

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Nos. 359 & 360 CD 2021

LIZ EVANS SCOLFORO AND THE YORK DISPATCH

Appellants,

v.

THE COUNTY OF YORK,

Appellee,

On Appeal from the January 25, 2021 Order of the York County Court of Common Pleas Denying Appellants' Petition for Review of a decision of the Office of Open Records, and the March 17, 2021 Order of the Court of Common Pleas of York County denying an Appeal under Pa. R.J.A Rule 509(c)(5)

APPELLANTS' BRIEF

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STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal pursuant to Section 1302(a) of the Right to Know Law (“RTKL”), 65 P.S. 67-1302(a) and Section 762(a)(4) of the Judicial Code, 42 Pa. C.S. § 762(a)(4).

STANDARD AND SCOPE OF REVIEW

The scope and standard of review by this Court of an order from the Court of Common Pleas regarding a request under the RTKL is whether “findings of fact are supported by competent evidence[,] or whether the trial court committed an error of law or an abuse of discretion in reaching its decision.” *Borough of Pottstown v. Suber-Aponte*, 202 A.3d 173, 178 n.8 (Pa. Commw. Ct. 2019) (internal citations and quotation marks omitted). The scope of review for questions of law is plenary. *See Hearst Television, Inc. v. Norris*, 54 A.3d 23, 29 (Pa. 2012).

ORDERS IN QUESTION

This case originated with the appeal of a denial of a RTKL request to the Office of Open Records (“OOR”), OOR Dkt. AP 2020-1606, followed by an appeal to the Court of Common Pleas in York County.

The first order, docketed January 25, 2021, is in the matter of *Liz Evans Scolforo and The York Dispatch v. County of York*, Docket No. 2020-SU-002162. See Appendix A.

The second order, dated March 17, 2021, is in the matter of *Liz Scolforo v. County of York*, Docket No: 2021-MI-000036 (holding that some records were inaccessible pursuant to Pa.R.J.A. No. 509(c)(5)). See Appendix B.

The two cases were consolidated by order of this Court on May 5, 2021.

STATEMENT OF THE QUESTIONS INVOLVED

1. Whether the lower court erred in concluding that prothonotary wage and salary records are not accessible under the RTKL?

Suggested answer: Yes. Prothonotary salary information is a record of the County, a local agency subject to the RTKL.

2. Whether the lower court erred by failing to consider the nature of the records, when deciding that the records were judicial records and not County records?

Suggested answer: Yes. This Court has previously held that when analyzing whether a record is a record “of” a particular agency, the nature of the record controls.

3. Whether the Court Administrator erred by redacting the length of service from the payroll records?

Suggested answer: Yes. The transfer to the Court Administrator was in error because these records are records of the County, and the redaction of the length of service was impermissible under the RTKL.

STATEMENT OF THE CASE

Ms. Scolforo's Journalism

This case concerns two separate channels by which Liz Evans Scolforo (“Ms. Scolforo”), who at the time of these requests was a reporter with The York Dispatch (together “Appellants”), attempted to obtain basic salary and job information about employees of the York County Prothonotary’s office. Founded in 1876 by Hiram Young, The York Dispatch is the longest continuously published newspaper in York County.

During the time period of the requests at issue, Ms. Scolforo was a senior crime reporter and covered issues related to courthouse operations. She wrote numerous articles about the court facility during the pandemic in 2020, including the use of masks in the Prothonotary’s office.¹

¹ Liz Evans Scolforo, *Few details released about York County employee who tested positive for COVID-19*, The York Dispatch (July 22, 2020)

<https://www.yorkdispatch.com/story/news/local/2020/07/22/few-details-released-york-county-employee-who-tested-positive-covid-19/5486866002/>;

Liz Evans Scolforo, *York judicial center workers 'do not have a right to make me sick,' paralegal says*, The York Dispatch (July 29, 2020),

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Liz Evans Scolforo, *State: Another York County Judicial Center worker tests positive for COVID-19*, The York Dispatch (Nov. 20, 2020),

<https://www.yorkdispatch.com/story/news/local/2020/11/20/state-another-york-county-judicial-center-worker-tests-positive-covid-19/6359636002/>.

In connection with her courthouse reporting, Ms. Scolforo sought to obtain information about staffing retention and salary levels for employees of the Prothonotary's office. On July 28, 2020, she contacted a spokesperson for the County of York to determine how she could get records; however, he was unable to provide her with that information and directed her to the "court's RTK office."

Ms. Scolforo's Request

On August 11, 2020, Ms. Scolforo submitted an RTKL request to York County. On August 14, 2020, the County denied her request. On August 28, 2020, she appealed to the OOR. On October 1, 2020, the OOR issued a final determination relinquishing jurisdiction over the records, despite the fact that the request was for County records, addressed to the County, denied by the County, and litigated by the County. On October 16, 2020, Appellants petitioned the OOR for reconsideration. On October 30, 2020, the OOR denied Appellants' Petition for Reconsideration.

Proceedings before the Court of Common Pleas

On November 6, 2020, Appellants appealed to the Court of Common Pleas *nunc pro tunc*. On January 25, 2021, the Court of Common Pleas issued its opinion denying the appeal and affirming the OOR's order. As part of the Court's January 25, 2021 order, the case was referred to the 19th Judicial District Court

Administrator “for review and determination whether the documents requested should be released consistent with this opinion.” R.140a.

On February 8, 2021, the 19th Judicial District Court Administrator rendered his opinion. He determined:

The names, salaries, and job titles of employees of the prothonotary are within the scope of the RTKL as it pertains to the judiciary, at least under the statute’s definition of financial record, so I authorize the county to release that information to Ms. Evans Scolforo. The length of service, including start and end dates of employment, exceeds the scope of the RTKL as it pertains to the judiciary, so I do not authorize the county to release that information to her.

R.166a.

Concurrent with the 19th Judicial District Court Administrator’s decision, Appellants were provided with a one-page spreadsheet showing the names, titles and salaries of Prothonotary office employees. R. 176a. The fields for “hire date” and “term date,” however, were redacted.

On February 23, 2021, Appellants sought review of the Judicial Court Administrator’s decision via an appeal to President Judge Maria Musti Cook of the Court of Common Pleas of York County, pursuant to Rule 509. On March 17, 2021, the President Judge affirmed the decision of both the 19th Judicial District Court Administrator and the January 25, 2021 Order.

Proceedings before this Court

On February 23, 2021, Appellants timely appealed the January 25, 2021 York County Court of Common Pleas order to this Court. On March 30, 2021, Appellants timely appealed the March 17, 2021 York County Court of Common Pleas order to this Court. On May 5, 2021, per order of this Court, the cases were consolidated.

SUMMARY OF ARGUMENT

These consolidated appeals arise from a RTKL request for salary and basic job information for prothonotaries' office employees. This Court should hold that the OOR does, in fact, have jurisdiction over such requests—which seek records that are distinct from the judicial records maintained by prothonotaries' offices.

Public employee salary information has been accessible to Pennsylvania taxpayers for more than a decade. *See Dep't of Conservation & Nat. Res. v. Off. of Open Recs.*, 1 A.3d 929, 938 (Pa. Commw. Ct. 2010) (citing 65 § 67.708(b)(6)(ii)). Such financial records are the bedrock of accountability, as evidenced by the fact that many public employees' salaries are required by law to be proactively provided to the public and can be quickly found online.²

The OOR—while fully acknowledging that such records are public—relieved itself of jurisdiction by erroneously concluding that the salaries of prothonotary employees are records of the judiciary, not of the County. This decision is inconsistent with the letter and intent of the RTKL, and the practical effect of its decision is to undermine transparency in the Commonwealth.

For the reasons herein, Appellants respectfully urge this Honorable Court to hold that, as local agencies, prothonotaries' offices' records of their employees'

² The Pennsylvania Web Accountability and Transparency (PennWATCH) Act, 72 Pa. Stat. Ann. § 4664.1, provided for the creation of a state transparency website: <http://pennwatch.pa.gov/employees/Pages/Employee-Salaries.aspx> (last accessed June 16, 2021).

salary and length of employment are records of the County, and to reverse and remand this matter to the OOR for further proceedings under the RTKL.

