

## OOB Provides Guidance as to when Requests for Emails are Insufficiently Specific

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We've addressed whether RTKL request are sufficiently specific before, but it's worth reexamining the issue again in the context of requests for electronic correspondence because requesters frequently make broad requests for emails and text messages and the recent decision in *Hatziefstatiou v. Montgomery County District Attorney's Office*, AP 2019-0774 (July 16, 2019), provides helpful guidance as to when such requests are insufficiently specific. In this case, the Requester submitted a multi-part RTKL request to the Montgomery County District Attorney's Office ("Office") seeking email correspondence related to Bill Cosby.

As we've discussed previously, Section 703 of RTKL requires that Requesters submit specific requests. See 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) a scope that identifies a discrete group of documents sought (e.g., type or recipient); and (3) the finite timeframe for which records are sought. *Pa. Dep't of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015); *Carey v. Pa. Dep't of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013).

The *Hatziefstatiou* case is helpful because the OOR thoroughly examines and explains when it will find that requests for email communications are sufficiently specific and when they are not. The determination also sets forth some rules that every Open Records Officer should know.

### **Rule 1: A request for "all correspondence" between multiple individuals over an extended timeframe is most likely insufficiently specific.**

The first part of the request sought "all electronic correspondences" between members of the Office and a list of ten individuals for a period exceeding four and one-half years. The OOR noted that it has consistently held that communications between multiple parties with no subject matter is insufficiently specific, and the Commonwealth Court has held that only a short timeframe can rescue a request with no subject matter. See *Easton Area Sch. Dist. v. Baxter*, 35 A.3d 1259, 1265 (Pa. Commw. Ct. 2012) (request for copies of all emails sent and received for a month from nine accounts was sufficiently specific); *Calabro v. Southeast Delaware County Sch. Dist.*, AP 2018-0180, 2018 PA O.O.R.D. LEXIS 327 (request seeking all emails between school board members for a four-month period is not sufficiently specific). Therefore, the OOR concluded that because this part of the request had a long timeframe, broad scope and no definitive subject matter, it was not sufficiently specific under Section 703 of the RTKL.

### **Rule 2: A request for correspondence, limited by keywords, between multiple individuals over an extended timeframe is insufficiently specific.**

The second part of the request sought electronic communications sent to or from a member of the Office containing a list of seventeen keywords for the same lengthy timeframe. The fact that a request uses keywords in place of a subject matter is not necessarily fatal to the request, but broad keywords alone do not provide a sufficient limiting context. See *Montgomery County v. Iverson*, 50 A.3d 281, 284 (Pa. Commw. Ct. 2012) ("incredibly broad" search terms do not provide a limiting subject matter); *Slaby v. City of Pittsburgh*, OOR Dkt. AP 2017-0142, 2017 PA O.O.R.D. LEXIS 238 ("A keyword list does not necessarily make a request insufficiently specific; however, a request must provide enough specificity in its scope and timeframe to help guide the agency in its search for records"). However, a broad keyword

search may be sufficiently specific where a request specifies senders or recipients of emails. See *Office of the Governor v. Engelkemier*, 148 A.3d 522, 532-33 (Pa. Commw. Ct. 2016) (holding that “although [the] keyword list is lengthy and in some respects broad, in consideration of the narrow timeframe and scope of the [request] ...

[the]

request, on balance, meets the specificity requirement...”).

The OOR has previously found that a request for a keyword search where the keywords do not reasonably involve some business of an agency, over the course of nineteen months, was insufficiently specific. *Palochko v. Executive Education Academy Charter Sch.*, OOR Dkt. AP 2018 1397, 2018 PA O.O.R.D. LEXIS 1220. The OOR has also held that a request for a keyword search over the course of two years is insufficiently specific where the keywords consisted only of four names. *LeConte-Spink v. Butler County*, OOR Dkt. AP 2018-1268, 2018 PA O.O.R.D. LEXIS 1018.

While the second part of the request provided a list of names as keyword subjects and arguably related the subject of Bill Cosby, it did not narrow the search field by identifying a specific transaction or activity of the Office to which the electronic correspondence would pertain. Moreover, it was not clear if the request sought “emails” or other “electronic communications” including text and other electronic messages” and the request did not identify a sender or recipient of the emails. Finally, as set forth above, the time-frame was 4.5 years. Accordingly, the OOR distinguished this case, which involved a very lengthy timeframe and did not limit the scope in any way by identifying senders or recipients of the electronic correspondences sought from *Engelkemier* (which identified a list of keywords for a more limited subject matter and a much shorter timeframe) and *Benzig* (which included a broad subject matter but one that was well known to the agency and senders and recipients of the requested communications), and concluded that this part of the request was insufficiently specific.

