



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
AMANDA ST. HILAIRE and ABC27 NEWS,	:
Requester	:
	:
v.	: Docket No: AP 2017-0439
	:
WEST SHORE REGIONAL POLICE	:
DEPARTMENT,	:
Respondent	:

INTRODUCTION

Amanda St. Hilaire, a reporter for *ABC27 News* (collectively, the “Requester”), submitted a request (“Request”) to the West Shore Regional Police Department (“Department”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking records related to towing services and the K9 unit. The Department denied the Request claiming, among other things, that 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 **granted in part** and **denied in part**, and the Department is required to take additional action as directed.

FACTUAL BACKGROUND

On January 6, 2017, the Request was filed seeking, among other items:

1. All records showing which towing companies were contacted for each crash in West Shore Regional Police jurisdiction between 2010 and present.

2. All emails to and from West Shore Regional Police about or related to towing services, including but not limited to emails from the public about towing services, between 2010 and present.

4. All emails to and from West Shore Regional Police about the K9 unit, including but not limited to funding of and preparations for the unit, in 2015 and 2016.¹

On January 12, 2017, the Department invoked a thirty day extension to respond. *See* 65 P.S. § 67.902. On February 10, 2017, the Department denied the Request, claiming that Items 1-2 and 4 are insufficiently specific to permit the Department to ascertain what records are being requested. *See* 65 P.S. § 67.703.

On March 6, 2017, the Requester appealed to the OOR, challenging only the denial of Items 1, 2 and 4 of the Request, and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On March 16, 2017, the Department submitted a position statement reiterating its grounds for denial. In support of its position, the Department submitted the affidavits of Michael Hope (“Chief Hope”), the Department’s Chief of Police and Open Records Officer, and Jason Statler, Esq., the Department’s solicitor. The Requester did not submit any additional information on 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

¹ On appeal, the Requester does not challenge the sufficiency of the Department’s responses to Items 3 and 5-7 of the Request. As a result, the Requester has waived any objections regarding the sufficiency of the responsive records provided for those Items. *See Pa. Dep’t of Corr. v. Office of Open Records*, 18 A.3d 429 (Pa. Commw. Ct. 2011).

“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 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, the parties did not request a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate the matter.

The Department 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. Portions of the Request are sufficiently specific

The Department argues that the Request is unclear as the Requester has failed to identify the transaction or activity to which the requested records pertain. The Department contends that “contacted” could mean utilized or “merely contacted” for some other purpose, such as informing the towing service about an incident as a precautionary measure. The Department also argues that the term “crash” could encompass a wide variety of crashes, such as “motor vehicle...,truck..., bus..., bicycle..., [and] plane crashes....”

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.” *Id.* 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). Specifically, the OOR examines to what extent the request sets forth (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 1124-25.

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 to be 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.*

In support of the Department’s position, Chief Hope attests, in pertinent part, as follows:

4. Upon receipt of the request, I conducted a thorough examination of the files in possession, custody, and control of the [Department] for records responsive to the [R]equest underlying this appeal.

6. I have been unable to discern the scope of documents requested as “about or related to towing services” and “about the K9 unit” without using my personal judgment...

a. Item 1 of the Request is sufficiently specific

Item 1 of the Request seeks records regarding towing contractors over a period of seven (7) years; however, a lengthy timeframe does not necessarily render a request insufficiently specific. The timeframe must be viewed in the context of the entire request and if the request provides a specific subject matter and scope to enable an agency to conduct a search. *Compare Pa. Dep't of Env'tl. Prot. v. Legere*, 50 A.3d 260, 264-65 (Pa. Commw. Ct. 2012) (concluding request seeking “a clearly defined universe of documents” spanning almost four years was sufficiently specific), with *Mollick v. Twp. of Worcester*, 32 A.3d 859 (Pa. Commw. Ct. 2011) (concluding request seeking all emails between township supervisors regarding any township business or activity for a period of one-to-five years was insufficiently specific).