ARGUMENT

I. The Court of Common Pleas erred in concluding that salary and job information for employees of prothonotaries' offices are not subject to the RTKL.

The RTKL 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.” *Pa. State Educ. Ass’n v. Commonwealth Dept. of Cmty. and Educ.*, 148 A.3d 142, 155 (Pa. 2016).

The decisions before this Court for review conclude that prothonotaries’ offices are judicial agencies and, as such, are not subject to the RTKL. This conclusion places both requesters and agencies on uncertain footing when submitting and responding to requests, as the OOR acknowledged:

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.**

See Scolforo v. York County, OOR Dkt. AP 2020-1606 (emphasis added).

Likewise, the Court of Common Pleas stated:

...the Court sympathizes with Requestor as it can well be argued that fundamentally the documentation sought contains precisely the kind of information that seemingly requires disclosure under the RTKL....

See Scolforo v. York County, No. 2020-SU-002162 (Ct. of Common Pleas 2021).

Despite the obviously public nature of these records, upon transfer to the York County Judicial Court Administrator, Appellants' request was partially denied.

Every reviewer of this case—with the exception of the agency whose records are being sought—agrees that these are, and should be, public records. No reviewer has come to the factual conclusion that prothonotaries' offices are unique in a way that justifies their categorization as a judicial agency. In fact, the OOR's decision places prothonotaries and their staff in a more insulated position than Commonwealth judges, as it provides heightened secrecy for prothonotaries' offices' salary information in a state where judicial salaries are publicized by statute, and terms of service are clearly established.³

Here, with two potential interpretations of a statute,⁴ two lower tribunals have improperly chosen the interpretation that narrows the RTKL—a statute that is “remedial in nature,” the exemptions to which are to be “narrowly construed,” and

³ See 65 Pa. Stat. Ann. § 366.2a (setting forth the salaries of Pennsylvania judges).

⁴ In fact, the lower court referred to the parties' positions as “equally valid” while choosing the position that restricts the flow of public employee salary information to the public. January 22, 2021 Opinion at Page 14.

that is the product of the General Assembly’s intent to create “a dramatic expansion of the public’s access to government documents.” *Bowling v. Off. of Open Recs.*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d*, 75 A.3d 453 (Pa. 2013); *Levy v. Senate of Pa.*, 65 A.3d 361, 381 (Pa. 2013).

A. Prothonotaries are “local agencies” for purposes of the RTKL.

The RTKL defines a “judicial agency” as, “[a] court of the Commonwealth or any other entity or office of the unified judicial system.” Section 102 of the RTKL, 65 P.S. § 67.102. The “unified judicial system” (UJS) is defined in Section 102 of the Judicial Code as “the [UJS] existing under section 1 of Article V of the Constitution of Pennsylvania and section 301 (relating to [UJS]).” 42 Pa.C.S. § 102. The Pennsylvania Constitution provides:

The judicial power of the Commonwealth shall be vested in a [UJS] consisting of the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal and traffic courts in the City of Philadelphia, such other courts as may be provided by law.... All courts and justices of the peace and their jurisdiction shall be in this [UJS].

Pa. Const. art. V, § 1; *see also* Section 301 of the Judicial Code, 42 Pa.C.S. § 301 (explaining that the UJS consists of all courts and magisterial district judges and their jurisdiction).

A “local agency,” on the other hand, is defined as any of the following:

(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 Pa. Stat. Ann. § 67.102.

As an initial matter, Appellants acknowledge that the majority of the records maintained in a prothonotary's office are judicial records. To be clear, however, prothonotaries do not produce or create those judicial records; those judicial records are created in legal proceedings by attorneys, litigants, and judges. The prothonotary's office simply maintains them. It is not Appellants' position that those judicial records should be accessible under the RTKL, and, should this Court agree that prothonotaries are "local agencies" for purposes of requests for records like the one at issue here, judicial records maintained in prothonotaries' offices' would still not be accessible under the RTKL in accordance with decades of decisions holding that a record created by the judicial process is a judicial record.⁵ See, e.g., *Philadelphia Dist. Attorney's Off. v. Stover*, No. 1952 C.D. 2016, 2017 WL 3995913, at *1 (Pa. Commw. Ct. Sept. 12, 2017).

Further, Appellants acknowledge that this Court held in *Faulk v. Philadelphia Clerk of Courts* that clerks of court are "judicial agencies," and that this Court held in *Frazier v. Philadelphia County Office of Prothonotary* that

⁵ The press and public have separate and powerful constitutional and common law rights to access judicial records which flow from the presumption that judicial proceedings are open to the public and are not at issue here. *Com. v. Upshur*, 592 Pa. 273, 281, 924 A.2d 642, 647 (2007) ("It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.")

prothonotaries are “judicial agencies” and “personnel of the unified judicial system.” *See* 116 A.3d 1183, 1186 (Pa. Commw. Ct. 2015); *see also* 58 A.3d 858, 859 (Pa. Commw. Ct. 2012) (hereinafter “*Frazier*”). Appellants respectfully urge this Court to distinguish that latter holding to take into account the distinguishable facts of this case, and the nature of the records Appellants seek access to.

To review the evolution of case law on this issue, in 2010, the Administrative Office of Pennsylvania Courts (AOPC) sought a declaration that the OOR lacked jurisdiction to compel Lackawanna County to respond to a RTKL request for emails involving the Director of the County’s Domestic Relations Office. *See generally Court of Common Pleas of Lackawanna Cnty. v. Office of Open Records (Lackawanna County CCP)*, 2 A.3d 810 (Pa. Commw. Ct. 2010). Lackawanna County argued that the records were “of the judiciary” because the emails were generated by a court employee. *Id.* at 812.

The OOR had previously concluded that the fact that the County paid the Director rendered him a County employee and, therefore, that the records were “of” the County. *See id.* This Court reversed, holding that the source of the Director’s salary was not dispositive. *See id.* In analyzing its own holding, this Court has explained:

Critical to [the Lackawanna] holding was the determination that “**any record produced by a judicial employee is a record of a judicial agency.**” Because the Judicial Code required creation of a domestic relations office, “consist[ing] of such ... other staff of the court as shall be

assigned thereto,” 42 Pa.C.S. § 961, we concluded the Director was a judicial employee.

Miller v. Cty. of Ctr., 135 A.3d 233, 236 (Pa. Commw. Ct. 2016), *aff’d*, 643 Pa. 560, 173 A.3d 1162 (2017) (internal citations omitted).

After *Lackawanna*, in 2012, a panel of this Court determined that prothonotaries were “judicial agencies” in a one-page opinion. *Frazier*, 58 A.3d at 859. That case involved a *pro se* petitioner seeking a record that was judicial in nature (an autopsy report, presumably attached to a docket as an exhibit in a legal proceeding). *See id.*

In *Frazier*, this Court stated:

A “Judicial agency” is defined as “[a] court of the Commonwealth or any other entity or office of the unified judicial system.” Right-to-Know Law § 102, 65 P.S. § 67.102. **Under the Pennsylvania Rules of Judicial Administration, court prothonotaries are personnel of the unified judicial system. Pa. R.J.A. No. 102.**

58 A.3d at 859 (emphasis added).

Pa. R.J.A. No. 102 defines “personnel of the system” as “[j]udges 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.” Prothonotaries are expressly listed in Pa. R.J.A. No. 102 under the definition of “system and related personnel,” alongside “district attorneys, public defenders, sheriffs and other officers serving process or enforcing orders, registers of wills....” Pa. R.J.A. No. 102. That prothonotaries and district attorneys are

included in the same category of “system and related personnel” in Pa. R.J.A. No. 102 is noteworthy because, in 2017, the Pennsylvania Supreme Court affirmed this Court’s 2016 holding that district attorneys were *not* “judicial agencies” under the RTKL. *Miller v. Cty. of Ctr.*, 135 A.3d 233, 236 (Pa. Commw. Ct. 2016), *aff’d*, 643 Pa. 560, 173 A.3d 1162 (2017) (“*Miller*”), thus distinguishing its own precedent interpreting Pa. R.J.A. No. 102.

