

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

George L. Antidormi,	:	
	:	
v.	:	No. 274 C.D. 2011
	:	Submitted: August 12, 2011
Lackawanna County Clerk of Courts,	:	
Respondent	:	
	:	

**BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE BROBSON**

FILED: September 14, 2011

Petitioner George L. Antidormi (Antidormi), *pro se*, petitions for review of an order of the Pennsylvania Office of Open Records (Open Records), which dismissed Antidormi’s appeal with prejudice. Open Records concluded that it was without jurisdiction to hear the appeal, in which Antidormi sought review of the Lackawanna County Clerk of Courts’ (Clerk) denial of Antidormi’s request under the Pennsylvania Right-to-Know Law (RTKL)¹ for access to documents in the docket of his criminal case.²

Antidormi sent the following request under the RTKL to the “Lackawanna Co. Clerk of Courts ATTN: Right to Know Officer”:

¹ Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-.3104.

² Antidormi is currently incarcerated at the State Correctional Institution at Dallas, Pennsylvania.

All documents: Notes of Testimony, Pleadings Filed of Record for Case NO. CPP 1376 A-F 1988 – Judge: Walsh, J.

According to Antidormi, the Clerk did not respond to his request.³ He appealed the deemed denial to Open Records, which, as noted above, dismissed the appeal for lack of jurisdiction. In its written determination, Open Records explained its decision:

Mr. Antidormi directed his RTKL request to the Lackawanna County Clerk of Courts (“Clerk”) and sought records from that agency. The Clerk is a “judicial agency” and as such is not subject to the jurisdiction of the OOR. *See* 65 P.S. § 67.503(b). Accordingly, the appeal is *dismissed with prejudice*.

(Emphasis in original.) Antidormi seeks review of this Open Records final determination.⁴

On appeal, Antidormi makes two arguments. First, citing Pennsylvania Rule of Criminal Procedure 113(a), Antidormi argues that the Clerk is required by law to maintain the criminal case files of the Lackawanna Court of

³ Under Section 901 of the RTKL, 65 P.S. § 67.901, a failure of an agency to timely respond to a written request for a record under the RTKL is treated as a deemed denial.

⁴ “The scope of review for a question of law under the [RTKL] is plenary.” *Stein v. Plymouth Twp.*, 994 A.2d 1179, 1181 n.4 (Pa. Cmwlth. 2010). In *Bowling v. Office of Open Records*, 990 A.2d 813 (Pa. Cmwlth. 2010) (en banc), *appeal granted*, ___ Pa. ___, 15 A.3d 427 (2011), we concluded that our standard of review under the RTKL is as follows: “A reviewing court, in its appellate jurisdiction, independently reviews [Open Records’] orders and may substitute its own findings of fact for that of the agency.” *Id.* at 818. Further, “a court reviewing an appeal from a [decision of an Open Records] hearing officer is entitled to the broadest scope of review.” *Id.* at 820. Under this broad standard we review “the record on appeal,” which includes: the request for public records, the agency’s response, the appeal, the hearing transcript, and the final written determination of the appeals officer. *Id.* at 820-21. Additionally, this Court may review other material, including party stipulations and also may conduct an *in camera* review of the documents at issue. *Id.* at 820-23. Finally, we may supplement the record by conducting a hearing or direct such supplementation by remanding the matter to Open Records. *Id.* at 823 n.11.

Common Pleas and, upon request, to provide copies of the same at a reasonable cost. Second, he argues that Open Records has jurisdiction to order the Clerk to provide the requested documents for the following reasons: (a) the RTKL is remedial; (b) the records sought are in the possession of the Clerk and are thus presumed to be public records; (c) no exemption from disclosure applies; (d) the records sought are public by virtue of Rule 113(a) of the Pennsylvania Rules of Criminal Procedure; (e) the Clerk should have granted him access; (f) the Clerk did not even respond to his request; and (g) his request was sufficiently detailed under the RTKL.

Based on our independent review of the record, we affirm OOR's determination that it lacked jurisdiction to hear Antidormi's appeal. OOR's jurisdiction to hear appeals under the RTKL does not extend to appeals from RTKL determinations by a judicial agency of the Commonwealth. *See* Sections 503(a) and 1101(a) of the RTKL, 65 P.S. §§ 67.503(a), .1101(a) (excluding from OOR's jurisdiction review of legislative and judicial agency determinations). "Judicial agency" is defined under the RTKL 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 (definition of "judicial agency"). "[C]lerks of court . . . are personnel of the unified judicial system." *League of Women Voters of Greater Pittsburgh v. Allegheny County*, 819 A.2d 155, 158 n.12 (Pa. Cmwlth.) (citing Section 102 of the Judicial Code, 42 Pa. C.S. § 102), *appeal denied*, 577 Pa. 674, 842 A.2d 407 (2003). Accordingly, based on the express terms of the RTKL, Open Records does not have jurisdiction to review the propriety of the Clerk's denial of Antidormi's RTKL request.

Moreover, this Court has already addressed the jurisdiction of Open Records as it pertains to RTKL requests directed to judicial agencies. In *Court of Common Pleas of Lackawanna County v. Pennsylvania Office of Open Records*, 2 A.3d 810 (Pa. Cmwlth. 2010) (*CCP Lackawanna*), in addition to noting the statutory limits of Open Records’ jurisdiction, we ruled that any order by Open Records, an office within the executive branch of our state government, to compel a judicial agency to disclose its records would constitute “a blatant and unconstitutional violation of the separation of powers doctrine.” *CCP Lackawanna*, 2 A.3d at 813.

We do not lightly dismiss Antidormi’s first argument on appeal, which is well-taken, that pursuant to Rule 113(a) of the Pennsylvania Rules of Criminal Procedure, the Clerk should make available to him, upon request and at reasonable cost, copies of the documents in Antidormi’s criminal file. The RTKL, however, is not the appropriate vehicle⁵ and Open Records is not the appropriate venue to compel the Clerk, as an officer of the unified judicial system, to comply with Rule 113(a). Similarly, none of the reasons Antidormi advances in support of his second argument on appeal address directly the statutory and constitutional limits of Open Record’s jurisdiction set forth above. Accordingly, Antidormi’s second argument on appeal lacks merit.

⁵ “The RTKL limits the record that judicial agencies must disclose to financial records.” *CCP Lackawanna*, 2 A.3d at 813 (citing Section 304 of the RTKL, 65 P.S. § 67.304). The documents Antidormi seeks, however, do not appear to fall within the RTKL’s definition of “financial record.” *See* Section 102 of the RTKL. That question, however, is not before us and thus does not form the basis of our decision in this appeal.

For the reasons set forth above, we affirm Open Records' dismissal of Antidormi's appeal with prejudice.

P. KEVIN BROBSON, Judge

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	:	
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ORDER

AND NOW, this 14th day of September, 2011, the order of the Office of Open Records is AFFIRMED.

P. KEVIN BROBSON, Judge