



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

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| IN THE MATTER OF | : |
| | : |
| MARK SEIBERLING AND KLEINBARD | : |
| LLC, | : |
| Requester | : |
| | : |
| v. | : Docket No: AP 2024-2938 |
| | : |
| POTTSVILLE AREA SCHOOL DISTRICT, | : |
| Respondent | : |

FACTUAL BACKGROUND

On October 22, 2024, Mark Seiberling, Esq. and Kleinbard LLC (collectively “Requester”) filed a request (“Request”) with the Pottsville Area School District (“District”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

1. All documents referencing and/or relating to the 13th Annual Schuylkill County Regional College Fair.
2. All correspondence, including, but not limited to, e-mails, text messages, or phone logs, referencing and/or relating to the 13th Annual Schuylkill County Regional College Fair, including those high schools and colleges/universities who were invited and participated.
3. From January 1, 2023 to present, all correspondence, including, e-mails, text messages, and phone logs, between Sarah Yoder and any individual referencing and/or relating to Gillingham Charter School.

On November 21, 2024, after invoking a thirty-day extension to respond, *see* 65 P.S. § 67.902(b)(2), the District denied the Request, citing, without explanation, Section 708(b)(11) of

the RTKL, 65 P.S. § 67.708(b)(11), and arguing that part of the Request is insufficiently specific.¹
See 65 P.S. § 67.703.

On November 21, 2024, the Requester filed an appeal with the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. 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 December 10, 2024, the Requester submitted a position statement, arguing, among other things, that the Request is sufficiently specific and correspondence about the College Fair could not possibly contain trade secrets or confidential, proprietary information. The Requester also notes that the District had produced no records as of that date and argues that the District is acting in bad faith. On the same date, the District submitted a position statement, arguing that there is no support for a finding of bad faith and Item 3 of the Request is insufficiently specific. The District noted that that it was mailing 977 pages of redacted records responsive to Items 1 and 2 to the Requester contemporaneous with its submission.² The District submitted a redaction log reflecting that it redacted records of personal identification information, 65 P.S. § 67.708(b)(6)(i)(A), internal, predecisional deliberations, 65 P.S. § 67.708(b)(10)(i)(A), and material protected by the attorney-client privilege.³ In support, the District submitted statements made under the penalties of unsworn falsification to authorities by David Gonzalez, Director of Technology (“Gonzalez Attestation”), Jared Gerace, Director of Curriculum, Instruction, and

¹ The District’s response did not identify which part of the Request it argued was insufficiently specific, but on appeal, the District identifies Item 3.

² Though it argues that it was necessary to print the records in order to securely redact them, the District waived copying and postage fees.

³ The District appears to have abandoned the claim that responsive records contain trade secrets or confidential, proprietary information.

Assessment (“Gerace Attestation”) and Stephanie Wood, Business Manager and the District’s Open Records Officer (“Wood Attestation”).⁴

On the next day, the Requester submitted a position statement, arguing that the Attestations are conclusory and the log is inaccurate and flawed.⁵ He requests that the OOR conduct *in camera* review. The following day, the OOR proposed an extension to allow the Requester to review the records provided by the District and the OOR to develop the record with regard to the Requester’s remaining objections. In response, the Requester agreed to an extension of the Final Determination due date, and the OOR ordered the District to submit a revised exemption log and evidence with additional detail. *See* 65 P.S. § 67.1101(b)(1).

On December 19, 2024, the Requester submitted a position statement, noting that he had reviewed the records that the District had provided and that numerous records included redactions that did not correspond with the redaction log.⁶ In response, the OOR specifically asked the District to be sure to address the existence of severable factual information in the records that the District argues are deliberative and/or to explain why records were withheld in their entirety. The OOR also asked the District to be sure to include Bates Numbers with the revised log.

On January 15, 2025, the District submitted a revised log with Bates Numbers, a supplemental Gerace Attestation (“Supplemental Gerace Attestation”), and redacted records with

⁴ Ms. Wood attests that she directed school counsellors and key administrators, who would have corresponded about the College Fair, to search for text messages responsive to the Request and confirmed that no responsive records exist. Wood Attestation, ¶¶ 3-4. The Requester does not challenge this statement.

