

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Department of Corrections, :
Petitioner :
v. :
James Marshall, : No. 916 C.D. 2012
Respondent : Submitted: September 28, 2012

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: December 7, 2012

The Pennsylvania Department of Corrections (DOC) challenges the order of the Office of Open Records (OOR) that granted in part and denied in part the appeal of James Marshall (Marshall) from DOC's denial of his request to obtain copies of public records that contained details about claims, settlements, or verdicts against certain individuals.

On February 22, 2012, Marshall submitted his request for information to DOC. He made the following request:

I would like to have released and provided with a copy of public records containing details about any claims, settlements, or verdicts against the following named individuals:

Maxine Overton	Tammy Mowry
Raymond J. Sobina	Denial Telega
William McConnell	Ralph Lucas
Brian Hewitt	Dr. Mark Baker
Dr. V. Gilreath	Scott Breckenridge

For each payment made, please include a copy of the tort claim or complaint, or any other documents that discloses the facts underlying the incident leading to settlement or verdict.

Also, include any settlement agreement, general release, verdict, or court Order obligating any of these named individuals to pay any claimant or plaintiff.

[F]inally, please include a copy of the check paid to the claimant or plaintiff from any settlement, verdict, or court order obligating any of the above mention [sic] individuals to pay.

Request for Information by James Marshall, February 16, 2012, at 1; Reproduced Record (R.R.) at 1.

By letter dated February 27, 2012, the Pennsylvania Department of Corrections Right-to-Know Office, Office of General Counsel (Right-to-Know Office) denied Marshall's request on the basis that the request failed to identify or describe the records that Marshall sought with sufficient specificity to enable the Right-to-Know Office to ascertain which records he sought. The Right-to-Know Office also stated that many of the possible records might be exempt because the records did not exist, the records fell within the personal security exemption of the Right to Know Law (Law),¹ Section 708(b)(1)(ii) of the Law, 65 P.S. §67.708(b)(1)(ii); the public safety exemption of the Law, Section 708(b)(2) of the Law, 65 P.S. §67.708(b)(2); the criminal investigation exemption, Section 708(b)(16) of the Law, 65 P.S. §67.708(b)(16); the noncriminal investigation exemption, Section 708(b)(17) of the Law, 65 P.S. §67.708(b)(17); the exemption for an individual's medical, psychiatric or psychological history or disability

¹ Act of February 14, 2008, P.L. 6.

status, Section 708(b)(5) of the Law, 65 P.S. §67.708(b)(5); and/or the personal identification exemption, Section 708(b)(6) of the Law, 65 P.S. §67.708(b)(6).

Marshall appealed to the OOR. DOC asserted before the OOR that Marshall's request lacked specificity and was too vague.

On April 16, 2012, the OOR issued a final determination in which it denied the request in part because it was unable to determine what records were sought in the majority of the request and granted the request in part with respect to "settlement agreements" and "checks" executed or paid in connection with the named individuals:

In the present case, the OOR is unable to discern what records are being sought in the majority of the Request. The Request seeks 'public records containing details about any claims . . . or verdicts' involving several identified individuals and also seeks various other records related to this general subject matter. As the Request is premised on a general subject matter without any limiting characteristics, such as time, courts, types of claims or any other attributes, the OOR finds that the majority of the Request fails to specifically identify what records were sought as required by 65 P.S. § 67.703.

Portions of the Request, however, offer examples of what types of records are sought. . . . The Request, for example, specifically seeks 'settlement agreement[s]' and 'check[s]' in the context of the subject matter identified in the remainder of the Request. Accordingly, based on a review of the Request, the OOR finds that the portion of the Request seeking settlement agreements and checks . . . sufficiently identified what records were sought to enable a response by the DOC.

In response to the Request, the DOC asserted a number of exemptions and alleged that certain records ‘do not currently exist.’ On appeal, however, the DOC provided no evidentiary support establishing either that one or more exemptions prevent access to the requested records or that the records do not exist. As the DOC bears the burden of proving that records are not subject to public access or do not exist, the OOR finds that the DOC did not meet its burden of proof. . . . (Citations omitted).

Final Determination, April 16, 2012, at 4-5; R.R. at 16-17.

DOC contends that OOR erred when it found that the pool of potentially responsive records was impermissibly vague, but nonetheless ordered that DOC must provide settlement agreements and checks.²

Section 703 of the Law, 65 P.S. §67.703, provides:

A written request for access to records may be submitted in person, by mail, by e-mail, by facsimile or, to the extent provided by agency rules, by any other electronic means. A written request must be addressed to the open-records officer designated pursuant to section 502. Employees of an agency shall be directed to forward requests for records to the open-records officer. A written request should identify or describe the records sought *with sufficient specificity to enable the agency to ascertain which records are being requested* and shall include the name and address to which the agency should address its response. A written request need not include any explanation of the requester’s reason for requesting

² A reviewing court in its appellate jurisdiction independently reviews the OOR’s orders and may substitute its own findings of fact for that of the agency. Bowling v. Office of Open Records, 990 A.2d 813, 818 (Pa. Cmwlth. 2010), *petition for allowance of appeal granted*, 609 Pa. 265, 15 A.3d 427 (2011). In reviewing a final determination of the OOR, a decision of the reviewing court shall contain findings and conclusions based on the evidence as a whole. Section 1301(a) of the Law, 65 P.S. §67.1301(a).

or intended use of the records unless otherwise required by law. (Emphasis added).

While the OOR determined that part of Marshall's request lacked specificity, it also determined that the request relating to settlement agreements and checks issued in connection with the ten named individuals in the request was sufficiently specific.

