

[illegible]

1

On May 24, 2023, the Association and the Trust both denied the Requests, arguing that neither the Association nor the Trust¹ are “agencies” for purposes of the RTKL, and thus, neither are subject to the RTKL. *See* 65 P.S. § 67.101.

On May 25, 2023 and on May 30, 2023, the Requester appealed to the Office of Open Records (“OOR”), challenging the denials and stating grounds for disclosure. Four separate appeals were filed by the Requester. The appeals with the Association were docketed at OOR AP 2023-1183 and AP 2023-1224. The appeals with the Trust were docketed at OOR AP 2023-1195 and AP 2023-1200. The OOR invited all parties to supplement the record and directed both the Association and the Trust to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On June 6, 2023, the Trust filed a request to participate as an interested party in the appeals docketed at OOR AP 2023-1183 and AP 2023-1224, which was accepted by the OOR. *See* 65 P.S. § 67.1101(c).

On June 9, 2023, because all four appeals involve the same parties and similar requests, the OOR granted the joint request for consolidation made by the Association and the Trust and the OOR consolidated the appeals into OOR Dkt. AP 2023-1183. *See* 65 P.S. § 1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”).

On June 20, 2023, the Requester submitted a position statement and variety of information in support of the appeal.

On July 7, 2023,² the Requester submitted additional information in support of the appeal.

¹ The Trust nevertheless voluntarily provided certain documents and information to Requester.

² On July 7, 2023, with consent of the parties, the OOR set a submission schedule. *See* 65 P.S. § 67.1102(a)(1) (vesting appeals officers with the discretion to establish a schedule for the parties to submit evidence and argument.). As part of the schedule, the Requester afforded the OOR and extension of time until September 1, 2023 to issue its Final

On July 17, 2023, the Association and the Trust submitted position statements³ reiterating their grounds for denial. In support of its position, the Trust submitted documentation relating to the litigation, judgments, and court orders that resulted in the Trust's creation.⁴

On July 24, 2023, the Requester provided a supplemental submission in support of the appeal.

On that same day, the Requester directed the appeal insofar as it concerns the Association to be withdrawn. Per that request, this Final Determination will not further address the Association and the Association is not required to take any further action.

On July 31, 2023, the Trust submitted a supplemental verified position statement, which is verified, subject to the penalties of 18 Pa. C.S.A. § 4904, by its Chair, Thomas VanKirk.

LEGAL ANALYSIS

The threshold question in this matter is whether the Trust is an agency subject to the RTKL. The Requester argues, in pertinent part, that the Trust can be viewed as either a Commonwealth or a local agency subject to the RTKL because it “receives, invests, spends, distributes, and oversees public funds, while also influencing how other entities spend those public funds[;]” thus, the Trust “performs a government function[.]” The Requester also argues that the “trust order...makes clear that the officials overseeing...[the funds] are public officials[.]” The Trust argues that it is not an agency under the RTKL. *See* 65 P.S. § 67.102.

Determination. 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

³ The Trust's position statement was verified, subject to the penalties of 18 Pa. C.S.A. § 4904, by its Chair, Thomas VanKirk.

⁴ *See* Trust Exhibits A-H, where Exhibits A and B are copies of the Final Consent Judgments (“Consent Judgments”) and Exhibits C and D are copies of the Joint Motions to Enter Final Consent Judgments (“Joint Motions”), Exhibit E is a copy of the Consent Judgments Order, Exhibits F and G are copies of the Settlement Agreements between the Office of Attorney General and the Pharmaceutical Companies, and Exhibit H is a copy of the Order of the Court creating the Trust (“Trust Order”). The Requester also submitted a copy of many of the same documents, including the Trust Order.

For an entity to be subject to the provisions of the RTKL, it must be “an agency” as defined by Section 102, which defines agency as “a Commonwealth agency, a local agency, a judicial agency or a legislative agency.” 65 P.S. § 67.102. Section 102 also further defines each type of agency. *Id.* The OOR is authorized to hear appeals for all Commonwealth agencies, local agencies or similar governmental entities. *See* 65 P.S. § 67.503(a). Therefore, the OOR may only retain jurisdiction of the instant appeal if the Trust is a Commonwealth agency, a local agency or a similar governmental entity.