Although the scope of Item 1 is broad, as it asks for “all records” without identifying a discrete type of record, the Request as a whole provides a narrow search context to sufficiently apprise the Department as to what records are being sought. While the Department contends that there is more than one reason why a towing service would be contacted or utilized, a review of Item 1 as a whole indicates that a narrower universe of documents is being sought. Item 1 identifies the Department as the possessor of the records sought and the subjects are limited to “which towing companies” were contacted for “each crash” in the Department’s jurisdiction, during the specified timeframe. As Item 1 limits its inquiry to scenarios involving crashes during the stated seven year timeframe, the context of the Request sufficiently describes the search for records containing names of towing companies contacted in the event of a crash. The Commonwealth Court has noted that “the specificity of a request must be construed in the request’s context, rather than envisioning everything the request might conceivably encompass.” *Montgomery County v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012); *see also Pass v. Capital Area Transit*, OOR Dkt. AP 2014-0173, 2014 PA O.O.R.D. LEXIS 247. Accordingly,

Item 1 of the Request is sufficiently specific to ascertain which records are being requested. *See Legere*, 50 A.3d at 264-265 (holding that, because a request delineated “a clearly-defined universe of documents[,]” there was no need to make a judgment call as to whether any records were related to the request).

b. Item 2 and the Request is insufficiently specific

The Department argues the Item 2 of the Request does not provide a clearly defined universe of documents, so the Department is required to review records and make judgments as to whether they are “about” or “relate” to the broad subject area of “towing services.”

Regarding Item 2, the Requester seeks emails to and from the Department “about or related to towing services[,]” which should “include[e] but not [be] limited to emails to and from the public,” for a seven year timeframe. Seeking records related to a topic or topics 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. *See Office of the Governor v. Engelkemier*, 148 A.3d 522, 532-33 (Pa. Commw. Ct. 2016) (holding that “although [the] keyword list is lengthy and in some respects broad, in consideration of the narrow timeframe and scope of the [request] ... [the] request, on balance, meets the specificity requirement...”); *cf. Iverson*, 50 A.3d 281 (finding that a request with no timeframe, a broad scope, and some “incredibly broad” keywords was insufficiently specific).

As compared to Item 1, Item 2 requests a discrete group of documents (emails) for the same time period, but does not provide a sufficiently specific subject matter to narrow the scope of the search in that it seeks those communications that are “about” or “related to” towing services. Further, a review of the language of the Item 2 reveals that it expressly broadens the scope of records requested by seeking emails that include those from the public about or related

to towing services, in addition to emails to and from entities that may ordinarily communicate with the Department in the course of a day.

Here, Item 2 has not “limited the subject matter ... in any meaningful way,” and the lengthy timeframe “is not short enough to [overcome the] failure to identify a [narrow] subject matter.” *Pa. Dep’t of Educ.*, 119 A.3d at 1126. While a similar request with a much shorter timeframe may be specific, *see Engelkemier*, 148 A.3d at 532-33, without specifying a particular transaction or activity of the agency, the Department is not able to reasonably focus its search of the email communications. *See Pa. Dep’t of Educ.*, *supra*; *see also City of Pittsburgh v. Intergovernmental Cooperation Auth. for Cities of the Second Class*, OOR Dkt. AP 2015-1872, 2015 PA O.O.R.D. LEXIS 1855 (finding that a request for certain specific types of records over a ten (10) year period regarding very broad subject matters is insufficiently specific). Accordingly, Item 2 of the Request is insufficiently specific.

c. Item 4 of the Request is sufficiently specific in part

The Department argues the Item 4 of the Request does not provide a clearly defined universe of documents, therefore, requiring it to review records and make judgments as to whether they are “about” the broad subject area of the “K9 Unit.” The Department also asserts that the scope of Item 4 is overly broad because the K9 Unit performs functions unique to the unit and, generally, as part of the Department.

Item 4 seeks all emails “about” the K9 unit “including but not limited to funding and preparation for the unit” for 2015 and 2016. Although the term “about” is broad and may require judgment by the Department to determine what transaction or activity of the K9 Unit to which the records relate, to the extent that that the Request seeks emails regarding the term “funding,” the context narrows the scope of the search for records responsive to Item 4.