In *Miller*, a District Attorney’s office argued that it was a “judicial agency,” relying heavily on *Lackawanna*, discussed *supra*. This Court rejected that argument, holding that district attorneys are included in the broader definition of “system and related personnel” because they are “related staff.” 135 A.3d 233 at 238. And central to this Court’s reasoning were principles applicable in this case, including that the Pennsylvania Supreme Court has held that “the term ‘related staff’ covers those whose function aids the judicial process but who are not supervised by the courts.” *Id.* (citing *Rosenwald v. Barbieri*, 501 Pa. 563, 462 A.2d 644, 647 (1983) (construing “related staff” as defined in 42 Pa.C.S. § 102)).

This Court also noted that Article IX, Section 4 of the Pennsylvania Constitution identifies district attorneys as county officers: “**County officers shall consist of** commissioners, controllers or auditors, **district attorneys**, public defenders, treasurers, sheriffs, registers of wills, recorders of deeds,

prothonotaries, clerks of the courts, and such others as may from time to time be provided by law.” *Id.* (citing PA. CONST. art. IX, § 4 (emphasis added)).

This same provision, as emphasized above, also designates prothonotaries as “county officers.” *See id.* Additional factors considered by this Court in *Miller* were the fact that the district attorney’s office was not “judicial in nature,” and that no “judicial power” was given to the district attorney’s office. *See id.* at 238.

These same distinctions apply to prothonotaries’ offices. They maintain judicial records (as do district attorneys to some extent), but prothonotaries are not judges.

Appellants acknowledge that this Court drew some distinctions between clerks of court and district attorneys in *Miller*. *See id.* However, while characterizing district attorneys as local agencies despite their inclusion in 42 Pa.C.S. § 102, this Court did not expressly hold in *Miller* that prothonotaries are judicial agencies. *See id.* Rather, in *Miller*, this Court held that the district attorney is not a judge. *See id.* This Court should similarly hold, here, that the prothonotary is not a judge or a judicial agency, despite the fact that prothonotaries assist the judicial system.

B. The Legislature intended for the OOR to hear most RTKL cases, with few, clearly defined exceptions.

The General Assembly established the OOR to assume the responsibility of deciding RTKL appeals at the first stage. 65 Pa. Stat. Ann. § 67.1310. The RTKL contemplates that the foundational question of whether a record or document is

exempt from disclosure is a factual one that should be made in the first instance by an appeals officer at the OOR. *Com., Off. of Open Recs. v. Ctr. Twp.*, 95 A.3d 354, 369 (Pa. Commw. Ct. 2014). The OOR’s abdication of that role as to *any* record that implicates prothonotaries’ offices, regardless of whether or not the record evidences a transaction or activity of that office, is contrary to legislative intent and improperly burdens other systems with RTKL appeals and requests.

II. The Court of Common Pleas erred by failing to consider the nature of the records at issue when determining that they were not accessible under the RTKL.

There is no question that the County is a local agency under the RTKL. *See* 65 Pa. Stat. Ann. § 67.102. The requester filed a request with the County for records created by the County and that were in the County’s possession. The County responded to that request and has litigated this matter up to this point. The County has not argued—nor could it—that the County itself is a judicial agency. Thus, while the request at issue seeks salary and basic job information *about* a prothonotary’s office, it was not submitted to the prothonotary’s office, and it did not seek records created by or in the possession of the prothonotary.

Even if this Court concludes that prothonotaries are judicial agencies, or declines to determine that issue, the Court can and should still hold that the requested records at issue here are not records “of” the judiciary. This is where both lower tribunals failed—they simply determined that prothonotaries’ offices

were judicial agencies (even though it was the *County* and not the prothonotary who responded to the request as the responsive agency) and ended its analysis there. *See* January 22, 2021 Opinion at Page 19.

Whether a record is “of” a particular agency turns on whether the record “documents” a “transaction or activity of the agency[.]” *See Grine v. County of Centre*, 138 A.3d at 94–95 (Pa. Commw. Ct. 2016); *id.* (explaining that “documents” in this context means “proves, supports [or] evidences”). In *Grine*, this Court correctly observed that “the location of the record or an agency’s possession does not guarantee that a record is accessible to the public; *rather, the character of the record controls.*” *Grine*, 138 A.3d at 94–95 (citations omitted) (emphasis added).

The County relies upon *Smith v. Philadelphia Office of Judicial Records*, in which this Court stated: “We have 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.’” 240 A.3d 673 (Pa. Commw. Ct. 2020) (citing *Nixon v. Phila. Cty. Clerk of Courts* (Pa. Cmwlth., No. 706 C.D. 2016, filed Nov. 14, 2017), slip op. at 3; *Faulk v. Phila. Clerk of Courts*, 116 A.3d 1183, 1186 (Pa. Cmwlth. 2015); *Frazier v. Phila. Cty. Office of the Prothonotary*, 58 A.3d 858, 859-60 (Pa. Cmwlth. 2012)). However, this case is easily distinguishable because of the nature of the records being sought.

In *Smith*, the record at issue was a **court order**. *See* 240 A.3d 673 (Pa. Commw. Ct. 2020). In *Nixon*, the records sought were **docket entries** in a criminal court docket. *See Nixon v. Phila. Cty. Clerk of Courts* (Pa. Cmwlth., No. 706 C.D. 2016, filed Nov. 14, 2017), slip op. at 3. In *Faulk*, the records sought were **certified sentencing orders**. *Faulk v. Philadelphia Clerk of Cts.*, 116 A.3d 1183, 1185 (Pa. Commw. Ct. 2015). In *Frazier*, the requester sought an **autopsy report** from a docket. *See Frazier v. Phila. Cty. Office of the Prothonotary*, 58 A.3d 858, 859-60 (Pa. Cmwlth. 2012)).

All of the records at issue in those cases are records that were created as part of a legal proceeding and maintained by the prothonotary's office for record-keeping purposes for the benefit of the judiciary. As this Court held in *Grine*, the location of the record is not dispositive. *See Grine*, 138 A.3d at 94–95. A court order is a judicial record, whether it is in the prothonotary's filing cabinet or elsewhere. Likewise, County payroll is a record of the County, regardless of the jobs of the employees reflected in that that record, or where it is kept. *See, e.g., Pennsylvania Off. of Atty. Gen. v. Bumsted*, 134 A.3d 1204 (Pa. Commw. Ct. 2016) (holding that pornographic emails were not records of the Office of Attorney General because they did not evidence a “transaction of the office” even though they were sent by public employees on public computers during work hours).

Here, this Court should again look to the controlling *nature* of the records sought. Appellants seek salary and other basic job information that evidences a transaction of the County, who pays the prothonotary, a County employee. Additionally, as noted above, the request was submitted to the County, who creates and maintains the payroll records at issue. Although the County claims that these records are “of” another agency, the fact that the County has expended the effort to litigate three separate appeals for these records is strong evidence that the County is the local agency most affected.

If this case concerned court orders, sentencing records, docket entries—or any other record created by the judicial system or a judicial officer—Appellants would agree with the County that the OOR would not have jurisdiction, as those types of records are judicial records. But Appellants seek records of employment created by the County that are in the County’s possession.

III. The Court of Common Pleas erred in referring the case to the Judicial Court Administrator for review under Unified Judicial System Rule 509, and the Judicial Court Administrator erred by redacting the length of service from the responsive records.

Because it concluded that the salaries and other basic job information of certain County employees are records of the judiciary, the Court of Common Pleas transferred this dispute to the Judicial Court Administrator for review pursuant to Unified Judicial System Rule 509. If this Court finds, as it should, that the records

requested by Appellants are records of the County, that court's transfer was necessarily erroneous. And, though Appellants have obtained some responsive records, the nature of the redactions made to those records underscores precisely why their release should be governed by the RTKL—not Rule 509 of the Rules of Judicial Administration.

