroad, although it may be considered as a factor in such a determination.” Pa. Dep’t of Env’tl. Prot. v. Legere, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012).

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. Finally, “[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 “all records relating to any and all contracts between Squid Wire and Upper Darby School District, as well as any and all bond records for the project.” There is a general subject matter, i.e. contracts between the District and Squid Wire. The Request does not identify a finite period of time, although it may be inferred from the subject matter of the Request that it is seeking documents from around the time that the District decided to contract with Squid Wire to the present. See Montgomery County v. Iverson, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012) (“The specificity of a request must be construed in the request’s context, rather than envisioning everything the request might conceivably encompass”); see also Corbett v. City of Phila. Dep’t of Licenses & Inspections, OOR Dkt. AP 2016-0664, 2016 PA O.O.R.D. LEXIS 737. However, the Request does not seek a discrete group of documents. In Pa. State Police v. Office of Open Records, the Commonwealth Court held that a request for “any and all records, files or communications” was insufficiently specific, while a portion of the request seeking “manuals” was

The District argues that the Request is insufficiently specific because it does not identify a specific contract. Rather, the Request seeks records relating to all contracts between the District and Squid Wire. As such, the Request naturally requires the District to review files and make judgements to determine whether any given record is “relating” to any contract it possesses with Squid Wire. See Mollick v. Twp. of Worcester, 32 A.3d 859 (Pa. Commw. Ct. 2011); Pa. Dep’t of Educ., 119 A.3d at 1125 (contrasting cases where there are no judgments to be made regarding the responsiveness of a record with more nebulous requests); see also Pa. Dep’t of Envtl. Prot. v. Legere, 50 A.3d 260, 264-65 (Pa. Commw. Ct. 2012) (a request seeking a large but “clearly defined universe” of documents is sufficiently specific). Therefore, because the Request seeks an undefined universe of records “related to” contracts, the Request is insufficiently specific. However, nothing in this Final Determination prohibits the Requester from submitting a more-detailed request, such as that which was outlined on appeal, to the District.3

CONCLUSION

For the foregoing reasons, Requester’s appeal is denied, and the District 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 Delaware County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal.

3 Likewise, nothing prohibits the District from releasing responsive records to the Requester. See 65 P.S. § 67.506.
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 proper party to any appeal and should not be named as a party.⁴ This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: December 29, 2017

/s/ Jordan Davis

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APPEALS OFFICER
JORDAN C. DAVIS

Sent to: Prabhu Narahari, Esq., (via e-mail only);
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