IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Liz Evans Scolforo and The York Dispatch,	:	
Appellants	:	
v.	:	No. 359 C.D. 2021
	:	
The County of York	:	
	:	
	:	
Liz Evans Scolforo,	:	
Appellant	:	
v.	:	No. 360 C.D. 2021
	:	
The County of York	:	Argued: September 12, 2022

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

DISSENTING OPINION BY
JUDGE McCULLOUGH FILED: July 10, 2023

In resolving these consolidated Right-to-Know Law (RTKL)[1] appeals, the Majority concludes that the records at issue—name, salary, job title, and length-of-service records of York County Prothonotary (Prothonotary) employees—are the records "of" a judicial agency and, therefore, may not be disclosed to the public without the approval of the judicial records manager of the Court of Common Pleas of York County, Pennsylvania (common pleas).[2] Although I agree with the Majority that these records are disclosable as public records, I cannot agree with the Majority's characterization of these records as those "of" a judicial agency. Rather,

[1] Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104.

[2] The judicial records manager of a judicial district is designated by the president judge of that judicial district. *See* Pa. R.J.A. 509(c)(1). In York County, and as is common, the judicial records manager is the district court administrator (DCA). (Reproduced Record (R.R.) 165a-67a.)

these records very plainly are financial records of York County (County), a local agency, and therefore are disclosable under the RTKL. *See* Section 708(b)(6)(ii) of the RTKL, 65 P.S. § 67.708(b)(6)(ii). The tangled procedural history below highlights in bold relief the difficulty that local records officials have in applying our precedents to RTKL requests that potentially involve both local and judicial agencies. Because I believe that the Majority confuses the analytical framework applicable to these kinds of records requests and unnecessarily complicates and restricts public access to public records, I must respectfully dissent.

First, on a procedural note, Case No. 359 C.D. 2021 is an appeal from the decision of common pleas affirming the Office of Open Records' (OOR) Final Determination. The OOR concluded that it did not have jurisdiction over the requested records because the records were those "of" a judicial agency. (Reproduced Record 12a.) The appeal to the OOR concerned a RTKL request submitted to the County, which undisputedly is a local agency. Thus, the precise question before the OOR was not so much whether it had *jurisdiction* to consider the appeal, but, rather, whether it had any *authority* to order the production of the requested records. We held as much in *Philadelphia District Attorney's Office v. Stover*, 176 A.3d 1024, 1026-27 (Pa. Cmwlth. 2017) (because district attorney's office is a local agency under the RTKL, appeal from denial of RTKL request directed to that office properly was before the OOR, which has "jurisdiction" over RTKL appeals from local agencies; "the fact that the OOR has jurisdiction to decide this controversy does not determine whether the OOR has the legal authority to grant [the r]equester's request, for the issues are separate and distinct"). I reiterate this distinction here only to make procedurally clear the fact that the OOR has "jurisdiction" over appeals from local agency RTKL determinations. The OOR may thereafter determine that the records at issue are "of" a judicial agency and, therefore, outside of its authority to either direct or preclude disclosure. This is a fine and somewhat pedantic point, but an important one, nevertheless.

Second, and more importantly, although I do not dispute that Prothonotary is a "judicial agency" under the RTKL and our case law, I do not believe that the requested records (personnel information regarding Prothonotary employees) are records "of" a judicial agency. As the Majority acknowledges, the fact that the requested records relate to employees of a judicial agency does not itself convert them into records "of" a judicial agency. *See Scolforo v. The County of York* ___ A.3d ___ (Pa. Cmwlth., Nos. 359 & 360 C.D. 2021, filed July __, 2023), slip op. at 24 (MO). Rather, whether these are records "of" a judicial agency is a question determined by the subject matter and character of the records. They must "document" (or prove, support, or evidence) a transaction or activity of the agency. *Stover*, 176 A.3d at 1028 (citing and quoting *Grine v. County of Centre*, 138 A.3d 88, 94-95 (Pa. Cmwlth. 2016) (*en banc*)). *See also* ___ A.3d at ___, MO at 26 ("In making this determination, courts examine whether the record is produced by the agency, reflects an activity or operation of the agency, or documents the transactions of the agency.").

I do not believe that these records qualify as records "of" a judicial agency under the above standards. The personnel records at issue in these appeals are generated, housed, and modified as necessary by the County, not Prothonotary acting as a judicial office. These employees' salaries and benefits are paid entirely by the County and not by funds appropriated to the Unified Judicial System (UJS). *See* Pa. R.J.A. 509 (defining "financial records" as those that relate to funds "appropriated to the [UJS]"). The records were not created by the judiciary in the course of its functions, and they do not evidence any "transaction" or "activity" of the judiciary. They are, therefore, both categorically and practically distinct from the records at issue in both *Court of Common Pleas of Lackawanna County v. Pennsylvania Office of Open Records*, 2 A.3d 810 (Pa. Cmwlth. 2010), and *Grine*.