⁵ Though the log did not include Bates Numbers, the Requester cross-checked records by correlating dates and times with records listed on the log and found that a number of records had not been included on the log. The Requester provides examples of seven emails that do not appear on the log. However, the Requester later limits his appeal, and these records do not appear to be among the records subject to the narrowed appeal. The Requester also notes that the log lists as privileged emails that he, himself, sent. However, the redacted records later submitted by the District show that, though responses to his email were redacted, his email was not.

⁶ The Requester notes that records that the District argued were redacted of privileged or deliberative content appear to have been withheld in their entirety. However, the amended log does include such records, albeit with most of the content redacted.

numbered pagination. The District notes that the revised log addresses errors and inadvertent omissions to the records previously produced. The Supplemental Gerace Attestation included minimal additional detail.

On January 20, 2025, the Requester submitted a supplemental position statement, noting several instances where it is unlikely that the records are deliberative or privileged. The Requester reiterates his request that the OOR conduct *in camera* review of the records withheld as deliberative or privileged among Bates Numbers 000979-001130.

LEGAL ANALYSIS

The District is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local 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 District 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)). The Requester asked the OOR to review the records *in camera*; however, based upon our review of the evidence presented in this matter, the OOR declines to conduct *in camera* review.

1. The appeal is moot in part

The District has provided redacted records on appeal. Accordingly, insofar as the request sought the unredacted portions of these records, the appeal is dismissed as moot. *See Chester*

Water Auth. v. Pa. Dep't of Cmty. & Econ. Dev., 249 A.3d 1106, 1114 (Pa. 2021) (finding that a matter was settled by provision of records, and thus, “the controversy has been mooted”).

2. Personal identification information is exempt from disclosure

The District redacted personal email addresses and other contact information, arguing that it is exempt personal identification information.⁷ Section 708(b)(6) of the RTKL exempts from disclosure “home, cellular or personal telephone numbers, personal e-mail addresses [and] employee number or other confidential personal identification number.” 65 P.S. § 67.708(b)(6)(i)(A). In *Off. of the Lieutenant Governor v. Mohn*, the Commonwealth Court held that secondary, agency-issued email addresses are personal identification information, and are, therefore, not subject to public disclosure. 67 A.3d 123 (Pa. Commw. Ct. 2013) (“While the secondary e-mail address in question is used to conduct agency business, it still falls within Section 708(b)(6)(i)(A) ... because, even though it is being used to transact public business, nonetheless, it is still personal to that person”), *abrogated in part on other grounds*, *Pa. State Educ. Ass’n v. Commonwealth*, 148 A.3d 142 (Pa. 2016); *see also Off. of the Governor v. Raffle*, 65 A.3d 1105, *abrogated in part on other grounds*, *Pa. State Educ. Ass’n*, 148 A.3d 142 (pertaining to agency-issued telephone numbers). However, in *Pennsylvania State System of Higher Education v. The Fairness Center*, the Court found that email addresses “held out to the public as places where faculty and coaches could be contacted” are not personal identification information subject to the exemption. No. 1203 CD 2015, 2016 Pa. Commw. Unpub. LEXIS 245 (Pa. Commw. Ct. 2016).

The Supplemental Gerace Attestation provides that personal email addresses and other personal identification information such as cell phone numbers have been redacted from

⁷ While the Requester has limited his appeal to the redactions to Bates Nos. 000979-0001130, the records at Bates Nos. 000979-000985 are only redacted of personal identification information, and Nos. 001046-48 include such redactions.

responsive records. Supplemental Gerace Attestation, ¶ 5.⁸ Further, the Attestation provides that, to the best of Mr. Gerace’s knowledge, the contact information is not held out to the public. As personal identification information is facially exempt from disclosure, the District has met its burden of proving that it appropriately redacted this information. *See* 65 P.S. § 67.706.

3. The District has not proven that records reflect its internal, predecisional deliberations

The District argues that certain records reflect its internal, predecisional deliberations. *See* 65 P.S. § 67.708(b)(10)(i)(A). Section 708(b)(10)(i)(A) of the RTKL exempts from public disclosure a record that reflects:

The internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.