DOC asserts that this request is similar to the one in Mollick v. Township of Worcester, 32 A.3d 859 (Pa. Cmwlth. 2011). In Mollick, James Mollick made many requests for records. Among the requests were all emails between Township of Worcester supervisors regarding any Township business and/or activities for the "past one and five years" and all emails between the Township supervisors and the Township employees regarding any Township business and/or activities for the "past one and five years." Mollick, 32 A.3d at 871.

The OOR directed the Township to provide a sample of the requested emails to enable Mollick to prepare a more specific request which was more limited in type, subject matter, time frame, and scope. The Court of Common Pleas of Montgomery County found that the OOR erred. Mollick, 32 A.3d at 870-871.

Mollick appealed to this Court which affirmed on this issue:

In his appeals to the OOR, Requestor [Mollick] simply states that he had to make his requests broad enough to be all-inclusive because he does not know which emails

the Township possesses and the Township does not have a catalogue organizing the emails into specific categories. . . . However, Requestor [Mollick] fails to specify what category or type of Township business or activity for which he is seeking information. . . . While the purpose of the RTKL is to provide access to public records in order to prohibit secrets, allow the public to scrutinize the actions of public officials, and make public officials accountable for their actions, it would place an unreasonable burden on an agency to examine all its emails for an extended time period without knowing, with sufficient specificity, what Township business or activity the request is related. (Citations omitted).

Mollick, 32 A.3d at 871.

In contrast to Mollick, the request here is far more specific insofar as the requested records are settlement agreements and checks related to claims against the ten named individuals. While DOC argues that this request would require it to “sort through this admittedly capacious haystack of potentially responsive records in search of the needles of settlement agreements and checks,” DOC’s Brief at 10, DOC did not provide any evidentiary support for the magnitude of this request either before the OOR or this Court.³ This Court agrees with the OOR that Marshall’s request is sufficiently specific.⁴

³ In reviewing a decision of the OOR, this Court is permitted to make its own findings of fact. Bowling.

⁴ DOC also argues that because OOR determined that the first portion of the request lacked specificity, the whole request lacks specificity. Once again, this Court agrees with the OOR that the request for settlement agreements and checks paid as a result of claims made against the ten individuals is sufficiently specific, even if the first portion of the request was not.

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

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	:	
v.	:	
	:	
James Marshall,	:	No. 916 C.D. 2012
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ORDER

AND NOW, this 7th day of December, 2012, the order of the Office of Open Records in the above-captioned matter is affirmed.

BERNARD L. MCGINLEY, Judge

Maxine Overton	Tammy Mowry
Raymond J. Sobina	Denial Telega
William McConnell	Ralph Lucas
Brian Hewitt	Dr. Mark Baker
Dr. V. Gilreath	Scott Breckenridge

For each payment made, please include a copy of the tort claim or complaint, or any other documents that discloses [sic] the facts underlying the incident leading to settlement or verdict.

Also, [please] include any settlement agreement, general release, verdict, or court Order obligating any of these named individuals to pay any claimant or plaintiff.

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(R.R. at 1.)²

After DOC denied the request, the Office of Open Records (OOR) issued a final determination granting the request in part with respect to any settlement agreements or checks relating to claims against the above-named individuals. OOR concluded that the request was sufficiently specific in this regard. However, OOR denied the remainder of the request because it was “premised on a general subject matter without any limiting characteristics, such as...courts, types of claims, or any other attributes....” (R.R. at 16-17.) The Majority affirms OOR’s final determination.

I agree with the Majority that the bulk of the request was not sufficiently specific. I also agree with the Majority that the request for settlement agreements and checks was more specific than the remainder of the request. However, I still have

² Requestor’s reproduced record does not contain the small “a” as required by Pa. R.A.P. 2173.

some reservations regarding the latter. In particular, I am concerned that the request does not contain a time frame and that it may still be construed as somewhat vague or overbroad.

Section 703 of the RTKL provides 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. In Montgomery County v. Iverson, 50 A.3d 281 (Pa. Cmwlth. 2012), we cautioned against requests that provide no time frame for the records sought, but instead utilize an “all” or “any” approach. Ultimately, we affirmed the order of the trial court concluding that such a request was not sufficiently specific. Compare Easton Area School District v. Baxter, 35 A.3d 1259 (Pa. Cmwlth.), appeal denied, ___ Pa. ___, ___ A.3d ___ (No. 136 MAL 2012, filed October 16, 2012) (holding that a request for emails limited to a 30-day period was sufficiently specific).

Additionally, we held in Iverson that “[a]n open-ended request that gives an agency little guidance regarding what to look for may be so burdensome that it will be considered overly broad.” Id. at 283. Further, we have held that a request will lack specificity if it fails to identify what category or type of business or activity for which the requestor is seeking information. Mollick v. Township of Worcester, 32 A.3d 859, 871 (Pa. Cmwlth. 2011) (holding that a request for “all emails between the Supervisors regarding any Township business and/or activities for the past one and five years...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 and placed an unreasonable burden on the Township).

In the present case, Requestor fails to set forth a time frame for the requested records and fails to provide any limiting characteristics such as the names of courts or the types of claims for the records he seeks. Nevertheless, given the fact that Requestor did attempt to limit his request to claims relating to the aforementioned ten individuals, as well as DOC's failure before OOR to provide any evidentiary support for its claim that the request will require it to "sort through this admittedly capacious haystack of potentially responsive records," DOC's Brief at 10, I concur in the result reached by the Majority.

PATRICIA A. McCULLOUGH, Judge