



3. Email correspondence from 2009-2022 between Blaine Phillips or other individuals associated with or employed by the Conservation Fund and [Department] officials, staff, employees, or contractors.
4. Email correspondence from 2009-2022 between individuals associated with or employed by Mt. Cuba Center and [Department] officials, staff, employees, or contractors.

On January 2, 2025, following a thirty-day extension, 65 P.S. § 67.902(b), the Department granted the Request in part, providing documents related to the closing and final settlement of the acquisition of the George Strawbridge property. The Department also denied the remainder of the Request, asserting that it is insufficiently specific. 65 P.S. § 67.703.

On January 21, 2025, the Requester appealed to the Office of Open Records (“OOR”), challenging the Department’s response, and stating grounds for disclosure, arguing that responsive records were not provided, and the Request is sufficiently specific. 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. 65 P.S. § 67.1101(c).

On January 30, 2025, the Department submitted a position statement reiterating its grounds for denial. In support of its position, the Department submitted the attestation of Jack Shope (“Shope Attestation”), Open Records Officer (“AORO”) for the Department.<sup>1</sup>

### **LEGAL ANALYSIS**

The Department 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 Department is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. §

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<sup>1</sup> The Shope Attestation is made subject to penalties under 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.

67.708(a)(1). The preponderance of the evidence standard 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)).

Although the Department provided some records in its possession, the Department argues overall that the Request is overly broad and therefore, insufficiently specific under Section 703 of the RTKL, which 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 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).

First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Id.* 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. Office 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”).

In support of the Department’s position that the Request is insufficiently specific, the Shope Attestation states, in part:

2. As the AORO for the [Department] and I am responsible for responding to the [RTKL] requests filed with the [Department].
3. In my capacity as the AORO, I am familiar with the records of the [Department].
4. Among its other duties and responsibilities, the [Department] is responsible for the 124 State Parks and 20 State Forest Districts, which are managed by the Department.
5. The [Department] has a total number 2,451 salaried and wage employees on staff[].
- ...
8. On November 25, 2024, I emailed a copy of [the Request] to the management staff of the [Department’s] Bureau of State Parks, Bureau of Forestry, and [Department] Secretary’s Office in an attempt to search for and locate any potentially responsible records for this Request within the Department’s possession, custody or control.
- ...
10. Following the attempt to search for search for and locate any potentially responsible records for this Request within the Department’s possession, custody or control, the staff with the [Department’s] Bureau of State Parks (“BSP”) was able to locate 35 pages of documents related to the closing and final settlement of the acquisition of the George Strawbridge Property, which was referenced in Request [I]tem #1 and Request [I]tem #2.



11. I have attended the [OOR's] ongoing trainings as it relate[s] to my duties and responsibilities as an AORO.
12. Through the various training, I am familiar with the past OOR and appellate court decisions concerning "insufficiently specific" and "overly broad" RTKL requests.
13. I am aware that under the Pennsylvania RTKL, a written request for records must identify or describe the records sought *with sufficient specificity to enable the agency to identify with certainty the records that are being requested.* 65 P.S. § 67.703.

...

17. As the [Department's] AORO, I determined [that] Request [I]tem #1 in this matter was "insufficiently specific" and "overly broad" as the Request failed to properly define the *scope* of the documents sought and the *timeframe* for which the records are sought.

...

19. As the [Department's] AORO, I determined the that the Request [I]tem #2 in this matter was "insufficiently specific" and "overly broad" as the Request failed to properly define the *scope* of the documents sought and the *timeframe* for which the records are sought.

...

21. As the [Department's] AORO, I determined the that the Request [I]tem #3 in this matter was "insufficiently specific" and "overly broad" as the Request failed to properly define the *subject matter of the [R]equest*, the *scope* of the documents sought, and the *timeframe* for which the records are sought.

...

23. As the [Department's] AORO, I determined the that the Request [I]tem #4 in this matter was "insufficiently specific" and "overly broad" as the Request failed to properly define the *subject matter of the [R]equest*, the *scope* of the documents sought, and the *timeframe* for which the records are sought.

24. Furthermore, I determined without the RTKL Request's necessary information, which in my opinion was lacking in this case, that I was unable to make a sufficiently specific request to the [Department's] staff working in the Department's Bureau of State Parks and/or Bureau of Forestry in order to attempt to have a supplemental search for the responsive information and public records, should any exist in the possession, custody, or control of the [Department].



...

26. Lastly, the Department's Final Response also provided [to the Requester]...additional information that [states] "if you provide the Department with a new or revised RTKL request that contains the necessary specificity and information as indicated, the Department will again attempt to search for the information in its possession, custody, or control to see if it can locate any of the responsive records sought, should they exist at the current time[.]"
27. To date, [the Requester] has not provided the Department with any additional information for a subsequent search for potentially responsible records for this matter.