In this case, the Judicial Manager redacted the employee's length of service from the responsive records. The rationale for that decision was that "judicial agencies" are only obligated to provide "financial records," which does not include an employee's length of service. 65 Pa. Stat. Ann. § 67.304. This holding was affirmed by the President Judge. Under the RTKL, such information is clearly public:

Nothing in this paragraph shall preclude the release of the name, position, salary, actual compensation or other payments or expenses, employment contract, employment-related contract or agreement and **length of service** of a public official or an agency employee.

65 Pa. Stat. Ann. § 67.708(b)(6)(ii) (emphasis added). This is the real-world effect of the OOR's decision that it had no jurisdiction over Appellants' request: a blow to transparency throughout the Commonwealth.

CONCLUSION

To permit this decision to stand is to narrow the RTKL, and to redirect an obligation that the Legislature delegated to the OOR to the judiciary.

For the foregoing reasons, Appellants respectfully request that this Court reverse and hold that (1) prothonotaries' offices are local agencies, not judicial agencies; that (2) in any regard, the salary and basic job information sought by Appellants are records of the County, not the prothonotary's office; and (3) that the County may not redact the length of service from such records. In the alternative, Appellants respectfully request that the Court remand this case to the Office of Open Records for further proceedings under the RTKL.

Respectfully submitted,

/s/ Paula Knudsen Burke

CERTIFICATE OF COMPLIANCE

I hereby certify that the Principal Brief of Appellants complies with the length requirements of Pa.R.A.P. 2135. According to the word count of the word processing system used to prepare this brief, the brief contains 4,443 words, not including the supplementary matter as described in Pa.R.A.P. 2135(b).

/s/ Paula Knudsen Burke
Paula Knudsen Burke

Dated: July 19, 2021

CERTIFICATE OF COMPLIANCE WITH Pa.R.A.P. 127

I certify, pursuant to Pa.R.A.P. 127, that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Paula Knudsen Burke
Paula Knudsen Burke

Dated: July 19, 2021

APPENDIX A

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA
CIVIL DIVISION: LAW

LIZ EVANS SCOLFORO and
THE YORK DISPATCH
Petitioners

No. 2020-SU-002162

vs.

THE COUNTY OF YORK,
Respondent

Right to Know Law

APPEARANCES:

For Petitioners: Paula Knudsen Burke, Esq.

For Respondent: Michéle Pokrifka, Esq.

OFFICE OF PROTHONOTARY
2021 JAN 25 AM 8:14
JUDICIAL CENTER
YORK, PA

ORDER

AND NOW, this 22nd day of January, 2021, upon consideration of the *Notice of Appeal and Petition for Review*, filed by the Petitioners, Liz Evans Scolforo and The York Dispatch, and the briefs filed by the parties in support or in opposition, which call upon us to decide whether governmental records setting forth salaries of employees of the York County Prothonotary should see the bright light of day or continue to be shrouded in darkness, it is hereby

ORDERED that the petition is DENIED.

It is further ORDERED and DIRECTED that the County of York shall, immediately and without delay, take all steps necessary to refer the request to the Records Manager for review and determination whether the documents requested should be released consistent with this opinion.

It is further ORDERED and DIRECTED that, upon such referral and after making a written determination, the Records Manager shall furnish a copy thereof to the solicitor for the prothonotary as well as to all other interested parties.

The Court's rationale is as follows:

I. BACKGROUND.

On July 28, 2020, Ms. Scolforo, on behalf of the York Dispatch (collectively, Requester), submitted a Right-to-Know Law¹ (RTKL) request (the Prior Request) to York County (the County). Therein, Requester sought salary records for all York County Prothonotary employees from January 1, 2020, to the present, showing name, salary, job title, and length of service, including start and end dates. The County timely denied the request, stating that Prothonotary employees are part of the judiciary and such request should be made to Court Administration. After further email exchange the next day, Ms. Scolforo received an email from JudicialOpenFinancialRecords@YorkCountyPA.gov stating, in part:

Employees 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, disciplining, terminating, or compensating those employees. The court has absolutely no authority over, responsibility for, nor access to any personnel record of any employee in the prothonotary's office. Furthermore, even if we did have access to that information, it would not be a financial record of funds appropriated to the court subject to the RTKL as it pertains to the judiciary. As such, your request to this office remains denied. If you want access to county employee records, which may or may not be subject to disclosure under the RTKL by the keeper of those records, you

¹ 65 P.S. §§ 67.101 et seq.

need to direct that request to the county agency that has access to and control of those records. If you disagree with my decision, your option is to file an appeal to the president judge.

That same day, Ms. Scolforo then sent an email to both President Judge Joseph C. Adams and Michéle Pokrifka, Esquire, the County solicitor, advising that the County was telling her the information must come from Court Administration and Paul Crouse, the District Court Administrator, was telling her it must come from the County. Ms. Scolforo wrote again to Ms. Pokrifka the following day, stating that President Judge Adams had advised her by phone call that Court Administration did not have the records requested, and those records would have to come from the County. There was no further response concerning the July 28, 2020 request until August 11, 2020, when the County solicitor's office advised Ms. Scolforo that since the request was not "submitted to the Court" it was "closed as a County Open Records Request and no further action was taken."

On August 11, 2020, Ms. Scolforo submitted another RTKL request to the County (the Pending Request), requesting "access (electronic copy) to salary records for all Prothonotary employees from Jan. 1, 2020, to present, showing name, salary, job title and length of service, including start and end dates." On August 14, 2020, the County responded by letter denying the request, advising that the Pending Request sought "records of a judicial agency," and informing Ms. Scolforo of the proper procedure to appeal.²

² York County's explanation for its denial is set forth in Appendix A.

Requester then appealed the County's denial to the Office of Open Records (OOR) on August 28, 2020, challenging the decision to withhold the documents and stating grounds for disclosure. According to the OOR, in addition to inviting the parties to supplement the record, it directed the County to notify any third parties of their right to participate in the appeal pursuant to 65 P.S. § 67.1101(c). *In the matter of Scoloforo and the York Dispatch v. York County*, No. AP 2020-1606. On September 10, 2020, the County submitted a position statement, reiterating the argument noted above, as well as an attestation, made under penalty of perjury, of Michelle Pokrifka, Esq., the County's Solicitor and Open Records Officer. Requester did not submit any additional information during the appeal.

By Final Determination dated October 1, 2020, the OOR dismissed the appeal on jurisdictional grounds and advised both parties of their right of appeal. The OOR did so based upon its determination that the sole issues before it was whether the County prothonotary is a "judicial" agency under the RTKL and, if so, whether prothonotaries of the courts of common pleas are to be included. In making its decision, the OOR reviewed the Judicial Code definition of the "Office of the clerk of the court of common pleas" (42 Pa.C.S. § 102) and held that prothonotaries are also "personnel of the system," as defined in the Judicial Code. In support, the OOR cited the Commonwealth Court's recent decision in *Smith v. Phila. Office of Judicial Records*, 2020 Pa. Cmwlth. Unpub. LEXIS 466 (Cmwlth. Sep. 25, 2020), which noted that it has "consistently held that a court's filing office, such as a prothonotary's office, ... [is] included within the RTKL's definition of 'judicial agency'."

The OOR did so despite Requester's argument that county prothonotaries, like district attorneys, fall within the Judicial Code's definition of "related staff ... who function aids the judicial process but who are not supervised by the courts." Despite agreeing with the Requester that county prothonotaries are not actually supervised by the judiciary, the OOR ultimately concluded that county prothonotaries are "administrative staff" as they fall within the definition of "personnel of the unified judicial system," and must be considered judicial agencies under the RTKL. It also sympathized with Requester's argument 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, but found that the Commonwealth Court has made clear that the OOR lacks jurisdiction over the records of a judicial agency, including those in the possession of an agency within the OOR's jurisdiction. *Court of Common Pleas of Lackawanna County v. Office of Open Records*, 2 A.3d 810 (Pa. Cmwlth. 2010); *Grine v. County of Centre*, 138 A.3d 88, 99 (Pa. Cmwlth. 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").