1. The Trust demonstrated that it is not a Commonwealth agency as defined by the RTKL

The Trust argues that it is not a Commonwealth agency because it does not meet the statutory definition set forth in Section 102 of the RTKL. The Requester argues that the Trust meets the statutory definition of Commonwealth agency because it “perform[s] an essential government function[,]” and because it is an “independent agency” or a “State-affiliated entity[,]” 65 P.S. § 67.102.

The RTKL defines “Commonwealth agency” as:

- (1) Any office, department, authority, board, multistate agency or commission of the executive branch, an independent agency and a State-affiliated entity.

The term includes:

- (i) The Governor’s Office.
- (ii) The Office of Attorney General, the Department of the Auditor General and the Treasury Department.
- (iii) An organization established by the Constitution of Pennsylvania, a statute or an executive order which performs or is intended to perform an essential governmental function.

- (2) The term does not include a judicial or legislative agency.

Id.

a. The Trust is not one of the entities named in subparts (i)-(iii)

When analyzing the statutory definition of “Commonwealth agency[,]” Sections (1)(i) and (1)(ii) clearly do not apply to the Trust because it is not one of the named Offices or Departments. The evidence presented by the Trust also demonstrates that the Trust was created pursuant to Court order and, is therefore, not an “organization established by the Constitution of Pennsylvania, a statute or an executive order....” 65 P.S. § 67.102; *see also* Trust Exhibits A-H.

Although the Requester does not dispute that the Trust was created pursuant to Court order, the Requester focuses on the phrase “performs or is intended to perform an essential governmental function.” 65 P.S. § 67.102. Specifically, the Requester argues that the Trust performs an essential government function because it “receives, invests, spends, distributes, and oversees public funds, while also influencing how other entities spend those...funds[.]” However, the Requester’s argument fails as it pertains to Sections (1)(iii) because it attempts to improperly bifurcate this subsection of the definition of “Commonwealth agency” into two separate statutory requirements. Essentially, the Requester argues that that Section (1)(iii) says that an entity is a Commonwealth agency for purposes of the RTKL if it is “established by the Constitution of Pennsylvania, a statute or an executive order,” **or** if it “performs or is intended to perform an essential governmental function.” *Id.* The plain language of the statute is clear that, to be a Commonwealth agency for purposes of the RTKL, an entity must be created by one of the governing documents listed **and** also “perform[] or [be] intended to perform an essential governmental function.” *Id.* Since the Trust was not “established by the Constitution of Pennsylvania, a statute or an executive order,” it does not meet the RTKL’s definition of “Commonwealth agency[,]” regardless of the function the Trust performs or is intended to perform. *Id.* Accordingly, based on the totality of the record and

the plain language of Section 102 of the RTKL, the Trust is not a “Commonwealth agency” pursuant to Sections (1)(i), (ii) or (iii) of the statutory definition. *See* 65 P.S. § 67.102.

b. The Trust is not an independent agency or a State-affiliated entity

The Requester also argues that the Trust meets the statutory definition of “independent agency” and “State-affiliated entity”.

Section 102 of the RTKL defines an “independent agency” as:

Any board, commission or other agency or officer of the Commonwealth, that is not subject to the policy supervision and control of the Governor. The term does not include a legislative or judicial agency.

65 P.S. § 67.102.

Section 102 defines “State-affiliated entity” as:

A Commonwealth authority or Commonwealth entity. The term includes the Pennsylvania Higher Education Assistance Agency and any entity established thereby, the Pennsylvania Gaming Control Board, the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement Board, the State System of Higher Education, a community college, the Pennsylvania Turnpike Commission, the Pennsylvania Public Utility Commission, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Interscholastic Athletic Association and the Pennsylvania Higher Educational Facilities Authority. The term does not include a State-related institution.

Id.

More specifically, the Requester argues that the Trust is a “board...of the Commonwealth” because “[a]ll members of the [T]rust board are public officials as they are ‘either a Public Official or Public employee or appointed by Public Officials or appointed pursuant to...the [Trust] [O]rder⁵ to perform a function administering a trust to protect the public interest[.]’” and because “the creation of the Trust board was proposed by the attorney general and approved by a court of law to administer funds to Pennsylvania as a result of legal action brought by the Commonwealth itself,

⁵ *See* Trust Order, p. 26.

making it a board ‘of the Commonwealth.’” Additionally, the Requester argues that the entities listed in the definition of State-affiliated agency “generally operate similarly to the...Trust in that the power to appoint members is divided over multiple entities and they are performing a government function.” The Requester uses “the Pennsylvania State System of Higher Education...[as an] example of how representation is divided for its leadership” because its Board consists of students, legislators, individuals appointed by the Governor, the Governor or a designee, and the Secretary of Education or a designee.