Under the RTKL, an affidavit or 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 Department has acted in bad faith, "the averments in the [attestation] should be accepted as true." *McGowan v. Pa. Dep't of Env'tl. 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)).

**1. Items 1 and 2 of the Request are insufficiently specific in part**

Item 1 of the Request seeks, "[d]ocumentation including emails, applications, letters of recommendation, communications, transcripts, and any other information or records concerning a \$1.5 million Community Conservation Partnerships Program (CCPP) grant awarded November 2018 in conjunction with acquisition of property located in Southern Chester County from George Strawbridge[.]" Item 1 does not have a timeframe but implies one by mentioning an event, *i.e.*, a \$1.5 million CCPP grant that was awarded in November 2018 where it concerns the specified George Strawbridge property. The scope of Item 1 is somewhat broad, to the extent it seeks, in part, "documentation...communications...and any other information or records" but Item 1 otherwise identifies discrete types of records such as emails, applications, letters of



recommendation, and transcripts. Finally, Item 1 does identify a specific subject matter, as it seeks records concerning a \$1.5 million CCPP grant that was awarded in November 2018 for the acquisition of the specified property.

Item 2 of the Request seeks, “[d]ocumentation including emails, applications, letters of recommendation, communications, transcripts, and any other information or records concerning C2P2 grants awarded in conjunction with acquisition of property located in Southern Chester County from George Strawbridge including[,] but not limited to[,] those grants awarded in 2016, 2017, and 2018.” As with Item 1, Item 2 implies a timeframe by mentioning events, *i.e.*, C2P2 grants awarded in 2016, 2017, and 2018 where it concerns the specified George Strawbridge property. Like Item 1, the scope of Item 2 is somewhat broad, to the extent it seeks, in part, “documentation...communications...and any other information or records” but Item 2 otherwise identifies discrete types of records such as emails, applications, letters of recommendation, and transcripts. Finally, Item 2 does identify a specific subject matter, as it seeks records concerning C2P2 grants awarded in 2016, 2017, and 2018 for the acquisition of the specified property.

First, concerning the portions of Items 1 and 2 that seek “documentation including emails...communications...and any other information or records,” these do not identify any senders and/or recipients between which requested records were exchanged that would aid in limiting the universe of potentially responsive records. The Department attests that it employs 2,451 employees. *See, e.g., Montgomery Cnty. v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012) (concluding request which “does not identify specific individuals, email addresses, or even departments, but requests any applicable emails sent from the County’s domain to four other domains” was insufficiently specific); *Pa. Dep’t of Educ.*, 199 A.3d at 1124-126 (“A request for a broad category of documents, such as all records, may be sufficiently specific if confined to a



particular recipient or recipients”); *see also Carey*, 61 A.3d at 372 (concluding that the scope of the request must identify “a discrete group of documents, either by type ... or by recipient”). In accordance with *Carey*, these portions, save for emails, do not identify discrete documents either by type, or by recipient. Further, these portions of Items 1 and 2 leave the Department to guess what records may be responsive, as opposed to listing specific records sought. *Pa. Dep’t of Env’tl. Prot. v. Legere*, 50 A.3d 260, 264-65 (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). Therefore, to the extent that Items 1 and 2 seeks “documentation including emails...communications...and any other information or records,” sent to, or from, unnamed senders/recipients, there is a lack of specificity, even with the inclusion of specific subject matters. *See Pa. State Police*, 995 A.2d at 517 (finding the portion of a request seeking “manuals” to be sufficiently specific, and the portion seeking “any and all records” to be insufficiently specific).

However, as previously stated, Items 1 and 2 of the Request also seek discrete types of records such as applications, which upon reading these Items, one can reasonably deduce that grant applications are responsive, letters of recommendation, and transcripts. Mr. Shope attests that there is familiarity with records of the Department, and attests that upon receipt of the Request, it was sent to various Bureaus within the Department, such as the Bureau of State Parks, the Bureau of Forestry, and the Secretary’s Office to search for responsive records. Shope Attestation ¶¶ 3, 8.

