



FINAL DETERMINATION

IN THE MATTER OF

**LIZ EVANS SCOLFORO AND THE
YORK DISPATCH,
Requester**

v.

**YORK COUNTY,
Respondent**

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Docket No: AP 2020-1606

INTRODUCTION

Liz Evans Scolforo and the York Dispatch (collectively, the “Requester”) submitted a request (“Request”) to York County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking salary records for employees of the County Prothonotary’s Office. The County denied the Request, arguing that the requested records are judicial records. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **dismissed**, and the County is not required to take any further action.

FACTUAL BACKGROUND

On August 11, 2020, the Request was filed, seeking electronic copies of “salary records for all Prothonotary employees from Jan. 1, 2020, to present, showing name, salary, job title and

length of service, include start and end dates....” On August 14, 2020, the County denied the Request, arguing that the Request seeks “records of a judicial agency.”

On August 28, 2020, 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 County to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On September 10, 2020, the County submitted a position statement, reiterating the argument above, as well as the attestation, made under the penalty of perjury, of Michelle Pokrifka, Esq., the County’s Solicitor and Open Records Officer. The Requester did not submit any additional information during the appeal.

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant

to an issue in dispute. *Id.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep't of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, the parties did not request a hearing; however, the OOR has the necessary information and evidence before it to properly adjudicate the matter.

The County is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 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)).

The sole issue before the OOR is whether the County prothonotary is a “judicial” agency under the RTKL and, as a result, whether the OOR lacks jurisdiction over the records at issue in the appeal. *See* 65 P.S. § 67.304; 65 P.S. § 67.503. The County argues that the prothonotary is a

judicial agency, citing the Commonwealth Court’s decision in *Frazier v. Phila. Cnty. Office of the Prothonotary*, 58 A.3d 858 (Pa. Commw. Ct. 2012), in support.

The RTKL defines a “judicial agency” as “[a] court of the Commonwealth or any other entity or office of the unified judicial system.” 65 P.S. § 67.102. The “unified judicial system” is defined by the Judicial Code and the Pennsylvania Rules of Judicial Administration. 42 Pa.C.S. § 102; Pa.R.J.A. 102. In particular, the term “system and related personnel” is defined to include the following:

Personnel of the system and related staff. The term includes district attorneys, public defenders, sheriffs and other officers serving process or enforcing orders, registers of wills, prothonotaries, clerks of courts, clerks of the orphans’ court division, coroners, jury commissioners, probation officials, and the personnel of all of the foregoing.

42 Pa.C.S. § 102; Pa.R.J.A. 102. The Judicial Code distinguishes between “personnel of the system,” defined as “[j]udicial officers, personal staff, administrative staff and central staff,” and “related staff,” which includes “[a]ll individuals employed at public expense who serve the unified judicial system” but “does not include personnel of the system.” 42 Pa.C.S. § 102; *see Rosenwald v. Barbieri*, 462 A.2d 644, 647 (Pa. 1983) (“These definitions[] clearly distinguish between ‘personnel of the system’ and ‘related staff’”).

The Requester does not dispute that “prothonotaries and their employees are ‘system and related personnel’”; however, she argues that prothonotaries should be considered “related staff” as discussed by the Pennsylvania Supreme Court in *Miller v. County of Centre*, 173 A.3d 1162 (Pa. 2017). In *Miller*, the Court analyzed whether a district attorney’s office was a “judicial agency” under the RTKL. 173 A.3d 1162. After reviewing the relevant definitions from the Judicial Code, the Court concluded that district attorneys are not “personnel of the unified judicial system”; rather, they are “related staff ... whose function aids the judicial process but who are not

supervised by the courts.” *Id.* at 1169. Thus, the Court found that district attorneys are not “judicial agencies” as defined in the RTKL. *Id.* at 1170.

However, as noted above, the Judicial Code defines “personnel of the system” as “[j]udicial officers, personal staff, *administrative staff* and central staff.” 42 Pa.C.S. § 102 (emphasis added); *see also* Pa.R.J.A. 102 (defining “personnel of the system”). The term “administrative staff” is defined as:

All individuals employed in the business of a court, *including the personnel of the office of the clerk of the court of common pleas*, but the term does not include judicial officers or their personal staff. The term includes the clerks or prothonotaries of the Supreme Court, Superior Court and the Commonwealth Court and their staffs.