Critically, the OOR noted, in footnote 6, that it well recognizes that its holding puts Requester in the untenable position as follows:

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 Prior Request). The Requester then sought the information via the RTKL (the Pending Request) 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.

Ultimately, the OOR found that it lacked jurisdiction over the records at issue and dismissed the appeal. Requester then took this pending appeal on November 2, 2020.³ By Order dated November 12, 2020, the Court granted Requester's petition for leave to appeal *nunc pro tunc*, as October 30, 2020 was the last day for appeal.

II. ARGUMENTS.

Requester maintains that prothonotary employees are paid by the County and Adams, Dauphin, and Lancaster Counties have routinely provided information identical to the information that is sought in this case. Requester asks us to be guided by the statement made by the Records Manager for the 19th Judicial District⁴ that prothonotary employees are subject to the joint supervision of the Prothonotary and the county commissioners, who are not under the jurisdiction of the judiciary, and the court has no authority over the personnel records of prothonotary employees.⁵ Requester further argues that, fundamentally,

³ Requester actually e-filed the notice of appeal and petition for review at 2:48 PM on October 30, 2020, the last day for appeal. An hour or so later, Requester received notice that its initial filing had been rejected, advising that the issue could be corrected within 14 days. At 4:28 PM that day, Requester attempted to resubmit the document and, once again, received notice of rejection on November 2, 2020. After conferring with the Prothonotary, Requester's third attempt was successful, resulting in a docketing reference of November 2, 2020 instead of the initial filing date of October 30, 2020, which necessitated the filing of an application to appeal *nunc pro tunc*.

⁴ Paul O. Crouse, the District Court Administrator. See *York R.J.A.* 509.

⁵ Paraphrased. See full statement at p. 2 above.

the Court needs to consider the primary goal of the RTKL, namely of allowing citizens to access information concerning the activities of their government, with any exception being narrowly construed. *Pa. State Police v. Grove*, 161 A.3d 866, 892; *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Cmwlth. 2010). Requester further asserts that the prothonotary employees are “related staff” of the judiciary “whose function aids the judicial process but who are not supervised by the courts.” *Rosenwald v. Barbieri*, 461 A.2d 644 (1983).

Alternatively, the County relies on the Rules of Judicial Administration and *Frazier v. Philadelphia County Office of the Prothonotary* to support the proposition that Court prothonotaries are part of the Unified Judicial System, making them part of the judiciary and precluding the OOR from having jurisdiction to hear the appeal under the Right to Know Law. *Pa. R.J.A. No. 102*; *Frazier v. Philadelphia County Office of the Prothonotary*, 58 A.3d 858, 859 (2012). In support, the County observes that Requester does not dispute this fact, but rather argues that prothonotaries are considered “related staff” as discussed by the Pennsylvania Supreme Court in *Miller v. County of Centre*, 173 A.3d 1162 (Pa. 2017), which the County contends discusses a District Attorney’s office and is not dispositive. The County further asserts that Requester’s argument that the County pays the Prothonotary is of no moment and has been dismissed repeatedly. *County of Lehigh v. Pennsylvania Labor Relations Board*, 507 Pa. 270, 274. Finally, the County cautions the Court to consider the Separations of Powers clause to preclude ordering the disclosure of judicial documents by County or Local agencies as being unconstitutional when the disclosure of such documents

must be under the purview of the judiciary. *Grine v. Cty of Ctr.*, 138 A.3d 88, 95 (Pa.Cmwlth. 2016).

III. LEGAL ANALYSIS.

At its heart, the RTKL is remedial legislation designed to facilitate transparency of government information and to promote accountability. *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 185 A.3d 1161, 1170 (Pa. Cmwlth. 2018) (Uniontown II) (citing *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Cmwlth. 2010), *aff'd*, 75 A.3d 453 (Pa. 2013)). Foundationally, the RTKL requires state and local agencies to provide access to public records upon request. Section 302 of the Right-to-Know Law, 65 P.S. §67.302 (“A local agency shall provide public records in accordance with this act.”).

The original Right to Know Act (RTKA) was enacted in 1957 and allowed public access to a very limited category of public records including “any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials equipment or other property.” 65 Pa. Stat. and Cons. Stat. Ann. § 66.1. Further, under the original RTKA, the burden of proving that a record was public was on the person seeking the record. In 2002, the RTKA was amended and provided more access to agency documents including access to documents in every form, allowing access to electronic documents, as well as providing an appeals process which was not previously present in the 1957 RTKA.

Initially, there was no avenue to access documents of the judiciary. However, on May 14, 2007, the Pennsylvania Supreme Court promulgated Rule 509 which permitted

Pennsylvanians access to financial records of the judiciary, limiting release that would compromise personal information or security.⁶ This rule, which further provides for a procedure for access through a records manager and a permissive appeal to the president judge of the county court of common pleas, took effect on July 1, 2007.⁷

On February 14, 2008, the Governor signed Act No. 3 of 2008 into law which completely overhauled the RTKA and established the Right to Know Law (RTKL) that now governs information requests. Act 3 allowed unprecedented access to all documents in government including the financial records of the judiciary and public records of the legislature. Notably, Act 3 specifies that a “judicial agency shall provide financial records in accordance with this act or any rule or order of court providing equal or greater access to the records.” 65 P.S. §67.304.

Section 102 of the Right-to-Know Law contains the following definitions, which inform our analysis:

“FINANCIAL RECORD.” Any of the following:

- (1) Any account, voucher or contract dealing with:
 - (i) the receipt or disbursement of funds by an agency; or
 - (ii) an agency’s acquisition, use or disposal of services, supplies, materials, equipment or property.
- (2) The salary or other payments or expenses paid to an officer or employee of an agency, including the name and title of the officer or employee.
- (3) A financial audit report. The term does not include work papers underlying an audit.

⁶ Act 3 of 2008 was first referred to the state government on March 29, 2007, but was not before the Senate for First Consideration until October 29, 2007.

⁷ On June 23, 2008, the Supreme Court amended Rule 509 in an attempt to harmonize with Act 3.

“JUDICIAL AGENCY.” A court of the Commonwealth or any other entity or office of the unified judicial system.

“LOCAL AGENCY.” Any of the following:

(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.

“OFFICE OF OPEN RECORDS.” The Office of Open Records established in section 1310 [65 P.S. §67.708].

“PUBLIC RECORD” as a record, including a financial record, of a Commonwealth or local agency that:

(1) is not exempt under section 708 [65 P.S. §67.708];

(2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or

(3) is not protected by a privilege.

“REQUESTER.” A person that is a legal resident of the United States and requests a record pursuant to this act. The term includes an agency.

“RESPONSE.” Access to a record or an agency’s written notice to a requester granting, denying or partially granting and partially denying access to a record.

65 P.S. §67.102. Underlining added.

The following definitions from the Pennsylvania Rules of Judicial Administration further guide our rationale:

“Personnel of the system.” 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.

“Related staff.” All individuals employed at public expense who serve the unified judicial system, but the term does not include personnel of the system.

“System.” The unified judicial system of this Commonwealth.

“System and related personnel.” 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, excluding prothonotaries of the Supreme Court, Superior Court and the Commonwealth Court of Pennsylvania, clerks of the courts, clerks of the orphans’ court division, prison and correctional officials, and the personnel of all of the foregoing.

Pa.R.J.A. No. 102. (Underlining added).

As do these definitions from the York County Rules of Judicial Administration:

County is York County.

Court Administrator is the appointed District Court Administrator for the Court of Common Pleas of York County, the Office of the District Court Administrator, the Administrative Office of York County Courts (AOYCC), and all employees of the office.

President Judge is the elected President Judge or acting President Judge of the Court of Common Pleas of York County, the Chambers of the President Judge, and all chambers staff.

Prothonotary is the elected or appointed Prothonotary of the Court of Common Pleas of York County, the Office of the Prothonotary, and all employees of the office.

York R.J.A. 102. (Underlining added).