In *Lackawanna County*, a RTKL request sought records of e-mails sent to or from e-mail accounts used by the county's domestic relations office director

(DRO director). *Id.* at 812. We concluded that the requested records were records "of" a judicial agency because they were produced by the DRO director, who was an administrative staff person of the UJS directly supervised by the court of common pleas. *Id.* at 813. Thus, "*his* records [were] records of a judicial agency . . . ," and Lackawanna County's payment of his salary, ownership of the subject e-mail accounts, and possession of the requested records did not convert the requested e-mails into county records. *Id.* We further noted that any attempt by the OOR to direct production of the DRO director's e-mails was a "blatant and unconstitutional" separation of powers violation:

> Among the judiciary's powers is the ability to supervise its own personnel without interference from another branch of government. An inescapable corollary to this power is that no administrative agency may exercise control over the records generated by personnel of a judicial agency.

Id. at 814 (citations omitted). For reasons that are obvious, that is not this case. The requested Prothonotary employee records are generated by the County and maintained by it for its own financial and employment-related purposes. Nothing in the record indicates that Prothonotary or any of its employees produced these documents in any fashion, let alone in the course of performing a judicial activity. They simply do not evidence any transaction or activity of Prothonotary acting in its function as a judicial agency. And, as stated above, I do not believe that the records' mere "relation" to Prothonotary, whatever that might mean, is sufficient to convert them into records of the judiciary.

Grine also is easily distinguishable for the same reasons. There, the requester sought cellular telephone records of a common pleas judge, a magisterial district judge, and a district attorney. Pertinent here, we concluded that the requested telephone records of the common pleas judge reflected *the activities* of the judiciary (i.e., the activities of a judicial officer—a judge), notwithstanding the fact that the

county paid the judge's cellular telephone bills. On that basis, and to maintain appropriate separation of powers and preserve the judiciary's supervisory control over its personnel, we concluded that the requested records were those of a judicial agency and were not disclosable by the county. *Grine*, 138 A.3d at 95, 97-98. And, although the issue is not now before us, the same analysis would apply to records generated by county probation officers, who also are supervised by the courts of common pleas and not by counties. *See Lackawanna County*, 2 A.3d at 813.

This, in my view, was the point of our conclusion in *Stover* that records of a criminal defendant's sentence and conviction were records of a judicial agency, no matter where they were housed. We stated that, "in both instances, the character and subject matter of the requested records evidence the duty and power **of the court while acting as a judicial agency**, and the orders document **activities that are solely and uniquely vested in and committed to the judicial branch of government.**" *Stover*, 176 A.3d at 1029 (emphasis added). Under that standard, Prothonotary employees' county-maintained personnel records that, by themselves, evidence no activity of Prothonotary *while acting as a judicial agency*, are not records "of" a judicial agency.

Further, unlike the situations in *Lackawanna County* and *Grine*, there is no separation of powers issue here. As common pleas noted, *see* ___ A.3d at ___, MO at 3-4, it has no supervisory authority over Prothonotary employees other than as they are working in court and performing court functions. Thus, the very real practical danger with the Majority's holding is that it potentially makes all, or almost all, financial records related to Prothonotary and its employees the financial records "of" a judicial agency. That means that any records related to Prothonotary's functioning or financial matters could not be released under the RTKL without the approval of the district court administrator, who has no authority over Prothonotary or its employees. This potentially would include budgeting, salaries, raises, bonuses, and the like. I do not believe that is an appropriate result. To further illustrate and

press the point, contrast the employee records requested here with financial records *maintained and generated by Prothonotary* that evidence the payment of costs, fees, and judgments, costs associated with service of legal filings, and records of paid-into-court funds such as a divorce master's fee. Those records, clearly, are financial records of the judiciary because they document a transaction or activity of a judicial agency *acting as a judicial agency*.

Finally, as I noted above, the requested records at issue here likely *would not* qualify as "financial records" under Pennsylvania Rule of Judicial Administration 509, which defines "financial records" of the UJS as those that relate to funds that are appropriated to the UJS. These Prothonotary personnel records relate to county-funded employment. The Majority declines to address this issue, *see* ___ A.3d at ___, MO at 42, but I think it is telling that our own Judicial Administration rules do not consider these records to be "financial records" of the UJS even though Prothonotary employees might be considered personnel of the UJS.

In sum, I would conclude that the requested records are disclosable under the RTKL as financial records of the County, a local agency. Under section 708(b)(6)(ii) of the RTKL, 65 P.S. § 67.708(b)(6)(ii), length-of-service records expressly are disclosable. This, to my mind and under our case law, is a cleaner outcome disposing of both appeals in a fashion that is readily applicable in future RTKL cases involving records that potentially "relate" to more than one kind of agency.

s/ Patricia A. McCullough
PATRICIA A. McCULLOUGH, Judge