



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**FREDERICK LITTLE,
Requester**

v.

**LACKAWANNA COUNTY,
Respondent**

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Docket No: AP 2024-0043

FACTUAL BACKGROUND

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

All records in [the County] of Magistrate Judge Farrel [sic] [Scranton Housing Authority (“SHA”)] evictions of [t]enant[s] proceedings by date, docket number, and parties (including SHA Adams High Rise) and including related cross claims and counter claims related to eviction proceedings from May 7, 1996 to the present.

The County did not respond within five business days of the Request, and on December 26, 2023, the Request was deemed denied. *See* 65 P.S. § 67.901. On January 4, 2024, 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 January 18, 2024, the OOR notified the parties that no submissions had been received and extended the filing deadline. The County did not respond or make any submissions on appeal.

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 County did not comply with the RTKL by timely responding to the Request, nor did the County participate on appeal by submitting legal argument or evidence in support of withholding records.

However, although it was directed to the County, the Request facially seeks magistrate court records related to SHA tenant eviction proceedings. *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). Additionally, in the appeal filing, the Requester affirms that he seeks magistrate court records. *See Pa. Game Comm’n v. Fennell*, 149 A.3d 101 (Pa. Commw. Ct. 2016) (holding that the OOR must consider uncontradicted statements in the appeal materials when determining whether an exemption applies).

Magisterial district courts are judicial agencies that are 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. *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. 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 disclosure 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.¹

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 Lackawanna 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.² All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: January 31, 2024

/s/ Tope L. Quadri

TOPE L. QUADRI
APPEALS OFFICER

Sent via portal to: Frederick Little
Traci K. Harte, AORO

¹ The records sought are “case records” governed by the unified judicial system (“UJS”). Accordingly, the Requester may potentially obtain responsive case records from the Magisterial District Court through UJS’s Public Access Policy, [214127-file10048.pdf \(pacourts.us\)](#).

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).