Id. (emphasis added); *see also* Pa.R.J.A. 102 (defining “Personnel of the system” as “Judges and other judicial officers, their personal staff, the administrative staff of courts and magisterial district judges, and the staff of the Administrative Office and other central staff”). Although prothonotaries of the courts of common pleas are not expressly identified in this definition, the Judicial Code defines “Office of the clerk of the court of common pleas” as follows:

A term employed in this title to refer generally to the administrative staff of the courts of common pleas and the Philadelphia Municipal Court responsible for the receipt of documents transmitted to the court by litigants and the transmission of notice of orders entered by and process issued under the authority of the court. The business of such staff shall be divided among *the personnel of the offices of the prothonotary*, the clerk of the courts and the clerk of the orphans’ court division in the manner provided by or pursuant to Chapter 27 (relating to office of the clerk of the court of common pleas). Except as otherwise provided by statute, the term does not imply unification of the administration, personnel or operations of any or all of such offices.

Id. (emphasis added).¹ Accordingly, prothonotaries, like clerks of the courts of common pleas, are “administrative staff” and, it follows therefore, that prothonotaries are also “personnel of the system,” as defined in the Judicial Code.²

Furthermore, in the Commonwealth Court’s recent decision in *Smith v. Phila. Office of Judicial Records*, the Court analyzed whether the Philadelphia Office of Judicial Records (“OJR”) was a judicial agency under the RTKL. No. 945 C.D. 2019, 2020 Pa. Commw. Unpub. LEXIS 466 (Pa. Commw. Ct. 2020).³ The Court noted that it has “consistently held that a court’s filing office, such as a *prothonotary’s office*, clerk of courts’ office, or, in this case, the OJR, are included within the RTKL’s definition of ‘judicial agency.’” 2020 Pa. Commw. Unpub. LEXIS 466 at *3-4 (emphasis added). As a result, the Court found that the OJR was a judicial agency, and the OOR did not have jurisdiction over the appeal. 2020 Pa. Commw. Unpub. LEXIS 466 at *4; *see also Nixon v. Phila. Cnty. Clerk of Courts*, No. 706 C.D. 2016, 2017 Pa. Commw. Unpub. LEXIS 865 (Pa. Commw. Ct. 2017); *Faulk v. Phila. Cnty. Clerk of Courts*, 116 A.3d 1183 (Pa. Commw. Ct. 2015); *Frazier*, 58 A.3d at 859-60 (concluding that “court prothonotaries are personnel of the unified judicial system”); *but see Olenginski v. County of Luzerne*, 24 A.3d 1103, 1107 (Pa.

¹ Pennsylvania courts have also found prothonotaries and clerks of the court to be “parallel offices” because they are created by the same constitutional provision—Article V, §15 of the Pennsylvania Constitution—and have substantially identical statutory grants of authority from the Judicial Code. *Compare* 42 Pa.C.S. § 2737, *with* 42 Pa.C.S. § 2757; *see also In re Admin. Order No. 1-Md-2003*, 936 A.2d 1, 9 (Pa. 2007) (“...the clerk of courts and the prothonotary are parallel offices, the former administering the criminal division of the court of common pleas and the latter the civil division”); *Gotwalt v. Dellinger*, 577 A.2d 623, 625 (Pa. Super. Ct. 1990) (finding that “[t]he prothonotary is merely the clerk of the court of Common Pleas...”).

² This finding is supported by the fact that the definition of “administrative staff ... includes the clerks or prothonotaries of the Supreme Court, Superior Court and the Commonwealth Court and their staffs.” 42 Pa.C.S. § 102. To treat county court prothonotaries differently from those of the appellate courts or, perhaps more significantly, different from clerks of the courts of common pleas would create an arbitrary result, especially when the Judicial Code “provides the prothonotary with the same roles over the civil division [of the court of common pleas] as the clerk of courts has” over the criminal division. *In re Admin. Order No. 1-Md-2003*, 936 A.2d at 9; *see also Miller v. County of Centre*, 135 A.3d 233 (Pa. Commw. Ct. 2016) (“...the duties of both clerks of courts and prothonotaries are set forth in Chapter 27 of the Judicial Code as part of the office of the clerk of court of the courts of common pleas”), *affirmed by*, 173 A.3d 1162 (Pa. 2017).

³ An unreported decision of the Commonwealth Court may be cited for its persuasive value. 210 Pa. Code § 69.414.

Commw. Ct. 2011) (holding that “while the records of the courts are part of the judiciary and the prothonotary takes part in the record-keeping, the prothonotary is not a judicial officer but a county officer” and is not, therefore, “part of the judiciary”).

