
AGENCY

Agency Under RTKL

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OOR Determination – AP 2018-0471: “Accordingly, because the Constable’s primary functions are as a process server and peace officer tasked with “enforc[ing] the law and carry[ing] it out,” we find that constables are governmental in nature and are, therefore, local agencies as defined by the RTKL.”

...

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Referral: <https://www.openrecords.pa.gov/Appeals/DocketSheet.cfm?docket=20180471>
<https://www.openrecords.pa.gov/Appeals/DocketSheet.cfm?docket=20180457>



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**MICHELLE GROVE,
Requester**

v.

**CONSTABLE RONALD QUINN,
Respondent**

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Docket No.: AP 2018-0471

INTRODUCTION

Michelle Grove (“Requester”) submitted a request (“Request”) to Constable Ronald Quinn (“Constable”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking written communications regarding another constable. The Constable denied the Request, arguing that he is not an agency subject to the RTKL. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted**, and the Constable required to take further action as directed.

FACTUAL BACKGROUND

On March 12, 2018, the Request was filed, seeking, for the time period of January 1, 2018 through March 12, 2018, “[a]ll written communications (including email) to/from/regarding Constable Grove.” The Requester also identified several “[s]earch keywords[,]” including “Casey Grove,” “Constable Grove,” “Casey,” “Grove,” “In Defense of Rural Values,” “www.constablegrove.com,” “Gregg Township,” and “Saul Alinsky[, i]nclud[ing] all replies.” On

March 15, 2018, the Constable denied the Request, arguing that he is not a public agency subject to the provisions of the RTKL and stating that he “will not be complying [with] your request for any correspondence.”

On March 15, 2018, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure.¹ The OOR invited the parties to supplement the record and directed the Constable to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On April 12, 2018, the Constable submitted an unsworn position statement, arguing that constables are not local agencies subject to the RTKL.²

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and

¹ The Requester granted the OOR until April 19, 2018 to issue the final determination in this matter. *See* 65 P.S. § 67.1101(b)(1).

² The Constable’s April 12, 2018 submission was received after the record closed in this matter; however, to further develop the record, the submission was considered. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute”).

relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep't of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, the parties did not request a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate the matter.

Records in the possession of a Commonwealth or local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and to respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemption(s). *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass'n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The Constable argues that he is not an agency subject to the RTKL. The question of whether the Constable is a Commonwealth or local agency is a jurisdictional one, as the OOR only retains authority to review decisions of Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). The RTKL defines a “Commonwealth agency” as:

- (1) Any office, department, authority, board, multistate agency or commission of the executive branch; an independent agency; and a State-affiliated entity. The term includes:
 - i. The Governor’s Office.
 - ii. The Office of Attorney General, the Department of the Auditor General and the Treasury Department.
 - iii. An organization established by the Constitution of Pennsylvania, a statute or executive order which performs or is intended to perform an essential governmental function.

65 P.S. § 67.102. An “Independent agency” is defined as “[a]ny board, commission or other agency or officer of the Commonwealth that is not subject to the policy supervision and control of the Governor.” *Id.* Meanwhile, a “State-affiliated entity” is defined as “[a] Commonwealth authority or Commonwealth entity.” *Id.* The definition:

includes the Pennsylvania Higher Education Assistance Agency and any entity established thereby, the Pennsylvania Gaming Control Board, the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement Board, the State System of Higher Education, a community college, the Pennsylvania Turnpike Commission, the Pennsylvania Public Utility Commission, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Interscholastic Athletic Association and the Pennsylvania Educational Facilities Authority.

Id.