The Trust does not dispute that some of its Trustees currently serve in public capacities but argues that “this fact alone does not establish [that] the Trust [i]s...[an] agency subject to the RTKL[,] and Requester cites no authority that it does.” The Trust also argues that it is not an “independent agency” because it is not “a board, commission or other agency or officer *of the Commonwealth....*” 65 P.S. § 67.102 (emphasis added). Additionally, the Trust argues that it is not one of the entities enumerated in the statutory definition of “State-affiliated” entity, “nor is it anything like them” because “each of the entities identified in the definition [of ‘State-affiliated’ entity]...was created and/or is governed by Pennsylvania statute[,]” and the Trust “is a new, unique trust vehicle created under the Consent Agreements and Trust Order to act as a conduit for settlement funds and to implement defined procedures for these funds....” The Trust further argues that it “is obligated to follow the procedures outlined in the Consent Agreements and Trust Order,” which defines its responsibilities and functions. Finally, the Trust argues that it “does not propose uses for the funds; the individual county and political subdivision recipients control those,” nor does it “allocate[] the settlement funds...[because] the Consent Judgments and Trust Order set specific formulas for that purpose.”

In support of their arguments, both the Requester and the Trust cite to the OOR's determination in *Campbell v. Republican State Committee of Pennsylvania*, OOR Dkt. AP 2016-1114, 2016 PA O.O.R.D. LEXIS 1077. Like the instant appeal, the question in *Campbell*, was whether the Republican State Committee of Pennsylvania ("Committee") is an agency for purposes of the RTKL. 2016 PA O.O.R.D. LEXIS 1077. In *Campbell*, the requester argued that the Committee "qualifies as a Commonwealth agency because it is an 'independent agency' that serves as a 'commission...of the Commonwealth.'" *Id.* The OOR analyzed the phrase "of the Commonwealth[,]" using the criteria set forth by the Court in *Scott v. Delaware Valley Regional Planning Commission*, 56 A.3d 40, 46-47 (Pa. Commw. Ct. 2012). In *Scott*, the Court stated that an entity exclusively performs governmental functions "[(1)] only where a statute identified the organization as providing essential services **or** [(2)] the organization provided constitutionally mandated services or services that were indisputably necessary to the continued existence of the Commonwealth." *Id.* at 46 (emphasis added) (citing *SAVE, Inc. v. Del. Valley Reg'l Plan. Comm'n*, 819 A.2d 1235 (Pa. Commw. Ct. 2003)). Following the Court's guidance, the OOR concluded that "only entities that exclusively perform governmental functions may be considered independent agencies under the RTKL." *Campbell*, 2016 PA O.O.R.D. LEXIS 1077 (citing *Office of the Governor v. Bari*, 20 A.3d 634, 645 (Pa. Commw. Ct. 2010). As such, the OOR determined that "because the Committee does not exclusively perform public functions like the agencies listed within 65 P.S. § 67.102, ...[it] cannot be considered an independent agency for purposes of the RTKL." *Id.*

Following the analysis in *Campbell*, for the Trust to qualify as an "independent agency" for purposes of the RTKL, it must be an agency "of the Commonwealth," meaning the Trust must exclusively perform governmental functions as set forth by the Court in *Scott*. 56 A.3d at 46; 65

P.S. § 67.102. The first part of the criteria set forth in *Scott* is that a “statute identifie[s] the organization as providing essential services.” 56 A.3d at 46. Here, there is nothing in the record to indicate that the Trust is identified by statute as providing an essential service. The second part of the criteria set forth in *Scott* is that “the organization provide[s] constitutionally mandated services or services that were indisputably necessary to the continued existence of the Commonwealth.” *Id.* There is nothing in the record showing that the services provided by the Trust are constitutionally mandated. Rather, the evidence provided by both parties shows that the functions of the Trust, as well as the Trust itself, are judicial creations. Further, the function of the Trust, as established in the Trust Order, is to “to distribute Trust Funds obtained by the Commonwealth and its subdivisions from the Settlements and Other Settlements,”⁶ which is valuable but not “necessary to the continued existence of the Commonwealth.” Accordingly, based on the evidence presented, the statutory language, and the analysis set forth in *Campbell* the Trust is not an independent agency as contemplated in the RTKL. 65 P.S. § 67.102.

