

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COUNTY OF LYCOMING,
Petitioner

v.

NICO SALVATORI and
THE WILLIAMSPORT SUN-GAZETTE,
Respondents

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PETITION FOR REVIEW

Docket No. 15-00726

FILED
LYCOMING COUNTY
JUN 17 2015
CLERK OF COURT

OPINION AND ORDER

On March 18, 2015, Lycoming County (Petitioner) filed a petition for review of an Office of Open Records (OOR) determination that the County was required to provide records in response to Nico Salvatori and The Williamsport Sun-Gazette’s (Respondents) Right-to-Know request of January 15, 2015. On May 18, 2015, Respondents filed an answer to the petition. Argument on the petition was held on May 20, 2015. On June 8, 2015, the parties filed stipulated facts. On July 6, 2015, Petitioner filed a brief in support of its petition. On July 21, 2015, Respondents filed a brief in opposition to the petition.

I. Background

On or about November 20, 2014, a vacancy arose for a Lycoming County commissioner seat when Jeff Wheeland left to begin his elected position as a member of the Pennsylvania House of Representatives. The Lycoming County Court of Common Pleas was directed to fill the vacancy by 16 P.S. § 501(b), which provides, “Any casual vacancy in the office of county commissioners shall be filled, for the balance of the unexpired term, by the court of common pleas of the county in which such vacancy shall occur by the appointment of a registered elector of the county. . . .” Applications to fill the vacancy were delivered to the Lycoming County

SCANNED

Court of Common Pleas and not the Petitioner. Pursuant to 16 P.S. § 501(b), the Court eventually filled the vacancy.

On January 25, 2015, Respondents requested from Petitioner “the list of candidates who applied to serve as a Lycoming County Commissioner for an interim term and fill the vacancy left by former Commissioner Jeff Wheeland.” Respondents contended that they were entitled to the requested information under the Right-to-Know Law (RTKL). On January 16, 2015, the Petitioner denied the request. That same day, Respondents appealed the denial to the OOR. On February 17, 2015, the OOR granted the appeal and provided Petitioner with 30 days to release the records sought by the Respondents. The Petitioner timely appealed the OOR’s determination by filing the present petition.

II. Discussion

The RTKL differentiates agencies. See 65 P.S. § 67.102 (defining “commonwealth agency,” “independent agency,” “judicial agency,” “legislative agency,” and “local agency”). A “local agency” is “any local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity.” Id. Here, the parties stipulated that the Petitioner is a local agency.

“A local agency shall provide public records in accordance with [the RTKL].” 65 P.S. § 67.302(a). Under the RTKL, a record is “[i]nformation, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.” 65 P.S. § 67.102. “This definition contains two parts. First, the

information must ‘document a transaction or activity of the agency.’ Second, the information must be ‘created, received, or retained’ in connection with the activity of the agency.”

Barkeyville Borough v. Stearns, 35 A.3d 91, 95 (Pa. Cmwlth. 2012).

Here, the information sought by Respondents is not a record of the Petitioner because the filling of the commissioner vacancy was not a transaction or activity of the Petitioner. The filling of the vacancy was not a transaction or activity of the Petitioner because the Petitioner was not involved in filling the vacancy. Applications to fill the vacancy were not delivered to the Petitioner. They were delivered to the Lycoming County Court of Common Pleas, and the vacancy was filled by the Court, which is a judicial agency under the RTKL. See 65 P.S. § 67.102 (defining judicial agency as “[a] court of the Commonwealth”). As mentioned above, a judicial agency is different than a local agency under the RTKL. See id. (defining judicial agency and local agency); compare 65 P.S. § 67.304(a) (limiting the records that judicial agencies must disclose to financial records), with 65 P.S. § 67.302(a) (requiring local agencies to provide public records). Since the information requested is not a record of the Petitioner, the RTKL imposes no requirement on the Petitioner in this case.

If the information requested exists, it presumably was created by the Lycoming County Court of Common Pleas. “[I]t is axiomatic that any record produced by a judicial employee is a record of a judicial agency.” Court of Common Pleas of Lackawanna County v. Office of Open Records, 2 A.3d 810, 813 (Pa. Cmwlth. 2010). If any record produced by a judicial employee is a record of a judicial agency, any record produced by a court of common pleas, a judicial agency itself, must be a record of a judicial agency. Therefore, the information requested would be a record of a judicial agency. As noted by the Petitioner, “the RTKL contains law unique to requests for judicial agency records as opposed to local agency records.”

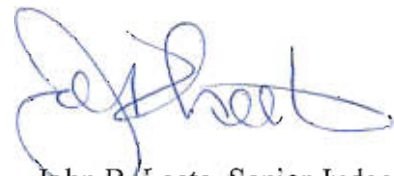
III. Conclusion

The information requested by Respondents is not a record of the Petitioner because the Petitioner was not involved in filling the vacancy in the commissioners' office. Therefore, the RTLK imposes no requirement on the Petitioner in this case.

ORDER

AND NOW, this 13 day of August, 2015, it is ORDERED and DIRECTED that the Petition for Review of Final Determination, which was filed on March 18, 2015, is hereby GRANTED. The Right-to-Know Law imposes no requirement on the Petitioner in this case because the information requested by Respondents is not a record of the Petitioner.

By the Court,



John B. Leete, Senior Judge
Specially Presiding

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