Regarding the subject matter, there is no dispute that it is specific because Item 1 concerns a specific \$1.5 million CCPP grant that was awarded in November 2018 for the acquisition of the specified property, and Item 2 concerns C2P2 grants awarded in 2016, 2017, and 2018 for the acquisition of the specified property. Although the Department asserts that it is unclear what



“C2P2” means, a review of the Department’s website reveals that it is another name for the CCPP grants seemingly distributed through the Department’s Bureau of Recreation and Conservation.<sup>2</sup>

Further, although timeframes have not been specifically identified, in *Pa. Dep’t of Educ.*, the Commonwealth Court found that the timeframe factor is the most fluid and is dependent upon the request’s subject matter and scope. 119 A.3d at 1126. The Commonwealth Court has emphasized the importance of a “flexible, case by case, contextual application of the test.” *Office of the DA of Phila. v. Bagwell*, 155 A.3d 1119, 1145 (Pa. Commw. Ct. 2017). Nevertheless, the subject matter here provides implied timeframes to further guide the Department’s search. 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.” *See Iverson*, 50 A.3d 281, 284; *see also Pass v. Capital Area Transit*, OOR Dkt. AP 2014-0173, 2014 PA O.O.R.D. LEXIS 247.

Accordingly, based on the foregoing, the OOR determines that Items 1 and 2 of the Request are sufficiently specific, except to the extent these Items seek “documentation including emails...communications...and any other information or records.” The Department is required to conduct a good faith search for any other records responsive to Items 1 and 2 in accordance with this Section and provide those records to the Requester.

## **2. Items 3 and 4 of the Request are insufficiently specific**

Item 3 of the Request seeks, “[e]mail correspondence from 2009-2022 between Blaine Phillips or other individuals associated with or employed by the Conservation Fund and [Department] officials, staff, employees, or contractors.” Item 4 of the Request seeks, “[e]mail

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<sup>2</sup> *See*, [https://elibrary.dcnr.pa.gov/GetDocument?docId=4077164&DocName=2007\\_2020\\_pdf\\_ofgrantannouncements.pdf](https://elibrary.dcnr.pa.gov/GetDocument?docId=4077164&DocName=2007_2020_pdf_ofgrantannouncements.pdf) *Department C2P2 Grant Announcement Lists 2007-Current* (last accessed February 19, 2025).



correspondence from 2009-2022 between individuals associated with or employed by Mt. Cuba Center and [Department] officials, staff, employees, or contractors.” The timeframe for Items 3 and 4 is a period of 13 years. The scope of the records sought in Items 3 and 4 is narrow, in that those Items only seek email correspondence, and the Items do identify some senders and recipients. Finally, these Items, standing alone, do not present any clear subject matter.

However, while Item 3 seeks emails “between Blaine Phillips or other individuals associated with or employed by the Conservation Fund and [Department] officials, staff, employees, or contractors,” other than an individual named Blaine Phillips, this portion of the Request does not identify any other specific Conservation Fund and Department employees as senders/recipients who emails were exchanged between that would aid in limiting the universe of potentially responsive records. Likewise, the same issue is present concerning Item 4 of the Request, which seeks emails “between individuals associated with or employed by Mt. Cuba Center and [Department] officials, staff, employees, or contractors,” which also does not identify any other specific individuals associated or employed by Mt. Cuba Center and Department employees as senders/recipients who emails were exchanged between. Therefore, the language of these Items further broadens its scope by failing to identify specific recipients and leaves an unknown number of potential record holders. *See, e.g., Wereschagin and The Pittsburgh Post-Gazette v. Pittsburgh City*, OOR Dkt. AP 2023-0711, 2023 PA O.O.R.D. LEXIS 1026 (finding that the request, which sought in part, in addition to the named officials, communication records from “[a]nyone with an email address ending in ‘@spcregion.org’” to be insufficiently specific).

Importantly, Items 3 and 4 do not contain a subject matter. If a subject matter were included, it could perhaps limit possible records custodians to certain employees of the Department. However, a lengthy timeframe of approximately 13 years for each Item with no





specific subject matter does little to aid the Department in pinpointing and providing responsive emails. Accordingly, the OOR determines that Items 3 and 4 of the Request are insufficiently specific. Nothing in this Final Determination prevents the Requester from filing a more specific RTKL request for the same information, and if necessary, filing an appeal pursuant to the requirements of 65 P.S. § 67.1101(a)(1).

### CONCLUSION

For the foregoing reasons, the appeal is **granted in part and denied in part**, and the Department is required to provide any applications, letters of recommendation, and transcripts responsive to Items 1 and 2 of the Request 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 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 as per Section 1303 of the RTKL. 65 P.S. § 67.1303. 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.<sup>3</sup> All documents or communications following the issuance of this Final Determination shall be sent to [oor-postfd@pa.gov](mailto:oor-postfd@pa.gov). This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: February 25, 2025**

*/s/ Tope L. Quadri*

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TOPE L. QUADRI  
APPEALS OFFICER

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



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