Chapter 9 of the RTKL sets forth an agency’s duties when responding to a request for records. Upon receiving the request, the officer “must make a good faith effort to determine whether: (1) the record is a public record; and, (2) the record is in the possession, custody, or control of the agency.” *Uniontown II* at 1171. The officer also has a duty to “to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession.” *Id.* at 1171-72. If the agency does not possess the records in question, but a contractor does, the agency must “take reasonable

steps to secure the records from the contractor and then make a determination if those records are exempt from disclosure.” *Id.* at 1172 (brackets omitted). After gathering all the relevant records, the agency must then “review the records and assess their public nature under Sections 901 and 903 of the RTKL.” *Id.* As the Commonwealth Court observed, “[i]t is axiomatic that an agency cannot discern whether a record is public or exempt without first obtaining and reviewing the record.” *Id.*

Section 901 of the RTKL provides, in relevant part:

§ 67.901. General rule

Upon receipt of a written request for access to a record, an agency shall make a good faith effort to determine if the record requested is a public record, legislative record or financial record and whether the agency has possession, custody or control of the identified record, and to respond as promptly as possible under the circumstances existing at the time of the request.

65 P.S. § 67.901.

Section 903 of the RTKL provides, in relevant part:

§ 67.903. Denial

If an agency’s response is a denial of a written request for access, whether in whole or in part, the denial shall be in writing and shall include:

- (1) A description of the record requested.
- (2) The specific reasons for the denial, including a citation of supporting legal authority.

65 P.S. § 67.903.

§ 67.502. Open-records officer

(a) Establishment. -

- (1) An agency shall designate an official or employee to act as the open-records officer.

* * * *

(b) Functions. -

(1) The open-records officer shall receive requests submitted to the agency under this act, direct requests to other appropriate persons within the agency or to appropriate persons in another agency, track the agency's progress in responding to requests and issue interim and final responses under this act.

65 P.S. § 67.502.

Upon request, a Local Agency shall provide public records in accordance with the RTKL. It may not deny a requester access to a public record due to the intended use of the public record by the requester unless otherwise provided by law. 65 P.S. § 67.302. The duty of a Judicial Agency is couched in a way that is slightly, but importantly, different. Its requirement is limited to providing *financial records* in accordance with the RTKL or any rule or order of court providing equal or greater access to the records and it may not deny a requester access to *financial records* due to the intended use of the financial record by the requester. 65 P.S. § 67.304. Records in the possession of a Local Agency are presumed to be a public record unless: the record is exempt under section 708; the record is protected by a privilege; or the record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree. Likewise, financial records in the possession of a judicial agency are presumed to be available in accordance with the RTKL, subject to the same exceptions. 65 P.S. § 67.305.

The burden of proving that a "record" is exempt from public access is placed on the "local agency receiving a request by a preponderance of the evidence." Section 708(a)(1) of the Right-to-Know Law, 65 P.S. § 67.708(a)(1). By this standard of proof, "the existence of

a contested fact must be more probable than its nonexistence.” *Pennsylvania State Troopers Association v. Scolforo*, 18 A.3d 435, 439 (Pa. Cmwlth. 2011) (quoting *Department of Transportation v. Agricultural Lands Condemnation Approval Board*, 5 A.3d 821, 827 (Pa. Cmwlth. 2010)). This standard is “tantamount to a ‘more likely than not’ inquiry.” *Popowsky v. Pa. Public Util. Com’n*, 937 A.2d 1040, 1055 n.18 (Pa. 2007). In addition, “[c]onsistent with the RTKL’s goal of promoting government transparency and its remedial nature, the exceptions to disclosure of public records must be narrowly construed.” *Office of the Governor v. Davis*, 122 A.3d 1185, 1191 (Pa. Cmwlth. 2015); *Easton Area Sch. Dist. v. Miller*, 191 A.3d 75, 79 (Pa. Cmwlth. 2018).

IV. DISCUSSION.

The Court is presented with two competing yet equally valid positions; the right of the people to know how the government is spending their tax dollars versus the separation of powers that preserves balance in our government and shields the judiciary from disclosure of its records, except for financial records. Significantly, the parties posit competing positions; Requester asks that we find that the records being requested are under the purview of the County, a local agency, making those records public records which must be released, while the County argues to the contrary that the records are judicial records and can only be released as authorized by the Records Manager if they come within the purview of being a “financial record” as narrowly defined by the RTKL.

As a preliminary matter, the Court sympathizes with Requestor as it can be well argued that fundamentally the documentation sought contains precisely the kind of

information that seemingly requires disclosure under the RTKL, that is, if the wage and salary documentation being sought is a local agency document, it should be disclosed as a public record, which includes financial records; likewise, if it is a record of the judiciary, it should also be disclosed as a financial record. Viewed from this vantage point, it would appear at first blush that non-disclosure would not be implicated under either analysis. However, after more careful review, the Court concludes that the records in question are judicial records and the County has no jurisdictional authority to release them without direction to do so by the judiciary.

Court Prothonotaries are Personnel of the Judiciary.

We conclude that prothonotaries and their employees are administrative staff of the Court. *See e.g. Faulk v. Philadelphia Clerk of Court*, 116 A.3d 1183, 1186; *Frazier v. Philadelphia County Office of the Prothonotary* 58 A.3d. 858, 859-60 (Pa. Cmwlth. 2012). “Clerks of courts and prothonotaries hold ministerial powers only, and lack discretion in performing their duties. *In re Admin. Order No. 1-MD-2003*, 594 Pa. 346, 936 A.2d 1, 9 (Pa. 2007) (explaining prothonotaries and clerks of courts are created by the same constitutional provision, sharing “identical statutory grants of authority”); *Dyson v. Dep’t of Transp., Bureau of Driver Licensing*, 18 A.3d 414 (Pa. Cmwlth. 2011). Further, 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. 42 Pa. C.S. §§2701-2777; *Miller v. Cnty. of Ctr.*, 135 A.3d 233, 238 (Pa. Cmwlth. 2015) (both clerks of courts and prothonotaries serve the courts in an administrative capacity.). Finally, our Supreme Court

held “the term ‘related staff’ covers those whose function aids the judicial process but who are not supervised by the courts.” *Rosenwald v. Barbieri*, 501 Pa. 563, 462 A.2d 644, 647 (Pa. 1983).

Despite the foregoing, another trial court entered an opinion just last week interpreting the Supreme Court’s decision in *Miller*, supra, as being applicable to not only district attorneys but also to county prothonotaries and their employees.⁸ However, this Court believes *Miller* is distinguishable and is guided instead by the precedent of our Commonwealth Court set forth above.

In *Miller*, the District Attorney denied a document request as not being a financial record by claiming it was a judicial agency and invoking the increased protections given to judicial agencies under the RTKL. The Supreme Court held that a district attorney and their employees are not personnel of the Judiciary. However, extending this holding to cover all other members of the “system and related personnel” of the UJS would be misplaced.

First, much of the Supreme Court’s decision and the Commonwealth court decision it affirmed focused on the stark differences between district attorneys “who litigate the controversies before judges” and prothonotaries “who serve the courts in an administrative capacity.” *Miller v. Cty. of Ctr.*, 135 A.3d 233, 238 (Pa.Cmwlt. 2016).

Secondly, and similar to Justice Donahue’s analysis in his concurring opinion in *Miller*, we need look no further than the Pennsylvania Constitution to determine whether or

⁸ *In re: Jonathan Luna (LNP Media Group, Inc., Intervenor)*, No. CI-20-01310, CCP of Lancaster County, PA (January 13, 2021).

not the Prothonotary should be treated as “system personnel” or “related personnel.” District attorneys are unquestionably “executive branch official[s]” and therefore cannot be captured as an office of the judiciary. *Miller v. Cty. of Ctr.*, 643 Pa. 560, 578 (Pa. November 22, 2017) (Donohue J. concurring opinion). The powers and responsibilities of district attorneys are clearly laid out in the Pennsylvania Constitution as an official of the executive branch. *Pa. Const. Art. IX*, § 4; *Beckert v. Warren*, 497 Pa. 137, 439 (Pa. 1981). Alternatively, as discussed in the Pennsylvania Constitution, the office of the prothonotary is inextricably tied to the function of the Judiciary. *Pa. Const. Art. V*. Furthermore, to allow access to confidential judicial records through the County solely because they have been filed with the prothonotary would be a dangerous precedent to set. Therefore, we decline to interpret the Supreme Court’s decision in *Miller* as binding precedent as it applies to prothonotaries. Comparing the office of the prothonotary, which aids the court in its essential daily functions, and the office of the district attorney, an entity that serves the executive branch and acts as the chief law enforcer of the commonwealth, would be improper.