Although independent agencies must perform an essential governmental function, the definition of “State-affiliated entity” includes agencies, such as community colleges, which the Pennsylvania Supreme Court has explicitly held do not perform an “essential governmental function.” *See* 65 P.S. 67.102; *Cnty College of Phila. v. Brown*, 674 A.2d 670, 671-72 (Pa. 1996) (“[W]hile the community colleges of Pennsylvania perform important educational services, we know of no authority which holds that their services are ‘essential’”).

As stated above, Section 102 of the RTKL defines “State-affiliated entity” as “[a] Commonwealth authority or Commonwealth entity.” *Id.* It is undisputed that the Trust is not a Commonwealth authority. The Trust’s argument that it is not analogous to any of the examples

⁶ *See* Trust Order, p. 9.

provided in Section 102 of the RTKL is persuasive because each entity listed in the RTKL's definition of "State-affiliated entity" is statutorily created, while the Trust is not. *Id.*; *see also* Trust Exhibit H. Moreover, the Requester does not expand upon the argument that the Trust is a "State-affiliated entity" other than simply stating that the entities listed in Section 102 "generally operate similarly to the...Trust in that the power to appoint members is divided over multiple entities and they are performing a government function." As previously discussed, there is no requirement that State-affiliated entities perform a government function; however, the Requester offers no evidence or legal authority supporting the argument that an entity's "power to appoint members divided over multiple entities" or the fact that an entity's members are appointed by public officials are hallmarks of State-affiliated entities for purposes of the RTKL. Accordingly, based on the evidence presented and the statutory language, the Trust does not meet the RTKL's definition State-affiliated entity. 65 P.S. § 67.102.

c. The Trust does not have a direct financial relationship with the Commonwealth

Lastly, the financial relationship between the Commonwealth and the Trust must be examined because the Commonwealth Court has noted that "the financial relationship between the Commonwealth and the [entity] in question is a primary factor in determining whether [it] is a Commonwealth agency." *S.A.V.E., Inc.*, 819 A.2d at 1238 (Pa. Commw. Ct. 2013).

The Trust argues that it "has zero 'government financing'" because it "is financed exclusively by funds from the Private Party Pharmaceutical Defendants." The Requester argues, in pertinent part, that the Pennsylvania Attorney General, "[a]n elected public official[,] used the full powers of his office to secure th[e] money for the Commonwealth and its subdivisions, making the funds public money."

Notwithstanding the parties' dispute regarding Requester's use of the terms "public funds" and "public money[.]" the question, here, is whether the Trust has a direct financial relationship with the Commonwealth. Although the Trust is unique, an analysis of whether other entities have a direct financial relationship with the Commonwealth is useful. For example, the OOR has analyzed the financial relationship between constables and the Commonwealth and concluded that, because "they are not salaried employees of the Commonwealth, do not depend on state funding to operate and are not subject to annual audits by the Commonwealth[.]" constables do not have a financial relationship with the Commonwealth. *See Kneller v. Wayne Twp. Constable*, OOR Dkt. AP 2018-1772, 2018 PA O.O.R.D. LEXIS 1325 (citing *Ward v. Commonwealth*, 65 A.3d 1078, 1082 (Pa. Commw. Ct. 2013)); *see also Grove v. Constable John-Walter Weiser*, OOR Dkt. AP 2018-0457, 2018 PA O.O.R.D. LEXIS 523.

Neither the Trust Order nor the appeal record shows that the Trust employees draw Commonwealth salaries, that it depends on state funding to operate or that it is subject to annual audits by the Commonwealth. Furthermore, the Consent Judgments and Trust Order—not the Commonwealth—enumerates the Trust's governance, the duties of the Trust and the permissible uses of the funds. Therefore, based on the evidence submitted on appeal, it cannot be concluded that the Trust has a direct financial relationship with the Commonwealth.

