



3. [E]mployees of the law firm of Freeh, Sporkin & Sullivan, LLP
4. [E]mployees of the law firm of Pepper Hamilton, LLP
5. Louis Freeh....
6. Omar McNeil....
7. Tom Cloud....
8. Greg Paw....
9. [A]ny other individual whose email address contains the freehgroup.com domain (i.e. somename@freehgroup.com).

On April 1, 2013, the PSP invoked a thirty (30) day extension of time to respond pursuant to 65 P.S. § 67.902. On May 1, 2013, the PSP denied the Request, arguing that it was insufficiently specific because it did not include a subject matter, and responsive records “could encompass multiple records involving numerous subjects.” Regardless, the PSP noted that it construed the Request “as specific to the Jerry Sandusky investigation” and identified one responsive record – PSP Investigation Report G07-1146135 – which it argued was exempt from disclosure under the RTKL.

On May 17, 2013, the Requester appealed to the OOR, challenging only the PSP’s argument that the Request is insufficiently specific.<sup>1</sup> Specifically, the Requester argues that the Request is not insufficiently specific merely because it is “burdensome” to the PSP. The OOR invited both parties to supplement the record. On May 29, 2013, PSP provided a position statement, along with the affidavit of William Rozier, Open Records Officer for the PSP.

The Requester also provided a submission, which was received by the OOR one (1) minute after the record closed in this matter. The OOR finds that this submission lacks probative value and as such, will not accept it into the record. *See* 65 P.S. § 67.1102(a)(2).

## **LEGAL ANALYSIS**

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<sup>1</sup> The Requester notes that “[t]his appeal does not challenge the PSP’s determination that the investigative report ... is exempt from disclosure.”

“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. OOR*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), appeal granted 15 A.3d 427 (Pa. 2011).

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 or not hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Dep’t of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, neither party requested a hearing and the OOR has the necessary, requisite information and evidence before it to properly adjudicate the matter.

The PSP is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in possession of a Commonwealth 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 clearly 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). 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 *Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The PSP argues that the Request is insufficiently specific because there is no subject matter. 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. Jan. 12, 2012) (citing *Bowling*, *supra*). The determination of whether a request is sufficiently specific is made on a case-by-case basis and “[i]f the OOR can determine what the Requester sought, it will find the request to be sufficiently specific.” *See Lauff v. Fort Cherry School District*, OOR Dkt. AP 2010-0128, 2010 PA O.O.R.D. LEXIS 180.

The Commonwealth Court has provided some guidance as to the necessity of providing a subject matter. In *Mollick v. Township of Worcester*, the Court held that requests for “any and/or all e-mails between any and/or all of the Supervisors regarding any Township business and/or

activities” over a period of 1-5 years were insufficiently specific under Section 703 of the RTKL because they did not provide a subject matter. 32 A.3d 859 (Pa. Commw. Ct. 2011). The Court reasoned that “it would place an unreasonable burden on an agency to examine all its emails for an extended period without knowing, with sufficient specificity, what [agency] business or activity the request is related [to].” *Id.* However, in *Easton Area School District v. Baxter*, the Court found that a request for “[a]ll emails sent and received between Oct. 1 and Oct. 31” from eleven listed e-mail addresses was sufficiently specific. The Court distinguished *Mollick*, reasoning:

Just as in *Mollick*, the request here is limited in terms of the type of record requested, the timeframe and the number of email addresses. Unlike in *Mollick*, though, the request here was not for years but for 30 days and the request was obviously sufficiently specific because the School District has already identified potential records included within the request. Because, unlike in *Mollick*, the request here does not constitute an unreasonable burden, it is sufficiently specific to comply with Section 703 of the RTKL.

35 A.3d 1259, 1265 (Pa. Commw. Ct. 2012).

Pursuant to *Baxter*, the OOR has found requests for records with a timeframe of less than one and a half (1½) years and a small, finite number of senders and recipients to be sufficiently specific, even though no specific subject matter was provided. *See Buffer v. Luzerne County*, OOR Dkt. AP 2012-0938, 2012 PA O.O.R.D. LEXIS 981; *see also Wereschagin v. Pennsylvania Department of Community and Economic Development*, OOR Dkt. AP 2012-0231, 2012 PA O.O.R.D. LEXIS 514. The present appeal is distinguishable from those cases, however. Here, unlike *Baxter*, portions of the Request involve undefined groups of people, *i.e.* employees of various firms. In order to respond to these items of the Request, the PSP would have to determine whether an individual was an employee of one of these firms. Then, the PSP would have to search its records “for an extended period without knowing, with sufficient specificity,

what [agency] business or activity the request is related [to].” *Mollick, supra*. Pursuant to *Mollick*, Items 1, 2, 3, 4, and 9 of the Request are insufficiently specific in the absence of a subject matter to help guide the PSP’s search for responsive records. *See Knick v. Lakeland School District*, OOR Dkt. AP 2012-1821 (“[A]lthough the lack of a subject matter is not inherently fatal to a Request, *see Baxter, supra*, this factor, in conjunction with a somewhat-lengthy timeframe and an nebulous group of senders and/or recipients leads the OOR to hold, based on the totality of the circumstances, that the Request is insufficiently specific.”). Therefore, the OOR finds that PSP properly denied Items 1, 2, 3, 4, and 9 of the Request.

However, the OOR finds that Items 5, 6, 7, and 8 of the Request are sufficiently specific. These Items of the Request identify distinct senders and recipients: employees of the PSP and four named individuals. As such, the limited timeframe of the Request, coupled with the finite number of senders and recipients, make these Items specific enough to enable the PSP to ascertain which records are being requested, even in the absence of a subject matter. *See Buffer, supra; Wereschagin, supra*. Since the PSP does not raise any exemptions as to these records, the OOR must order disclosure.

The OOR acknowledges that it is often a struggle to determine whether a request for records is sufficiently specific. The inquiry is fact specific and there is no “bright-line” test to guide agencies in making their determination. However, agencies must remember the intent of the RTKL: “to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees, supra*.

## CONCLUSION

For the foregoing reasons, Requester’s appeal is **granted in part** and **denied in part** and PSP is required to provide all responsive records for Items 5-8 of the Request to the Requester within thirty (30) days. This Final Determination is binding on all parties. Within thirty (30)

days of the mailing date of this Final Determination, any party may appeal 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. This Final Determination shall be placed on the OOR website at: <http://openrecords.state.pa.us>.

**FINAL DETERMINATION ISSUED AND MAILED: July 1, 2013**



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APPEALS OFFICER  
KYLE APPLGATE, ESQ.

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