Court Prothonotaries are Paid as County Employees.

As provided in the County Code,

The salaries and compensation of county officers shall be as now or hereafter fixed by law. The salaries and compensation of all appointed officers and employees who are paid from the county treasury shall be fixed by the salary board created by this act for such purposes: Provided, however, That with respect to representation proceedings before the Pennsylvania Labor Relations Board or collective bargaining negotiations involving any or all employees paid from the county treasury, the board of county commissioners shall have the sole power and responsibility to represent judges of the court of common pleas, the county and all elected or appointed county officers having any employment powers over the affected employees. The exercise of

such responsibilities by the county commissioners shall in no way affect the hiring, discharging and supervising rights and obligations with respect to such employees as may be vested in the judges or other county officers.
16 P.S. § 1620 (Supp. 1984-85).

Section 1620 explicitly states that the county commissioners are to “represent the judges of the court of common pleas” in such salary and compensation negotiations, which phrase the Supreme Court has interpreted to mean “sit on behalf of judges.” *Ellenbogen v. County of Allegheny*, supra, 479 Pa. at 437, 388 A.2d at 734.

The judges are principals in the negotiations participating through the county commissioners. Thus, the county commissioners are clearly charged with the responsibility of representing the judges’ managerial interests, as well as their own, in contract negotiations with court-appointed employees.

“The exercise of such responsibilities by the county commissioners shall in no way affect the hiring, discharging and supervising rights and obligations with respect to such employees as may be vested in the judges or other county officers” does not limit the permissible subject of bargaining to purely financial terms. The proviso merely recognizes that, under PERA, matters affecting the hiring, discharge and supervisory powers of the public employer are not subjects of collective bargaining. See 43 P.S. § 1101.702 (selection and direction of personnel not subject to collective bargaining); 43 P.S. § 1101.706 (employer’s right to discharge for cause not impaired). Rather, under the express language of section 701 of PERA, court-appointed employees’ “wages, hours and other terms and

conditions of employment” are subjects of mandatory bargaining. 43 P.S. § 1101.701 (emphasis added).

Should Commissioners, however, neglect or refuse to furnish funds, or sufficient funds, for reasonable judicial functions, and consequently impair or interfere with the efficient administration of the judicial branch of the government, the courts possess the inherent power to require such necessities to be furnished and to direct payment therefor out of the public treasury. *Leahey v. Farrell*, 362 Pa. 52; 66 A.2d 577 (1949) (Citations omitted).

Given this context, it becomes apparent that the wage and salary records requested are judicial records under the control and supervision of the judiciary. A record does not need to be generated by the agency receiving a RTKL request to qualify as “of” that agency. *Bagwell v. Dep’t of Educ.*, 76 A.3d 81 (Pa. Cmwlth. 2013). In discerning whether records qualify as records “of” a particular agency, we consider the subject-matter of the records. *Meguerian v. Office of Attorney Gen.*, 86 A.3d 924 (Pa. Cmwlth. 2013); see also *Office of Atty. Gen. v. Phila. Inquirer*, 127 A.3d 57, 63 (Pa. Cmwlth. 2015) (“For emails to qualify as records “of” an agency, we only look to see if the subject-matter of the records relate to the agency’s operations.”). The *Grine* court specifically held that a record qualifies as “of” an agency when that record “documents a transaction or activity of the agency.” *Allegheny Cnty. Dep’t of Admin. Servs. v. A Second Chance, Inc. (ASCI)*, 13 A.3d 1025, 1034-35 (Pa. Cmwlth. 2011) (en banc); see *Meguerian* at 930. The location of the record or an agency’s

possession does not guarantee that a record is accessible to the public; rather, the character of the record controls. *Grine* at 94-95.

Separation of Powers Concern Implicated/Differences in Process for Access.

As discussed in *Grine*, a request for information must be decided and fulfilled differently based upon where it is filed. In this case, the Prior Request was made to the judiciary and answered by the Records Manager, whereas the Pending Request was addressed to the County and answered by the open-records officer.

The underlying procedure for filing a RTKL request with the County of York closely follows the general rule: "Section 901 of the RTKL establishes the general rule for a local agency's response to a request made pursuant to the RTKL, mandating that upon receipt of a written request for access to a record, an agency shall make a good faith effort to determine if the record requested is a public record, legislative record or financial record and whether the agency has possession, custody or control of the identified record, and to respond as promptly as possible under the circumstances existing at the time of the request." *Office of the DA of Phila. v. Bagwell*, 155 A.3d 1119, 1130 (Pa.Cmwlt. 2017) (Internal quotation marks omitted). Section 502(b)(1) provides that the open records officer is the individual who receives the request and "track[s] the agency's progress in responding to requests." 67 P.S. § 67.502(b)(1). If a local agency responds to a requester's RTKL request with a denial, whether in whole or in part, the denial shall be issued in writing and shall include, *inter alia*, (1) a description of the record requested and (2) the specific reasons for denial, including a citation of supporting legal authority." 65 P.S. § 67.903; *Id.* The local agency's denial must

also advise the requester of the procedure by which the requester may appeal the denial to the OOR (65 P.S. § 67.903(5); *Id* at 1130-31). This was the procedure followed in this case.

Alternatively, when seeking records of the judiciary, the party seeking such information must make a request in writing “to the records manager as designated by the Court Administrator of Pennsylvania.” *Pa. R.J.A. 509(c)(1)*. This request must “describe the records sought with sufficient specificity to enable the records manager to ascertain which records are being requested.” *Pa. R.J.A. 509(c)(2)*. Within ten days of the request, the records manager shall respond by: (1). Fulfilling the request or informing the requestor that upon payment of any necessary fee, the information will be available thereafter, (2) notifying the requester that they have failed to comply with provisions of the rule and specify which issues exist, (3) notifying the requester that the information cannot be provided and specify why, or (4) notifying the requester that the request has been received and the expected date the information will be available within 30 business days. *Pa. R.J.A. 509(c)(4)(i-iv)*. In the event of a denial, “the denial may be appealed in writing within 15 business days of the mailing date of the written response by the records manager to the president judge or designee. Within 20 business days of receipt of the appeal, the president judge or designee shall make a determination and forward it in writing to the requester. This remedy need not be exhausted before other relief is sought. Any further appeal shall be subject to Chapter 15, Judicial Review of Governmental Determinations, of the Pennsylvania Rules of Appellate Procedure.” *Pa. R.J.A. 509(c)(5)*.

At this juncture, it is significant to note the nature of the appeal. It is an appeal from a decision rendered by the OOR after a request was made to a local agency, the County, to produce its records. Critically, it is not an appeal from a decision rendered by the Records Manager of a judicial agency, our local courts. While we might have been initially inclined to rule on the substantive merits of the request regardless of its track, we decline to embark on that journey at this time based upon the separation of powers argument articulated by the County. Instead, we have confined our analysis to the arguments raised by the parties within the construct of this being just a local agency appeal. *See e.g. Grine*, 138 A.3d at 93 n.4. We leave for another day a determination of whether or not the documents requested are within the ambit of being financial records and must be disclosed by the judiciary.