In Pennsylvania, constables are a statutory creation, but are not subject to the direct policy supervision or control of the Governor, nor do they fall within the definition of a State-affiliated entity; therefore, we must determine whether constables are independent agencies. *See generally*

Appeal of Hadley, 83 A.3d 1101, 1106-07 (Pa. Commw. Ct. 2014) (“[W]e reject [the r]equester’s broad interpretation that anything referred to as an agency under any law qualifies as an agency under the RTKL”). The Commonwealth Court has noted that “the financial relationship between the Commonwealth and the agency in question is a primary factor in determining whether the agency is a Commonwealth agency.” *S.A.V.E., Inc. v. Delaware Valley Regional Planning Comm’n*, 819 A.2d 1235, 1238 (Pa. Commw. Ct. 2013). Furthermore, “[a]n organization performs an essential governmental function only where (1) the statute identifies the organization as providing essential services, or (2) the organization provides constitutionally mandated services or services undisputedly necessary to the continued existence of the Commonwealth.” *Id.* at 1241 (citing *Commonwealth College of Phila. v. Brown*, 674 A.2d 670 (Pa. 1996)).

With respect to constables, the Pennsylvania Supreme Court has concluded that:

... a constable does not act for or under the control of the Commonwealth or a political subdivision. A constable is not an employee of the state, judiciary, county, or municipality in which he or she works. A constable is an independent contractor.

Ward v. Commonwealth, 65 A.3d 1078, 1082 (Pa. Commw. Ct. 2013) (citing *In re Act 147 of 1990*, 598 A.2d 985, 990 (Pa. 1991)). Additionally, constables have little financial relationship with the Commonwealth, as they are not salaried employees of the Commonwealth, do not depend on state funding to operate and are not subject to annual audits by the Commonwealth; rather, constables are independent contractors who collect payment on a per job basis in accordance with statute. *See* 44 Pa.C.S. §§ 7161-7166 (setting forth fees and compensation that may be collected by constables). Constables do not have a direct financial relationship with the Commonwealth and do not perform an essential governmental function, as their services are not identified as essential within their governing statute, are not mandated by the Pennsylvania Constitution, and there is no indication that “the survival of the Commonwealth would be in jeopardy” without the functions

performed by constables. *See Brown*, 674 A.2d at 671. Therefore, constables are not independent agencies as contemplated in the RTKL.

However, the inquiry is not complete. The RTKL defines “local agency” as:

- (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.

65 P.S. § 67.102. While constables do not meet the definition of “local agency” as defined in subsection (1) of Section 102 of the RTKL, we must determine whether they fall under one of the types of entities delineated in subsection (2), such as a “local” or “municipal” agency. *See Appeal of Hadley*, 83 A.3d at 1106-07 (focusing on whether an agency was “governmental in nature” and whether the agency served an exclusively “governmental function” when determining whether it was any entity set forth in subsection (2) of the definition of local agency). The Supreme Court, during its discussion of constables’ proper place within government, compared constables to district attorneys and sheriffs, explaining as follows:

As a peace officer, and as a process server, a constable belongs analytically to the *executive branch of government*, even though his job is obviously related to the courts. It is the constable’s job to enforce the law and carry it out, just as the same is the job of district attorneys, sheriffs, and police generally. Act 147 is unconstitutional and violates the separate of powers doctrine in our Constitution because it attempts to place constables within the judicial branch of government and under the supervisory power of the judicial branch.... Personnel whose central functions and activities partake of *exercising executive powers* cannot be arbitrarily made part of another branch of government whose functions they do not perform.

In re Act 147, 598 A.2d at 990 (internal citations omitted) (emphasis added); *see also Miller v. County of Centre*, 173 A.3d 1162, 1175-76 (Pa. 2017) (stating that the “function” of constables “is law enforcement and thus makes them members of the executive branch...”).

Constables are authorized, by statute, to perform certain enumerated duties, including preserving the peace during elections, *see* 44 Pa.C.S. § 7152; serving process, *see* 44 Pa.C.S. § 7153; executing warrants for the purpose of delinquent tax collection, 44 Pa.C.S. § 7154; arresting persons who violate forest laws, 44 Pa.C.S. § 7155; and, in the case of boroughs, arresting those guilty of, among other things, breaching the peace, disorderly conduct, drunkenness or acts tending to imperil the personal security or property of citizens, as well as those violating any borough ordinance for which a fine or penalty is imposed, 44 Pa.C.S. § 7158. Furthermore, “[a] court may summon a constable to appear before it and direct the constable to investigate a complaint of a violation of law or of a condition which a constable is required to report to the court and to make a report of his investigation.” 44 Pa.C.S. § 7157(b).³ Many of a constable’s functions, particularly those involving law enforcement and the powers of arrest, are governmental in nature.