65 P.S. § 67.708(b)(10)(i)(A). In order for this exemption to apply, three elements must be satisfied: 1) “[t]he records must ... be ‘internal’ to a governmental agency”; 2) the deliberations reflected must be predecisional, *i.e.*, before a decision on an action; and 3) the contents must be deliberative in character, *i.e.*, pertaining to proposed action. *See Kaplin v. Lower Merion Twp.*, 19

⁸ Under the RTKL, a statement made under penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the District has acted in bad faith, “the averments in the [attestation] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’t Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). The Requester asks the OOR to make a finding of bad faith. Section 1304(a) of the RTKL states that a court “may award reasonable attorney fees and costs of litigation ... if the court finds ... the agency receiving the ... request willfully or with wanton disregard deprived the requester of access to a public record ... or otherwise acted in bad faith...” 65 P.S. § 67.1304(a). Similarly, Section 1305(a) authorizes a court to “impose a civil penalty of not more than \$1,500 if an agency denied access to a public record in bad faith.” 65 P.S. § 67.1305; *see also Off. of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119, 1140-41 (Pa. Commw. Ct. 2017) (“An example of bad faith is a local agency’s failure to comply with the mandate of Section 901 of the RTKL, which requires that a local agency make a good faith search for information responsive to a request and determination of whether that information is public.”). However, the record does not support a finding of bad faith

A.3d 1209, 1214 (Pa. Commw. Ct. 2011). To be deliberative in nature, a record must make recommendations or express opinions on legal or policy matters and cannot be purely factual in nature. *Kaplin*, 19 A.3d at 1214.

In *Pennsylvania Public Utility Commission v. Nase*, the Commonwealth Court explained that:

[T]o establish a record is “deliberative in character,” and therefore exempt from disclosure under this exception, “an agency must submit evidence of specific facts showing how the information relates to deliberation of a particular decision. Only ... confidential deliberations of law or policymaking, reflecting opinions, recommendations or advice [are] protected as deliberative.” *Smith*, 161 A.3d at 1067 (citations and quotation marks omitted; emphasis added). Indeed, it should be expected that public officials and employees of a government agency deliberate in some form before making important decisions. Revealing the existence of a deliberative process may effectively disclose confidential communications, such as a “contemplated or proposed policy or course of action,” in certain circumstances, see 65 P.S. § 67.708(b)(10)(i)(A), but that will not always be the case.

302 A.3d 264 (Pa. Commw. Ct. 2022). In so holding, the Court rejected an argument that records which merely refer to, mention, or schedule a decision are deliberative in character—instead, the records must contain the actual, confidential deliberations in question. *Id.*

Here, the Gerace Attestation provides:

4. The identification of records as “predecisional” in the redaction log is based on my personal knowledge, information, and belief that the communication was among District staff, Board members and/or the District’s legal counsel that included predecisional deliberations related to the 13th Annual Schuylkill County Regional College Fair.⁹

The Supplemental Gerace Attestation is nearly identical and does not address the OOR’s request for additional detail and inquiry about the existence of severable factual information. Furthermore, the log originally submitted by the District provides under the “reason for redaction,” that some

⁹ In addition to Section 708(b)(10)(i)(A), the Gerace Attestation references Subsection (i)(B), which applies to “[t]he strategy to be used to develop or achieve the successful adoption of a budget, legislative proposal or regulation.” 65 P.S. § 67.708(b)(10)(i)(B). It is not clear how this applies to responsive records, and the Supplemental Gerace Attestation omits any reference to Subsection (i)(B).

records are “internal predecisional???” The amended log contains the same three question marks describing the reason for withholding the records identified as Bates Nos. 000998-1004.

Conclusory statements are not sufficient to establish that records are exempt under the RTKL. *See Scolforo v. Off. of the Governor*, 65 A.3d 1095, 1130 (Pa. Commw. Ct. 2013) (“[A] generic determination or conclusory statements are not sufficient to justify the exemption of public records”); *Pa. Dep’t of Educ. v. Bagwell*, 131 A.3d 638, 659 (Pa. Commw. Ct. 2016) (“Affidavits that are conclusory or merely parrot the exemption do not suffice”); *W. Chester Univ. of Pa. v. Schackner et al.*, 124 A.3d 382, 393 (Pa. Commw. Ct. 2015) (“The evidence must be specific enough to permit this Court to ascertain how disclosure of the entries would reflect that the records sought fall within the proffered exemptions”) (citing *Carey*, 61 A.3d at 375-79). As the District provides no detailed evidence, it has failed to carry its burden of proof. *See* 65 P.S. § 67.708(a)(1).