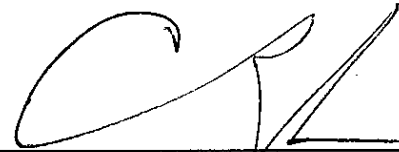
“When the General Assembly replaced the Right to Know Act in 2009 with the current RTKL, it significantly expanded public access to governmental records ... with the goal of promoting government transparency.” *Pa. State Police v. Grove*, 161 A.3d 877, 892 (Pa. 2017) (internal quotation and citation omitted). In order to advance this goal we conclude it is reasonable to impose on the open records officer a duty to “direct requests to other appropriate persons within the agency.” 65 P.S. § 502(b)(1).

“Regardless of whether responsive records are simultaneously of a county and of a judicial agency, a county must defer to the judicial agency for a response.” *Grine v. Cty. of Ctr.*, 138 A.3d 88, 100 (Pa.Cmwlth. Ct. 2016). Judicial agencies may review requests to discern whether the requested records qualify as financial records that are subject to disclosure. *Grine* at 99. We, therefore, conclude that “it [would be] improper for the county

to produce such records without first obtaining approval from the appropriate judicial open records officer.” *Commonwealth v. Grove*, 170 A.3d 1127, 1133 n.2 (Pa. Super. Ct. 2017); *Commonwealth v. McClure*, 172 A.3d 668, 675 n.4 (Pa. Super. Ct. 2017).

The Prothonotary is DIRECTED to serve copies of this order upon counsel of record for dissemination to their respective clients. Courtesy copies shall also be forwarded to: the Honorable Maria Musti Cook, President Judge; Paul O. Crouse, District Court Administrator; and Gregory E. Gettle, Esquire, the Prothonotary’s solicitor.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'C. W. Vedder', written over a horizontal line.

CLYDE W. VEDDER, JUDGE

Appendix A

Based upon statutory language and case law, the records you are seeking are records of a judicial agency. Under the Pennsylvania Rules of Judicial Administration, court prothonotaries and their employees are personnel of the unified judicial system. Pa. R.J.A. No. 102. *Frazier v. Phila. County Office of the Prothonotary*, 58 A.3d 858, 859, 2012. Further, their records are deemed judicial records.

The fact that a county pays an employee's salary who works in a judicial office "does not affect his status as a judicial employee". *County of Lehigh v. Pennsylvania Labor Relations Board*, 507 Pa. 270, 274, 489 A.2d 1325, 1327 (1985). The Open Records Office has routinely denied such appeals as they do not have jurisdiction to hear such matters. See *Edward Kennedy v. Berks County Court of Common Pleas*.

Where the record may also be in the possession of the County does not of itself make it an agency record. Records may document an activity of more than one agency. Where such dual records are also under the control of the judicial agency and the rules of judicial administration would not permit disclosure of such records, they may not be disclosed.

In this instance, the Courts have held that permitting the judicial branch to maintain control over the records which are also considered records of the judicial agency is appropriate. The Courts have even enjoined a county from "exercising control over records of the judiciary" related to open records requests. *Court of Common Pleas of Lackawanna Cnty. v. Office of Open Records*, 2 A.3d 810 (Pa. Cmwlth. 2010).

The location of the record or an agency's possession does not guarantee that a record is accessible to the public; rather, the character of the record controls." *Grine v. County of Centre*, 138 A.3d 88.

The Courts have also held that "to 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." See *Lackawanna County*.

APPENDIX B

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

LIZ EVANS SCOLFORO

V.

COUNTY OF YORK

Wed, Mar 17, 2021 1:45 PM

: NO.

2021-MI-000036

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:
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:

RIGHT TO KNOW REQUEST

**ORDER CONFIRMING THE DETERMINATION
OF THE OPEN RECORDS MANAGER**

OFFICE OF PROTHONOTARY
2021 MAR 17 PM 1:45
JUDICIAL CENTER
YORK, PA

AND NOW, this 17th day of March, 2021, the undersigned President Judge has reviewed the determination of Paul Crouse, District Court Administrator and Open Records Manager for the 19th Judicial District, in response to the request filed by Liz Evans Scolforo and the York Dispatch, pursuant to Pa.R.J.A. No 509(c)(5). Upon review of the request, the applicable law and the determination of the Open Records Manager, the undersigned confirms said determination and denies the appeal.

REQUEST HISTORY

On or about August 10, 2020, Liz Evans Scolforo (herein "Scolforo") filed an Open Records Request with the County of York seeking "access (electronic copy) to salary records for all prothonotary employees from Jan.1, 2020, to present, showing name, salary, job title and length of service, including start and end dates." The request indicated that the requestor was "Liz Evans Scolforo/The York Dispatch". The request was denied by the county and the denial was appealed to the Pennsylvania Office of Open Records (OOR), which dismissed the appeal on October 1, 2020.

A Notice of Appeal and Petition for Review of the decision of the OOR was filed by Scolforo and the York Dispatch (herein “Dispatch”) to the Court of Common Pleas. On January 25, 2021, the Honorable Clyde W. Vedder issued an Order denying the Petition and directing the County to refer the request to the Records Manager for review and determination. As part of the decision of the Court, Judge Vedder did an extensive analysis and comparison of the records of a “local agency” versus a “judicial agency”. Judge Vedder determined that the records of the prothonotary are judicial records. On February 23, 2021, an appeal was filed on behalf of Scolforo and Dispatch to the Commonwealth Court of the decision rendered on January 25, 2021.

In the interim, on January 25, 2021, the records request of Scolforo/Dispatch was forwarded to Paul Crouse, District Court Administrator and Open Records Manager for the 19th Judicial District (herein “Crouse”). Crouse reviewed the request and timely issued a determination that the county was authorized to release the names, salaries and job titles of the employees. In fact, such information was released by County Solicitor Michèle Pokrifka on February 11, 2021.

On February 23, 2021, an appeal of the determination of Crouse was filed on behalf of Scolforo.¹ The appeal asserts that Crouse erred in failing to authorize the release of the length of service for each employee, citing Section 708(b)(6) of the Right to Know Law.²

This Court finds the assertion of Appellant to be misguided. This Court agrees with Judge Vedder’s analysis of appellate case law, the applicable statute and the Constitution, in holding that the records sought are the records of a judicial agency. Moreover, Section 304 of

¹ There is no reference to the York Dispatch in the Appeal letter.

² 65 P.S. §67.708(b)(6)

the Right to Know Law provides that: “A judicial agency shall provide financial records in accordance with this act or any rule or order of court providing equal or greater access to the records.”³ “Financial Record” under the Right to Know Law is defined as:

- (1) Any account, voucher or contract dealing with:
 - (i) the receipt or disbursement of funds by an agency; or
 - (ii) an agency’s acquisition, use or disposal of services, supplies, materials, equipment or property.
- (2) *The salary or other payments or expenses paid to an officer or employee of an agency, including the name and title of the officer or employee.*
- (3) A financial audit report. The term does not include work papers.⁴ (Emphasis added.)

The statute does not include length of service of the agency employee.

Appellant argues that Section 708(b)(6) of the Right to Know Law applies and requires the release of such information. Section 708 of the Right to Know Law addresses “Exceptions for public records”. “Public Record” is specifically defined in the Right to Know Law:

- A record, including financial record, of a *Commonwealth or local agency* that:
- (1) is not exempt under section 708;
 - (2) is not exempt from being disclosed under any Federal or State law or regulation or judicial order or decree; or
 - (3) is not protected by a privilege. (Emphasis added.)⁵

The terms “Commonwealth Agency”, “local agency”, and “judicial agency” are separately and specifically defined under the Right to Know Law.⁶ The records in question are not records of a Commonwealth or local agency, but rather, they are records of a judicial agency, thus Section 708 does not apply.

³ 65 P.S. §67.304

⁴ 65 P.S. §67.102

⁵ 65 P.S. §67.102

⁶ 65 P.S. §67.102

The decision of the York County Open Records Manager properly applied the law under the Right to know Law. The appeal is **DENIED**.

The Prothonotary is directed to provide a copy of this Order to Paula Knudsen Burke, Esquire, Michèle Pofrifka, Esquire and Paul Crouse, District Court Administrator.

BY THE COURT

A handwritten signature in black ink, appearing to read "Maria Musti Cook", written over a horizontal line.

Maria Musti Cook
President Judge