

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

LIZ EVANS SCOLFORO and : No. 2020-SU-002162  
THE YORK DISPATCH :  
Petitioners :  
vs. :  
THE COUNTY OF YORK, :  
Respondent : Right to Know Law

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

APPEARANCES:

For Petitioners: Paula Knudsen Burke, Esq.  
For Respondent: Michéle Pokrifka, Esq.

**ORDER**

AND NOW, this 22<sup>nd</sup> 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 Law<sup>1</sup> (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](mailto: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

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<sup>1</sup> 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.<sup>2</sup>

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<sup>2</sup> 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.<sup>3</sup> 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 District<sup>4</sup> 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.<sup>5</sup> Requester further argues that, fundamentally,

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<sup>3</sup> 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*.

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

<sup>5</sup> 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.Cmwlt. 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. Cmwlt. 2018) (Uniontown II) (citing *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Cmwlt. 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.<sup>6</sup> 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.<sup>7</sup>

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.

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<sup>6</sup> 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.

<sup>7</sup> 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.

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(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.<sup>8</sup> 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

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<sup>8</sup> *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 employes 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 employes 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.

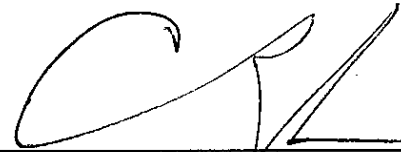
“When the General Assembly replaced the Right to Know Act in 2009 with the current RTKL, it significantly expanded public access to governmental records ... with the goal of promoting government transparency.” *Pa. State Police v. Grove*, 161 A.3d 877, 892 (Pa. 2017) (internal quotation and citation 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 read '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*.