4. The District has not proven that records are privileged

The District argues that certain responsive records are privileged. The RTKL’s definition of privilege includes the attorney-client privilege, and the presumption that records in the possession of local agencies are public records does not apply to records that are privileged. *See* 65 P.S. §§ 67.102 and 305(a)(2). In order for the attorney-client privilege to apply, an agency must demonstrate that: 1) the asserted holder of the privilege is or sought to become a client; 2) the person to whom the communication was made is a member of the bar of a court, or his subordinate; 3) the communication relates to a fact of which the attorney was informed by his client, without the presence of strangers, for the purpose of securing either an opinion of law, legal services or assistance in a legal matter, and not for the purpose of committing a crime or tort; and 4) the privilege has been claimed and is not waived by the client. *See Bousamra v. Excelsa Health*, 210 A.3d 967, 983 (Pa. 2019) (internal citation omitted). When waiver is at issue, the burden of

proof shifts to the requester. *See Bagwell v. Pa. Dep't of Educ.*, 103 A.3d 409, 420 (Pa. Commw. Ct. 2014). An agency may not rely on a bald assertion that the attorney-client privilege applies; instead, the agency must establish the first three prongs of the privilege for it to apply. *See, e.g., Mezzacappa v. Northampton Cnty.*, OOR Dkt. AP 2022-2617, 2023 PA O.O.R.D. 240.

Here, the Gerace Attestation provides that “[t]he identification of records as ‘privileged’ in the redaction log is based on my personal knowledge, information, and belief that the communication was sent to or from the District and its legal counsel, including KingSpry Attorneys, regarding various legal issues.” Gerace Attestation, ¶ 3. As noted above, the Supplemental Gerace Attestation provides minimal additional information, although it omits “including,” and adds that the emails were sent “for the purpose of obtaining legal advice regarding the District’s response to an incident that occurred at the College Fair.” Supplemental Gerace Attestation, ¶ 3.

The Requester argues that many emails that have been redacted as privileged are highly suspect or plainly not privileged. For example, there is no evidence that Bates Nos. 001004-001008, 001047, 001049-001054¹⁰ and 001060 were sent to an attorney. Additionally, Bates Nos. 001124-001128 were sent to media outlets.

As the District has failed to explain the examples provided by the Requester and has only provided conclusory evidence, the District has failed to meet its burden of proving that records are privileged.

5. Item 3 is sufficiently specific in part

The District argues that Item 3 is not sufficiently specific to enable it to locate responsive

¹⁰ The Requester also identifies Bates Nos. 001046 and 0001048. While it may be that there have been redactions to privileged information that are not visible on the redacted records, i.e. if the District used white correction fluid or tape, from an assessment of the redacted records, it appears that only an email address was redacted, and this address is listed on the redaction log.

records. 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 determining whether a particular request is sufficiently specific, the OOR undertakes a nonexclusive, multi-factor test, considering “the extent to which the request specifies subject matter, the extent to which it defines the scope of the records it seeks, and the extent to which it limits the timeframe of the request.” *Pa. Off. of the Governor v. Brelje*, 312 A.3d 928, 937 (Pa. Commw. Ct. 2024) (citing *Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015)). The test is not “a conjunctive, bright-line rule requiring each ‘element’ of the test to be satisfied; rather, it [is] a flexible approach” consistent with relevant caselaw. *Id.*

First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Pittsburgh Post-Gazette*, 119 A.3d at 1125 (quoting 65 P.S. § 67.102). Second, “[t]he scope of the request must identify ‘a discrete group of documents, either by type ... or by recipient.’” *Id.* (quoting *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013)). Finally, “[t]he timeframe of the request should identify a finite period of time for which records are sought.” *Id.* at 1126 (citing *Carey, supra*). “The timeframe prong is, however, the most fluid of the three prongs, and whether or not the request’s timeframe is narrow enough is generally dependent upon the specificity of the request’s subject matter and scope.” *Id.*

The above factors are intended “to facilitate an analysis in order to determine whether an agency can ascertain which records are being requested The subject matter, scope, and timeframe of a request are flexible, analytical elements, not evidentiary requirements.” *Pa. Dep’t of Health v. Shepherd*, No. 377 C.D. 2021, 2022 Pa. Commw. Unpub. LEXIS 207 *6-7 (Pa. Commw. Ct. 2022), *appeal denied*, No. 334 MAL 2022, 2022 Pa. LEXIS 1862 (Pa. 2022).

