pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
NICHOLAS MICHAEL,	:	
Requester	:	
	:	
v.	:	**Docket No: AP 2016-1286**
	:	
PHILADELPHIA ADULT PROBATION	:	
and PAROLE DEPARTMENT,	:	
Respondent	:	

INTRODUCTION

Nicholas Michael, an inmate at SCI-Rockview, ("Requester") submitted a request ("Request") to the Philadelphia Adult Probation and Parole Department ("Department") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq*., seeking various records relating to lab testing and notices of parole violations and revocations pertaining to two (2) specified criminal dockets. The Request was deemed denied, and the Requester appealed to the Office of Open Records ("OOR"). For the reasons set forth in this Final Determination, the appeal is **transferred** to the Appeals Officer for the Philadelphia Court of Common Pleas, and the Department is not required to take any further action.

FACTUAL BACKGROUND

On July 13, 2016, the Request was filed, seeking lab reports for urine tests taken on eight (8) specified dates, a lab report for a date when the Requester allegedly refused to take a urine test, copies of warrant cards, notices of alleged probation violations, an arrest warning for

specified dates, along with "[a]ny other written notices for revocation that were served upon" him in connection with two (2) court dockets. The Requester also seeks a copy of "the written documentation from [t]he Court of Common Pleas of Lancaster County showing written verification of [his] new conviction." As the Department did not respond to the Request, the Request was deemed denied on July 21, 2016. *See* 65 P.S. § 67.901.

On August 1, 2016, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. 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, however, neither party made a submission on appeal. *See* 65 P.S. § 67.1101(c).

LEGAL ANALYSIS

In the instant matter, the Request was directed to the Department and seeks records relating to the supervision of the Requester's probation or parole. For the reasons that follow, the OOR is without jurisdiction to consider the instant appeal.

The Commonwealth Court has unequivocally held that the OOR is without jurisdiction over records of judicial employees. *Lackawanna County Court of Common Pleas v. Office of Open Records*, 2 A.3d 180 (Pa. Commw. Ct. 2010). Pursuant to Section 102 of the RTKL, a "judicial agency" is defined as "[a] court of the Commonwealth or any other entity or office of the unified judicial system." 65 P.S. § 67.102. Employees of probation offices are considered employees of the court system. *See Lackawanna*, 2 A.3d at 813; 42 Pa.C.S. § 961 (stating that "[e]ach court of common pleas shall have a domestic relations section, which shall consist of such probation officers and other staff of the court as shall be assigned thereto"); *see also Dunsinger v. Susquehanna County*, OOR Dkt. AP 2014-0535, 2014 PA O.O.R.D. LEXIS 457 (dismissing appeal concerning adult and juvenile probation records for lack of jurisdiction).

Because the probation records sought by the Requester are maintained by the Department, they are considered judicial records and are beyond the jurisdiction of the OOR. Instead, appeals involving a judicial agency are to be heard by an appeals officer designated by the judicial agency. *Id*. ("A judicial agency shall designate an appeals officer to hear appeals under Chapter 11").

CONCLUSION

For the foregoing reasons, Requester's appeal is **transferred** to Appeals Officer for the Philadelphia Court of Common Pleas. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, either party may appeal to the Philadelphia 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. 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.[1] This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: August 18, 2016

/s/ Kelly C. Isenberg

APPEALS OFFICER
KELLY C. ISENBERG, ESQ.

Sent to: Nicholas Michael (via U.S. Mail only);
Philadelphia Adult Probation & Parole Dept. (via U.S. Mail only);
Appeals Officer, Philadelphia Court of Common Pleas (via U.S. Mail only)

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