



# pennsylvania

## OFFICE OF OPEN RECORDS

### FINAL DETERMINATION

<b>IN THE MATTER OF</b>	:	
	:	
<b>EDWARD KENNEDY,</b>	:	
<b>Requester</b>	:	
	:	
<b>v.</b>	:	<b>Docket No: AP 2023-2605</b>
	:	
<b>SCHUYLKILL COUNTY,</b>	:	
<b>Respondent</b>	:	
	:	

### FACTUAL BACKGROUND

On October 18, 2023, Edward Kennedy (“Requester”) submitted a request (“Request”) to Schuylkill County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

Judicial Insurance policy for the following: Jacqueline L. Russell, Charles M. Miller[,] James P. Goodman, Christina E. Hale, Christopher W. Hobbs[,] D. Michael Stine, and Senior Judge C. Palmer Dolbin.

The Requester alleges that the County did not respond within five business days of the Request, and on October 25, 2023, the Request was deemed denied. *See* 65 P.S. § 67.901. On October 26, 2023, the Requester appealed to the Office of Open Records (“OOR”), providing reasons for disclosure. The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On November 6, 2023, the County submitted its response, stating that responsive records do not exist in its possession, custody or control.<sup>1</sup> In support of its position, the County submitted the attestation of Mary Timpany, Esq. (“Timpany Attestation”), Court Administrator for the Schuylkill County Court of Common Pleas.<sup>2</sup>

### LEGAL ANALYSIS

The County is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the County is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder...to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

Here, the Request facially seeks *judicial* insurance policies, for seven specified individuals, who are judges (emphasis added). *See Office of the Governor v. Davis*, 122 A.3d 1185, 1194 (Pa. Commw. Ct. 2015) (*en banc*) (holding that an affidavit may be unnecessary when an exemption is clear from the face of the record).

On appeal, the County submitted evidence demonstrating the AORO contacted Ms. Timpany, who serves as Court Administrator for the Schuylkill County Court of Common Pleas, who conducted a search for records. Timpany Attestation ¶ 1. Under the RTKL, an affidavit or

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<sup>1</sup> The County also attests that a final response was sent to the Requester on October 26, 2023. Timpany Attestation ¶ 7. However, the response is untimely. *See* 65 P.S. § 67.901.

<sup>2</sup> The Timpany Attestation is made subject to penalties under 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.

statement made under penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the County has acted in bad faith, “the averments in the [attestation] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). Additionally, although it was directed to the County, the Request facially seeks records of the Schuylkill County Court of Common Pleas.

The Court is a judicial agency that is not subject to the jurisdiction of the OOR. *See* 65 P.S. § 67.102; 65 P.S. § 67.503(b); *see also Frazier v. Phila. Cnty. Office of the Prothonotary*, 58 A.3d 858 (Pa. Commw. Ct. 2012) (“Under the Pennsylvania Rules of Judicial Agency Administration, court prothonotaries are personnel of the unified judicial system ... [and], the OOR correctly determined that it did not have jurisdiction to hear Petitioner’s appeal...”). The OOR does not have jurisdiction to hear appeals related to requests for records of judicial agencies. 65 P.S. § 67.503(b). 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”). The RTKL only requires judicial agencies to provide financial records on request, and the OOR does not have jurisdiction over judicial agencies. 65 P.S. §§ 67.304 and 67.503(b); *Faulk v. Phila. Clerk of Courts*, 116 A.3d 1183, 1187 (Pa. Commw. Ct. 2015).

Further, even when a local agency possesses a record of a judicial agency, the OOR is prohibited from ordering disclosure of these records.<sup>3</sup> *Court of Common Pleas of Lackawanna Cnty. v. Pa. Office of Open Records*, 2 A.3d 810, 813-14 (Pa. Commw. Ct. 2010); *Grine v. Cnty.*

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<sup>3</sup> The County also presented credible evidence that records responsive to the Request do not exist in the County’s possession, custody, or control.

of Centre., 138 A.3d 88 (Pa. Commw. Ct. 2016); *Phila. Dist. Atty's Office v. Stover*, 176 A.3d 1014, 1028 (Pa. Commw. Ct. 2017) (finding that a sentencing order was a judicial record not subject to be disclosed under the RTKL even when in the possession of the DA's office). The Commonwealth Court in *Grine* noted that, "[t]o preserve the separation of powers, a requester was unable to access records of activities of a judicial employee by seeking the records through a county." *Grine*, 138 A.3d at 98 (citing *Lackawanna Cnty.*, 2 A.3d at 813). Therefore, even if the County did possess these records, the OOR would be unable to order their release. Nevertheless, the Timpany Attestation affirms that no responsive records exist, either with the County or the Court.

### CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the County 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 Schuylkill County 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. 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.<sup>4</sup> All documents or communications following the issuance of this Final Determination shall be sent to [oor-postfd@pa.gov](mailto:oor-postfd@pa.gov). This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: November 20, 2023**

*/s/ Tope L. Quadri*

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TOPE L. QUADRI  
APPEALS OFFICER

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<sup>4</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

Sent via portal to: Edward Kennedy  
Lois Lebo, AORO