Finally, we must analyze the entirety of a request, as it is possible that portions of a request are insufficiently specific, while other portions provide sufficient guidance. *See Pa. State Police v. Off. of Open Records*, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010) (noting “the valid part of the request was included in a laundry list of requested materials”).

Here, Item 3 seeks all correspondence from Sarah Yoder referencing or relating to Gillingham Charter School over a time period of nearly 23 months. The District argues that it cannot ascertain what records are being requested.

a. Item 3 is sufficiently specific insofar as it relates to the incident at the College Fair

In *Greim v. Pa. State Police*, 2025 Pa. Commw. LEXIS 20, __ A.3d __ (Pa. Commw. Ct. Jan. 17, 2025), the Court held that it was error for the OOR to consider one part of a request as having nothing to do with the remainder of the request. *See also Montgomery Cnty. 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.”).

In the case of the instant Request, Item 1 identifies the College Fair and Item 2 identifies high schools and colleges that were invited to and participated in the Fair. Further, a reading of the Supplemental Gerace Attestation, together with a review of the log and the redacted records provided in response to Items 1 and 2, indicates that the District understands that Items 1 and 2 relate to an incident at the College Fair involving Gillingham Charter School and the District’s response to the incident.

Understood in the context of the entire Request, Item 3 also seeks records related to the incident at the College Fair and the District’s response. Thus, Item 3 identifies a District activity, and because it contains a narrow scope and a finite timeframe, it seeks a defined universe of

responsive records. As such, insofar as it seeks records related to the incident at the College Fair, Item 3 is sufficiently specific.¹¹ *See* 65 P.S. § 67.703.

The District argues that responsive records may contain personal identification information and as noted above, it may redact information that is facially exempt. However, while the District generally argues that responsive records may contain privileged information, it does not specify what this information may be and has failed to meet its burden with regard to the records it has produced.

b. Item 3 is insufficiently specific insofar as it seeks records unrelated to the incident at the College Fair

All of the records on the log are dated from July – October of 2024, but Item 3 also seeks records dating back to the beginning of 2023, suggesting that Item 3 it is not limited to the incident at the College Fair.

The Gonzales Attestation provides:

3. On October 30, 2024, I personally initiated searching the District’s database for [responsive] records
- ...
5. The search for records in response to [Item] three ... yielded 1,579 emails.

The fact that a request may be burdensome is a valid consideration in a specificity analysis, though it is not sufficient in and of itself to deem the request overbroad. *See Pa. Dep’t of Env’t Prot. v. Legere*, 50 A.3d 260, 265 (Pa. Commw. Ct. 2012); *see City of Phila. Off. of the Dist. Att’y v. Bagwell*, 155 A.3d 1119, 1143 (Pa. Commw. Ct. 2017) (finding that an open-ended request that fails to give an agency guidance in its search for the information sought may be so burdensome that the request will be found overbroad under the RTKL). The District also argues that given Superintendent Yoder’s position, responsive records likely include privileged material and exempt

¹¹ While the District has already produced twenty-eight emails that were sent to or from Superintendent Yoder, insofar as any additional emails related to the incident at the College Fair exist, they must be provided.

personal identification information. That responsive records likely include exempt material can impact a specificity analysis.

In *Keystone Nursing & Rehab of Reading, LLC v. Simmons-Ritchie*, 2020 Pa. Commw. Unpub. LEXIS 8, the Commonwealth Court held that a request for all correspondence sent and received over a 48-day timeframe by four named individuals, including the Department's former Secretary, about changes in ownership of 35 nursing homes was insufficiently specific. The Court opined that it "place[d] an unreasonable burden on Department to compile all correspondence sent and received by the highest tier of employees at Department." *Id.* at *54-55.

