



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

VALERIE SHULTZ,
Requester

v.

PENNSYLVANIA STATE POLICE,
Respondent

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Docket No: AP 2023-1774

FACTUAL BACKGROUND

On June 23, 2023, Valerie Shultz (“Requester”) submitted a request (“Request”) to the Pennsylvania State Police (“PSP”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “[PSP] [E]mbreeville incidents for 2022-2023 (Jan 2018 – June 2023) and associated response time for Honey Brook Township.”

On July 31, 2023, following a thirty-day extension,¹ 65 P.S. § 67.902(b), the PSP denied the Request, arguing that it is insufficiently specific, 65 P.S. § 67.703.

On August 1, 2023, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.² The OOR invited both parties to

¹ On June 30, 2023, the PSP invoked a thirty-day extension. 65 P.S. § 67.902(b).

² The Requester granted the OOR a thirty-day extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

supplement the record and directed the PSP to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On August 22, 2023, the PSP submitted a position statement reiterating its grounds for denial.

LEGAL ANALYSIS

The PSP is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the PSP is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 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 Request cannot be modified on appeal

As a threshold matter, the Request cannot be modified on appeal. On the appeal form the Requester states that the Request seeks “the number of general calls for service for Honey Brook Township that the Embreeville police have responded to and [the] response times[,]” and that the Requester “would like to see the total number of dispatched calls from the Embreeville police station for the last [five] years and categorized according to the type of crime with associated response time statistics.” However, the plain language of the Request states that it seeks “[PSP] [E]mbreeville incidents for 2022-2023 (Jan 2018 – June 2023) and associated response time for Honey Brook Township.” The OOR has repeatedly held that a requester may not modify or expand

a request on appeal, and that the OOR's review on appeal is confined to the Request as written. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010); *Michak v. Pa. Dep't of Pub. Welfare*, 56 A.3d 925 (Pa. Commw. Ct. 2012) (holding that "where a requestor requests a specific type of record...the requestor may not, on appeal argue that an agency must instead disclose a different record in response to the request"). Accordingly, the OOR's review on appeal is confined to the instant Request as written, and any modification of the Request on appeal will not be considered.

2. The Request is insufficiently specific

The PSP argues that the Request is insufficiently specific because "the Request does not provide a subject matter, scope, or timeframe." 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. 201., 2012 Pa. Commw. Unpub. LEXIS 38 at *16 (citing *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff'd*, 75 A.3d 453 (Pa. 2013)). 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).

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.*

In this instance, the Request contains a very broad subject matter—PSP Embreeville incidents and associated response times for Honey Brook Township—and contains a lengthy but finite timeframe of January 2018 – June 2023, but it does not have a defined scope because the Request does not identify a discrete group of documents sought. *Id.*

A request’s failure to contain a defined scope is not necessarily fatal to its specificity; however, the request still must provide limiting context in its subject matter and in its timeframe to aid the agency in its search for responsive records and in narrowing the universe of potentially responsive records yielded by the search. *See Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259, 1265 (Pa. Commw. Ct. 2012), *appeal denied*, 54 A.3d 350 (Pa. 2012). Here, the Request seeks, essentially, documentation relating to every incident the PSP has responded to in Embreeville, as well as all associated response times for Honey Brook Township for the for nearly five years, which could encompass a wide range of documents. The Request, as written, seeks a vast universe of responsive records but does not provide the PSP with guidance to search for those records nor does the Request provide any limiting factors to aid the PSP in narrowing that universe of potentially responsive records. Thus, the PSP would be required to make judgements as to what documents are, in fact, responsive to the Request. *See Baxter*, 35 A.3d 1259; *Pa. Dep’t of Envtl.*

Prot. v. Legere, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012) (a request must provide an agency with the necessary context to determine which records a requester is seeking). Additionally, the Request's lengthy—and potentially conflicting—timeframe of approximately five years is not short enough to meaningfully aid the PSP in its search. Accordingly, based on the totality of the record, the Request is insufficiently specific to enable the PSP to ascertain precisely what additional records are sought. 65 P.S. § 67.703. However, nothing in this Final Determination prevents the Requester from filing a new, more detailed request with the PSP.

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the PSP 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 or petition for review to the Commonwealth Court. 65 P.S. § 67.1301(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 court rules as per Section 1303 of the RTKL, 65 P.S. § 67.1303, but as the quasi-judicial tribunal that adjudicated this matter, the OOR is not a proper party to any appeal and should not be named as a party.³ All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 29, 2023

/s/ Erika Similo

APPEALS OFFICER
ERIKA SIMILO

Sent via OOR portal to: Valerie Shultz, Nolan B. Meeks, Esq., William Rozier

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