The Requester argues that county prothonotaries, like the district attorney discussed in *Miller*, fall within the Judicial Code’s definition of “related staff ... who function aids the judicial process but who are not supervised by the courts.” 173 A.3d at 1169. Although the Requester correctly notes that county prothonotaries are not supervised by the judiciary, *see Pa. State Ass’n of Jury Commissioners v. Commonwealth*, 78 A.3d 1020, 1026 (Pa. 2013) (“Nor ... does the Pennsylvania Constitution provide that prothonotaries are part of the judiciary or supervised by the judiciary”); *Olenginski*, 24 A.3d at 1106 (“[N]owhere in the Pennsylvania Constitution is it stated that prothonotaries are part of the judiciary” nor does the Constitution “provide that the judiciary supervises the office of the prothonotary”), “[a] striking feature of this Commonwealth’s judicial system at the county level is the court-county cooperation mandated by statute[,]” which results in a system where “[a] significant proportion of the personnel involved in the operation of a county judicial system is neither appointed nor supervised by the judges of a court of common pleas.” *Beckert v. Warren*, 439 A.2d 638, 644 (Pa. 1981). Because county prothonotaries are “administrative staff” and, as a result, fall within the definition of “personnel of the unified judicial system,” they are considered judicial agencies under the RTKL.⁴ Accordingly, the OOR lacks jurisdiction over the records at issue in this appeal.

⁴ Notably, the “Public Access Policy of the Unified Judicial System of Pennsylvania” states that “Unified Judicial System officials or employees include: judicial officers and their personal staff, administrative staff and other central staff, *prothonotaries*, clerks of the courts, clerks of the orphans’ court division, sheriffs, prison and correctional officials, and personnel of all the above.” *See* <http://www.pacourts.us/assets/opinions/Supreme/out/477jad-attach1.pdf?cb=1> (last accessed September 30, 2020) (emphasis added).

Finally, the Requester suggests that finding county prothonotaries to be judicial agencies would throw a blanket of confidentiality over the most basic records of employees who are supervised by County officials and funded by the County's coffers.⁵ While we are sympathetic to the Requester's position, the Commonwealth Court has made clear that OOR lacks jurisdiction over the records of a judicial agency, including those in the possession of an agency within the OOR's jurisdiction.⁶ *See Court of Common Pleas of Lackawanna County v. Office of Open Records*, 2 A.3d 810 (Pa. Commw. Ct. 2010) (finding that the OOR lacked jurisdiction to order disclosure of records of a county domestic relations director because he was a judicial employee despite being paid by the county and the county having access to the records); *Grine v. County of Centre*, 138 A.3d 88, 99 (Pa. Commw. Ct. 2016) (the "OOR lacks jurisdiction over appeals involving records of a judicial agency... Indeed, allowing OOR to direct an agency to disclose a record showing activities of a judicial agency violates the separation of powers"). Nevertheless, the RTKL provides that judicial agencies must disclose financial records, which includes salary information. *See* 65 P.S. § 67.102 (defining "financial record"); 65 P.S. § 67.708(c); *see also Smith*, 2020 Pa. Commw. Unpub. LEXIS 466 at *6 (confirming that Section 304 of the RTKL limits the disclosure of a judicial agency's records to "financial records").

⁵ By correspondence dated July 29, 2020, in response to a similar request filed under Rule 509 of the Rules of Judicial Administration, the County's Rule 509 Manager, Paul Crouse, and/or the Honorable Joseph Adams, President Judge of the County Court Common Pleas, informed the Requester that "[e]mployees in the prothonotary's office are subject to the joint supervision of independently elected officials of county government (the prothonotary and the county commissioners) who are not under the jurisdiction of me, the president judge, nor any other member of the state judiciary regarding hiring, firing, promoting, demoting, discipline, terminating, or compensating those employees." They further note that "[t]he court has absolutely no authority over, responsibility for, nor access to any personnel record of any employee in the prothonotary's office."

⁶ The OOR recognizes that this holding puts the Requester in an unusual position. The information being requested, salaries and basic job information for agency employees, is clearly public. *See* 65 P.S. § 67.708(b)(6)(ii); Pa.R.J.A. 509(a). The Requester sought the information via Rule 509 of the Rules of Judicial Administration and was denied. The Requester then sought the information via the RTKL and was denied. Here, based on the analysis above, the Requester's appeal of the RTKL denial is being dismissed; however, that the Requester should be provided the requested information is not in dispute. The question is merely who is responsible for providing it. Unfortunately, this Final Determination will not resolve that question.

CONCLUSION

For the foregoing reasons, the appeal is **dismissed**, 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 York 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.⁷ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: 1 October 2020

/s/ Joshua T. Young

JOSHUA T. YOUNG
APPEALS OFFICER

Sent to: Liz Evans Scolforo (via email only);
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⁷ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).