

December 17, 2008

Ms. Terry Mutchler, Executive Director
Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Dear Ms. Mutchler:

I am writing to obtain an advisory opinion from your office regarding what constitutes a "Judicial agency" as set forth in Section 102 of the new Open Records Law. The determination of what constitutes a "Judicial agency" is significant in that judicial agencies are treated differently under the act from local agencies.

I am of the opinion that several offices that occupy county buildings are judicial agencies and thus not subject to the same requirements for distribution of records as county offices. My reasoning is as follows: Under 42 P.C.S.A. Section 301, the judicial power of the Commonwealth is vested in a unified judicial system consisting of nine (9) identified courts including the Courts of Common Pleas. Under PA.R.J.A. No. 102, the Pennsylvania legislature has defined the "System and Related Personnel" to include "district attorneys, public defenders, sheriffs and other officers serving process or enforcing orders, register of wills, prothonotaries ... clerks of the courts, clerks of the orphans' court division, prison and correctional officials and the personnel of all the foregoing." The prothonotaries of the Supreme Court, Superior Court and Commonwealth Court of Pennsylvania are excluded from the definition.

In *League of Women Voters v. Allegheny County*, 819 A.2d 155 (Pa.Cmnwlth. 2003), the Commonwealth Court of Pennsylvania notes that Section 102 identifies clerk of courts and prothonotaries as personnel of the unified judicial system.

Within the new open records law definition of a judicial agency, the phrase "or any other entity or office of the unified judicial system" seems broad in its possible application. "Entity" is not defined. Thus I believe a reasonable argument can be made that the offices which include personnel of the unified judicial system can be included as a "Judicial agency" under the new Open Records Act. As a result, only "financial records" as defined under the act are required to be released by those offices.

Please advise of whether or not your office agrees with my interpretation or can offer further clarification of the appropriate definition of a judicial agency. Thank you for your assistance.

Sincerely,

FRANKLIN COUNTY

COMMISSIONERS

Shawn D. Meyers
County Solicitor



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS

January 16, 2009

Shawn D. Meyers, Esquire
Solicitor
Franklin County Commissioners' Office
14 North Main Street
Chambersburg, PA 17201-1284

Re: Advisory Opinion Request—Definition of “Judicial Agency”

Dear Solicitor Meyers:

Thank you for writing to the Office of Open Records (“OOR”) with your request for an Advisory Opinion pursuant to the Right-to-Know law, Act 3 of 2008, 65 P.S. §§67.101, *et seq.*, (“RTKL”) on behalf of the Franklin County Commissioners’ Office.

Your request seeks guidance regarding the parameters of the definition of “judicial agency,” and in particular whether offices of the County, to include clerks of court, prothonotaries, registers of wills and recorders of deeds, qualify as judicial agencies.

Your request for an Advisory Opinion is granted. Please be advised that unlike Final Determinations, the law does not establish a deadline for the issuance of Advisory Opinions by the Office of Open Records. The OOR will work diligently to provide Advisory Opinions as soon as practicable; however, please be advised that issuance of an Advisory Opinions may take at least ninety (90) days from the date OOR grants a request for an Advisory Opinion. Given the importance of your question, however, we will be expediting this response.

Respectfully,

A handwritten signature in black ink, appearing to read "Terry Mutchler".

Terry Mutchler
Executive Director