Accordingly, based on the totality of the record, the Trust demonstrated that it is not Commonwealth agency as defined in Section 102 of the RTKL, 65 P.S. § 67.102.

2. The Trust is not a local agency or similar governmental entity as defined by the RTKL

The Trust argues that it is neither a local agency nor a similar governmental entity because it does not meet the statutory definition. The Requester argues that the Trust is a local agency

because “[o]f the [thirteen] members of the [Trust’s] board, seven represent regions of the state[,]” and because “[s]even is also the explicit requirement for a quorum of the [T]rust.”

The RTKL defines “local agency” as:

- (1) Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school.
- (2) Any local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity.

65 P.S. § 67.102.

It is not disputed that the Trust is not a “political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school.” *Id.* To the extent the Requester argues that the Trust is an “regional agency” because seven of its Trustees are required by the Trust order to represent different regions of Pennsylvania, there is no evidence that that requirement, alone, transforms the Trust into a “regional agency.” Thus, the record does not support a finding that the Trust is a “regional agency” as contemplated by the RTKL.⁷

Although the Requester does not specifically argue that the Trust is a “similar governmental entity[,]” it also does not qualify as such. In *Pysher v. Clinton Township Volunteer Fire Company* (“*Pysher I*”), the Commonwealth Court set forth several factors to be considered when assessing whether an organization is considered a “similar government entity[,]” including the degree of governmental control, the nature of the organization’s functions and financial control. 209 A.3d 1116 (Pa. Commw. Ct. 2019); *see also Appeal of Hadley*, 83 A.3d 1101, 1108 (Pa.

⁷ Additionally, as argued by the Trust, the agencies listed in the RTKL’s definition of “local agency” are, generally, statutorily created or created by a political subdivision whereas, the Trust was not. *See In re Right to Know Law Request Served on Venango Cnty’s Tourism Promotion Agency, Lead Econ. Dev. Agency*, 83 A.3d 1101 (Pa. Commw. Ct. 2014); *see also Phila. Indus. Dev. Corp. v. Ali, Phila. Indus. Dev. Corp. v. Ali*, 2011 Pa. Commw. Unpub. LEXIS 317 (Pa. Commw. 2011) (“Generally, local, intergovernmental, regional or municipal agencies, authorities, councils, boards or commissions are government entities established by a political subdivision pursuant to statutory authorization.”).

Commw. Ct. 2014). The Court explained that with respect to the first factor, a court should review the “organizational structure, purposes, powers, duties and fiscal affairs” of the organization. *Id.* The Court also noted that “cooperation with the government is insufficient to establish control.” *Id.* Regarding the second factor, the Court held that “[t]he function an entity performs weighs heavily in a local agency assessment. The function must be governmental, but it need not be...essential. To qualify as governmental, the function must be a substantial facet of a government activity.” *Id.*; *see also Hadley*, 83 A.3d 1109. Finally, with respect to financial control, the Court noted that “the less government financing, the less likely it was that there was governmental control.” *Id.*

In this instance, the Trust’s “organizational structure, purposes, powers, duties and fiscal affairs” are set forth in the Consent Judgments and Trust Order. The Trust Order specifically states that the Trust’s purpose is “to distribute Trust Funds obtained by the Commonwealth and its subdivisions from the Settlement[] [Agreements].” *See* Trust Order, p. 9. Additionally, the Trust Order does not contain a provision providing any government entity with the power or duty to oversee or control the Trust.⁸ Regarding the second factor set forth by the Court in *Pysher I*, the Court stated that the entity’s function “must be a substantial facet of a government activity.” 209 A.3d at 1123. Further, as previously discussed the functions of the Trust are not established by statute and there is no evidence in the record to show that the Trust fulfills the “core purpose of a government agency.” Rather, as argued by the Trust, the Trust “administers a unique program arising out of Consent Judgments with private parties....” Finally, as noted above, the Trust does

⁸ *See Pysher v. v. Clinton Twp. Volunteer Fire Co.*, 7 66 C.D. 2022, 2023 Pa. Commw. Unpub. LEXIS 280, *5 (Pa. Commw. Ct. May 24, 2023) (“*Pysher II*”) (Finding that, while municipalities exercise very little “active control” over the Fire Company, they “exercise passive or political control and oversight[,]” and even though the municipalities do not often use this authority, what mattered is that they could exercise authority over the Fire Company.)