The term “funding” is common term, the meaning of which would be understood by local government officials, such as a police department, given its budgeting responsibilities. Accordingly, viewing this portion of Item 4, within the context of language of the Item, the scope is sufficiently narrowed to apprise the Department of what records are sought. *See Pa. Dep’t of Env’tl. Prot. v. Legere*, 50 A.3d 260, 264-265 (Pa. Commw. Ct. 2012) (holding that, because a request delineated “a clearly-defined universe of documents[,]” there was no need to make a judgment call as to whether any records were related to the request); *see also Pa. State Police v. Office of Open Records*, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010) (concluding a request for “any and all records, files or communications” related to vehicle stops, searches, and seizures was insufficiently specific, but that the portion of the request seeking a particular type of document--manuals related to vehicle stops, searches and seizures --was sufficiently specific). As a result, this portion of Item 4 of the Request is sufficiently limited to allow the Department to identify responsive records.

However, to the extent that Item 4 seeks emails “about” the K9 Unit “including but not limited to...preparations for the unit,” the Request is insufficiently specific. “Preparation” is defined as: the action or process of making something ready for use or service or of getting ready for some occasion, test, or duty. *Merriam-Webster’s Collegiate Dictionary* 980 (11th ed. 2012). Although, the Request is time limited to two (2) years and by type of record (emails), the search phrase “preparations for” is broad and, when coupled with “including but not limited to,” does not sufficiently apprise the Department of what records are being sought in this portion of the Item 4. The search for “preparation” activities or transactions of the K9 unit would require the Department about what types of records the Requester is seeking. The types of “preparations for” the formation of a K9 Unit could encompass a wide variety of transactions or activities. In

addition, viewing the Request in light of the definition of “preparation” along with the additional language of “including but not limited to,” further broadens the scope of this portion of the Request such that context does not provide a means by which the Department can narrow its search. Although the Requester seeks records for a shorter timeframe than in Items 1 and 2, “a[]... short timeframe will not rescue an otherwise overbroad request, except for in the most extraordinary circumstances.” *See Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259, 1265 (Pa. Commw. Ct. 2012) (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). Because it does not enable the Department to limit its search for records in any meaningful way, this portion of Item 4 is insufficiently specific. *Pa. Dep’t of Educ.*, 119 A.3d at 1126.

2. The Department has demonstrated that crash reports are confidential under the Motor Vehicle Code

Relying on Chief Hope’s affidavit, the Department contends that the information requested in Item 1 is contained in vehicle crash reports, which have been determined to be exempt under the RTKL. *See St. Hilaire and ABC27 News v. West Shore Regional Police Dep’t*, OOR Dkt. AP 2016-1520, 2016 PA O.O.R.D. LEXIS 1357. Chief Hope attests that “the Borough does not require officers to detail any towing information other than on crash reports provided to [the Pennsylvania Department of Transportation (“PennDOT”)].”

In *St. Hilaire*, the Requester sought “crash reports showing vehicle towing information.” The OOR recognized that Section 3751 of the Motor Vehicle Code requires that all written accident reports be forwarded to PennDOT and designates the circumstances and the individuals to whom a record may be released. *See* 75 Pa.C.S. § 3751. Further, the agency demonstrated that 67 Pa. Code § 95.2(e)(3) expressly limits the persons to whom agencies are authorized to release

the records and serves as a “regulatory exemption protecting” accident reports held by PennDOT and local agencies. *St. Hilaire v. West Shore Regional Police Dep’t, supra.*; see also *Tennis Towing v. State College Police Dep’t*, OOR Dkt. AP 2016-0835, 2016 PA O.O.R.D. LEXIS 849. Therefore, to the extent that the records responsive to Item 1 constitute crash reports created by the Department’s police officers, the reports are exempt from disclosure.

CONCLUSION

For the foregoing reasons, Requester’s appeal is **granted in part** and **denied in part**, and the Department is required to provide the Requester with the records responsive to Item 1 of the Request, to the extent they are not crash reports, and records responsive to the portion of Item 4 found to be sufficiently specific above, 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 to the Cumberland 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 proper party to any appeal and should not be named as a party.² This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: April 11, 2017

/s/ Kelly C. Isenberg

APPEALS OFFICER
KELLY C. ISENBERG, ESQ.

² See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

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