

Insufficiently Specific Requests (Section 703 the RTKL) – Responding to a RTKL Request

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As I discussed last week, when an Open Records Officer receives a Right to Know Law (“RTKL”) request, his or her first duty is to determine if the agency (including its employees and officers) possess any responsive records.

The difficult task of providing a timely response becomes impossible when the Requester does not clearly tell the Open Records Officer what they want. Often this involves requests that are so broad that anything could be responsive (e.g. “all emails” of the Township concerning zoning). Fortunately, the Section 703 of RTKL requires that Requesters submit specific requests. 65 P.S. § 67.703. (“A written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.”).

When determining whether a request is sufficiently specific, the courts and the Office of Open records examine the extent to which the Request sets forth: (1) the subject matter of the request (e.g., the transaction or activity); (2) the scope of documents sought (e.g., type or recipient); and (3) the finite timeframe for which records are sought.

In the recent decision Seybert v. West Chester University of Pennsylvania, AP 2018-2102 (Jan. 10, 2018), the Office of Open Records, after balancing these factors, found that the following request (“Request”) was insufficiently specific:

Copies of all emails/texts/correspondence sent via WCU campus email accounts/phones belonging to [19 individuals] mentioning or referring to [5 individuals] since 5/2016, this includes any deleted correspondence.

The OOR found that the Request was insufficiently specific because it failed to: 1) identify recipients of the requested correspondence (i.e., scope); and 2) identify a transaction or activity of the agency (i.e., subject matter). Moreover, by including the phrase “refer to” in the Request, the Request improperly required the agency to make judgments as to what may or not be responsive.

As illustrated by Seybert, a RTKL request must clearly define the requested documents and an Open Records Officer is not required to guess or make judgments as to what is being requested. If faced with an insufficiently specific request, an Open Records Officer should contact their solicitor to determine agency’s next steps. In certain circumstances, the appropriate response may be to contact the Requester and request that he or she submit a clarified request. If the Requester fails to do so, you may need to deny the Request for being insufficiently specific under Section 703 of the RTKL.

It is important to note that while agencies may object to insufficiently specific requests, courts and the OOR have rejected the argument that a burdensome request is automatically insufficiently specific. In other words, a request that “seeks a clearly delineated group of documents” is not overly broad because it “would be extremely burdensome” for the agency to respond to the request. We will address the proper procedures to deal with overwhelmingly burdensome requests in a future post.

If you have any questions or comments, please do not hesitate to contact Chris Voltz or any of the other Municipal and School Attorneys at Tucker Arensberg, P.C.