not draw public funding.⁹ Therefore, application of the *Pysher* factors weigh in favor of finding that the Trust is not a “similar governmental entity” for purposes of the RTKL. *See Pysher*, 209 A.3d 1116; *Appeal of Hadley, supra* (concluding that a business, industry and tourism alliance was not a “similar governmental entity” where there was no governmental control over the alliance’s operations, including its organizational structure, purposes, powers, duties and fiscal affairs and the government’s financing of the alliance was “proportionally small”); *Phila. Indus. Dev. Corp. v. Ali*, 2011 Pa. Commw. Unpub. LEXIS 317 (Pa. Commw. Ct. 2011) (holding that the PIDC was not a “similar governmental entity” where, among other things, it was not created by a political subdivision pursuant to a specific statutory power, its members were not appointed exclusively by the governing body of a political subdivision, it did not require the delegation of authority from a political subdivision to perform its function); *see also, e.g., Touti v. Oley Valley Community Education Foundation*, OOR Dkt. AP 2023-1130, 2023 PA O.O.R.D. LEXIS 1613.

Accordingly, based on the RTKL’s statutory definition of “local agency,” case law, and the evidence provided by the Trust, the OOR cannot conclude that the Trust is a local agency for purposes of the RTKL. 65 P.S. § 67.102.¹⁰

3. The determination that the Trust is not an “agency” for purposes of the RTKL is dispositive

As stated above, the OOR is authorized to hear appeals for all Commonwealth agencies, local agencies or similar governmental entities and, as such, the OOR only retains jurisdiction of

⁹ In *Pysher II*, the Court noted that more than 50% of the Fire Company’s funding came from public sources, and, moreover, the Fire Company acknowledged that its very existence was dependent on the support of the municipalities. *Id.* at *6-7.

¹⁰ Although the Trust argues that it is not a “judicial agency” or a “legislative agency,” as defined in Section 102 of the RTKL, 65 P.S. § 67.102, the OOR does not have jurisdiction over either type of agency, and so would be required to dismiss this appeal regardless. Therefore, the OOR will not address whether the Trust is a judicial or legislative agency for purposes of the RTKL.

the instant appeal if the Trust is determined to be a Commonwealth agency, a local agency or a similar governmental entity. *See* 65 P.S. § 67.503(a).

The Requester raises various other arguments that the Trust should be considered an agency for purposes of the RTKL. In sum, the Requester argues that the Trust receives and distributes large sums of money that is intended to be used by state and local government to abate Pennsylvania's opioid crisis and, as such, it is in the public interest for the Trust to be subject to the RTKL because public oversight and access to information promotes greater transparency.¹¹ Although the Requester's argument is in the spirit of the RTKL, which is designed to promote access to government information, the OOR does not have the authority to deem an entity an "agency" for purposes of the RTKL if, after a factual and legal analysis, the entity does not meet the statutory definition of agency.¹² 65 P.S. § 67.102. Additionally, the OOR does not have the authority to create a new category of "agency." Rather, the OOR's jurisdiction is limited to determining whether the Trust falls within the current statutory definition of "an agency." Accordingly, the above determination that the Trust is not an "agency" for purposes of the RTKL is dispositive and the appeal must be dismissed for lack of jurisdiction.

CONCLUSION

For the foregoing reasons, the appeal is **dismissed** for lack of jurisdiction, and the Trust is not required to take any further action. 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 appropriate court of appellate jurisdiction. 65 P.S. §§ 67.1301(a), 1302(a). All parties must be served with

¹¹ As stated by the Trust, the Consent Judgments and Trust Order intentionally include disclosure requirements to "ensure certain levels of transparency." It is not disputed that the Trust Order "includes a provision that public proceedings and meetings of the Trust are governed by the Sunshine Act...." However, contrary to the Requester's argument, there is no legal precedent that such an agreement can transform the Trust into an "agency" under the RTKL.

¹² To the extent the Requester believes that the Trust is a judicial agency, such a determination must be made by a court, not the OOR.

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.¹³ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 1, 2023

/s/ Erika Similo

APPEALS OFFICER
ERIKA SIMILO

Sent via OOR portal to: Ed Mahon
 Jack M. Stover, Esq.
 Claudia Shank, Esq.

¹³ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).