**Rule 3: A request for correspondence that fails to identify a sender or recipient may be insufficiently specific, even with a short timeframe.**

The third part sought all electronic correspondence between “a member of the [Office]” and a list of twelve individuals pertaining to jurors for a shorter timeframe of six weeks. As with the previous requests, this part of the request failed to identify senders or recipients of the Office. The limiting subject matter of “pertaining to jurors” was not helpful because activities and transactions relating to jurors is integral to the functioning of a district attorney’s office. Accordingly, the OOR concluded that given the vague subject matter and broad scope, the shorter timeframe of approximately six weeks did not sufficiently limit the this part of the request to apprise the agency of what records are being sought.

**Rule 4: A request for correspondence that does not identify any business of the Agency or the senders or recipients is insufficiently specific.**

The fourth part of the request sought all electronic correspondences between “members of the [Office]” to “any individuals with a ‘@steele4da.org’ email.” This request was deemed insufficiently specific because it did not reference any business of the Office or how it would relate to the Steele campaign and failed to identify a subject matter. In *Mollick v. Twp. of Worcester*, 32 A.3d 859, 871 (Pa. Commw. Ct. 2011), the Commonwealth Court concluded that a request for “all emails between the Supervisors regarding any Township business” and “all emails between the Supervisors and the Township employees regarding any Township business and/or activities for the past one and five years” was insufficiently specific because it failed to specify “what category or type of Township business or activity for which [the requester was] seeking information.”

In addition, this part of the Request did not identify specific individuals or departments or the business of the Office or a sender or recipient within the office. In *Iverson*, the Commonwealth Court held that a 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. 50 A.3d at 284. Finally, this part of the Request did not include a timeframe. Accordingly, the OOR concluded that it was insufficiently specific under Section 703 of the RTKL.

**Rule 5: Requests for “relevant” correspondence is insufficiently specific.**

Another part of the Request sought for a list of several date ranges, electronic correspondences sent to or from a member of the Office containing the keywords “Cosby” and “Bill Cosby.” It also sought “other relevant emails pertinent to William H. Cosby.”

The “other relevant emails pertinent to William H. Cosby” portion was deemed insufficiently specific because it required the Office to do more than conduct a simple keyword search. Instead, the Office would be required to make judgments about what other events or subjects might be “relevant” to an activity or transaction involving William H. Cosby, which is not appropriate under the RTKL. See *Legere*, 50 A.3d at 265 (concluding a request seeking “a clearly-defined universe of documents” spanning almost four years was sufficiently specific because there [were] no judgments to be as to whether the documents [were] “related” to the request); *Campbell v. Bellefonte Area School Dist.*, OOR Dkt. AP 2019-0205, 2019 PA O.O.R.D. LEXIS 386 (holding that a request for emails related in to calendar booking activity of an individual for a work related matter as insufficiently specific as it requires an agency judgement call to determine what emails may related to the identified activities); *Seybert v. West Chester Univ. of Pa.*, OOR Dkt. AP 2018-2102, 2018 PA O.O.R.D. LEXIS (finding that a request seeking communications that “mention or refer to” five named individuals and that identifies the senders but not the recipients is insufficiently specific).

**Rule 6: Requests for correspondence containing keywords concerning a well-known subject matter, identifying senders and recipients and containing a limiting timeframe may be sufficiently specific.**

The OOR concluded that the remainder of the above-referenced part of the request was sufficiently specific because it contained more limiting factors that served to narrow the potential universe of documents to be searched. The OOR has found keyword lists specific where they relate to well-known matters of agency business and the request identifies senders and recipients. See *Benzing v. City of Pittsburgh*, AP 2018-0188, 2018 PA O.O.R.D. LEXIS 383; *Winklosky v. Pa. Office of Admin.*, AP 2018-1438, 2018 PA O.O.R.D. LEXIS 1391; *Seybert v. West Chester Univ. of Pa.*, AP 2018-2102, 2018 PA O.O.R.D. LEXIS.

Because all the keywords involve one individual, Bill Cosby, an individual at the center of a criminal matter well known to the Office during the timeframe, the OOR concluded that this part of the Request contained sufficient limitations to enable the Office to determine what members of the Office would be likely to have responsive records. See *Benzing, supra* (holding that a request containing keywords that related to a well-known agency computer program was sufficiently specific under the RTKL where the request identified a timeframe and senders and recipients). In addition, the timeframe is much more limited than the 54-month timeframe of another part of the request in that this part of the request set out six specific months and 11 specific days.

Like the Request in *Engelkemier*, the OOR concluded that while keywords are in some respects broad, the shorter timeframes and the Office’s familiarity with the subject allowed the Office to further narrow the scope and made this part of the Request, on balance, sufficiently specific.

While the *Hatziefstatiou* decision provides valuable insight into how the OOR will evaluate whether a request for email correspondence is sufficiently specific, it is clear that this inquiry is fact specific and that the outcome in many instances is far from certain. It is important to note that, despite the Office’s request that the case be remanded if any portions of the request were deemed specific, the OOR ordered the Office to provide all records responsive to the part deemed sufficiently specific without further review.

Accordingly, Open Records Officers should always consult with their solicitor prior to denying a request solely on the basis of it possibly being insufficiently specific.

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.