The Court further noted that "the secretary of a state agency is likely to send and receive more communications in a 30-day time period than a member of a local school board and that these communications are likely to contain exempt information." *Id.* at *55; compare *Brelje*, 312 A.3d at 938 (finding that requests for all emails to and from two individuals over 10 and 21 days sought a clearly defined universe of documents) and *Methacton Sch. Dist. v. Off. of Open Records*, No. 250 C.D. 2021, 2021 Pa. Commw. Unpub. LEXIS 670 (finding that a consolidated appeal of four separate requests each seeking all emails from four identified employees over the course of four sequential months was sufficiently specific), with *Mollick v. Twp. of Worcester*, 32 A.3d 859, 871 (Pa. Commw. Ct. 2011) (concluding that a request for all emails to or from agency supervisors regarding any agency business over the past one to five years was insufficiently specific because it failed to specify an agency business or activity).

Like the request in *Keystone*, the records responsive to the instant Request likely include exempt material,¹² and though the District is not a Commonwealth agency, the Request seeks

¹² The OOR acknowledges that the District has not met its burden of proving its assertion of privilege with regard to the records responsive to Items 1 and 2.

emails from the District Superintendent. Further, the Request includes a timeframe of nearly 23 months, far longer than the time frames at issue in *Brelje* or *Methacton*.

While Item 3 mentions Gillingham Charter School, standing alone, that does not identify a District transaction or activity. In *Office of the Governor v. Engelkemier*, the Commonwealth Court found that a broad keyword search may still be sufficiently specific, but “a keyword list is not necessarily a substitute for a properly-defined subject matter(s) -- i.e., a particular transaction or activity of an agency.” 148 A.3d at 531. The Court concluded that, although the keyword list was lengthy and broad, the fact that the request had a narrow scope and a timeframe of five months, along with the agency’s response stating that it was producing records, meant that the request was sufficiently specific. *Id.* at 532.

Here, Item 3 only contains one keyword; however, not only does it seek records referencing Gillingham Charter School, but also those “relating to” the school. Thus, determining whether a given record is actually responsive to the Request would require the District to make judgment calls. *See Pa. Dep’t of Env’t Prot. v. Legere*, 50 A.3d 260, 264-265 (Pa. Commw. Ct. 2012) (finding that a request that would require an agency to review all potentially responsive files and “make judgments as to the relation of the documents to the specific request” would be insufficiently specific). Finally, unlike the request in *Engelkemier*, Item 3 is not limited to a five-month timeframe, and the District has not stated that it would be producing records.

Identifying records responsive to Item 3 that are not related to the incident at the College Fair would require the District to review Superintendent Yoder’s emails for nearly 23 months without knowing what exactly the Request is seeking. *Greim*, 2025 Pa. Commw. LEXIS at *20 (quoting *Iverson*, 50 A.3d at 284 n.4) (finding that a request need only provide enough information to inform “an agency of the records requested.”); *see Pa. State Police v. Off. of Open Records*, 995

A.2d at 517 (holding that, while the portion of the request that sought “any and all records, files or communications” was not sufficiently specific, the portion that sought manuals related to vehicle stops, searches and seizures was). As such, insofar as Item 3 seeks records that are not related to the incident at the College Fair, it is insufficiently specific.¹³ See 65 P.S. § 67.703.

The OOR notes that this is so, despite the fact that the District had identified and provided some responsive records. See *Pa. Dep’t of Educ.*, 119 A.3d at 1126, n. 8 (rejecting the argument that a request was sufficiently specific merely because the agency was able to identify potentially responsive records).

CONCLUSION

For the foregoing reasons, the Requester’s appeal is **granted in part, denied in part**, and **dismissed as moot in part**, and the District is required to provide records withheld as internal, predecisional and deliberative or privileged, as well as any other records responsive to Item 3 that are related to the incident at the College Fair. 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 Schuylkill 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, 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.¹⁴ 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>.

¹³ Nothing in this Final Determination prevents the Requester from filing a new RTKL request for any emails about Gillingham Charter School aside from those related to the incident at the College Fair, and if necessary, filing an appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

¹⁴ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: February 3, 2025

/s/ Blake Eilers

Blake Eilers, Esq.

Senior Appeals Officer

Delivered via e-file portal to: Mark Seiberling, Esq.; Marissa Dang, Esq., Stephanie Wood;
Rebecca Young, Esq.