Unlike the economic development corporation in *Hadley*, constables perform some governmental functions,⁴ yet they do not fall within the supervisory orbit or control of any Commonwealth, local or judicial agency. *See In re Act 147*, 598 A.2d at 986 (holding that a constable is an independent contractor); *see also Rosenwald v. Barbieri*, 462 A.2d 644 (Pa. 1983). Additionally, the statute governing constables is silent regarding the constables’ status as an agency under the RTKL and whether their records may be requested thereunder. *Cf.* 72 P.S. §§ 5511.4c(a), (c)(1) (stating that a tax collector is not an “agency” under the RTKL); *Honaman v. Twp. of Lower Merion*, 13 A.3d 1014 (Pa. Commw. Ct. 2011) (concluding that the locally elected tax collector’s records may not be requested directly from the tax collector and that the tax

³ Constables are also authorized to appoint deputy constables, subject to the approval of the county court of common pleas, so long as the prospective deputy constable is a *bona fide* resident of the ward, borough or township for which he or she is appointed and continues to be a *bona fide* resident for the duration of the appointment. 44 Pa.C.S. § 7122.

⁴ While the issue of whether an entity performs an “essential governmental function” is relevant to the definition of “Commonwealth agency,” there is no requirement that an entity perform essential functions in order to qualify as a local agency.

collector's records were not records under the RTKL). Accordingly, because the Constable's primary functions are as a process server and peace officer tasked with "enforc[ing] the law and carry[ing] it out," we find that constables are governmental in nature and are, therefore, local agencies as defined by the RTKL.⁵ See *Grove v. Constable John-Walter Weiser*, OOR Dkt. AP 2018-0457, 2018 PA O.O.R.D. LEXIS ____.

Because the Constable has not raised an exemption under the RTKL or any other reason for denying access to the requested records, the Constable has failed to meet its burden of proof for withholding the records under the RTKL. See 65 P.S. § 67.305.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted**, and the Constable is required to provide the Requester with all responsive records within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Centre County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁶ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

⁵ The OOR has previously determined that records may not be requested directly from an elected official but, instead, must be sought from the underlying agency. See, e.g., *Campbell v. Stacy Parks Miller*, OOR Dkt. AP 2016-1610, 2016 PA O.O.R.D. LEXIS 1464 (holding that an individual district attorney is not a local agency under the RTKL); *Donahue v. Office of Schuylkill County Commissioner Frank Staudenmeier*, OOR Dkt. AP 2012-0786, 2012 PA O.O.R.D. LEXIS 780 (holding that "[a]n individual county commissioner is neither a 'Commonwealth agency' nor a 'local agency' for purposes of the [RTKL]"). However, given the unique nature of constables and the fact that there is not a defined, uniform office through which public records may be accessed, such as a district attorney's office, as constables are not employees of any Commonwealth or local agency, the holdings in *Campbell* and *Donahue* are inapplicable to constables.

⁶ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: 16 April 2018

/s/ Joshua T. Young

JOSHUA T. YOUNG
APPEALS OFFICER

Sent to: Michelle Grove (via e-mail only);
Constable Ronald Quinn (via e-mail only)

Young, Joshua

From: Young, Joshua
Sent: Monday, April 16, 2018 10:22 AM
To: 'michelleyvonnegrove@gmail.com'; 'rqsvcs@comcast.net'
Subject: re: Grove v. Constable Ronald Quinn; AP 2018-0471
Attachments: 2018-0471_Grove_Constable Ronald Quinn.pdf

Dear Parties:

Attached please find the Final Determination issued in the above-referenced Right-to-Know appeal.

Very truly yours,



Joshua T. Young | Attorney
Office of Open Records
333 Market St., 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | <http://openrecords.pa.gov>
joshyoung@pa.gov | [@OpenRecordsPA](#)

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Young, Joshua

From: Microsoft Outlook
To: michelleyvonnegrove@gmail.com
Sent: Monday, April 16, 2018 10:22 AM
Subject: Relayed: re: Grove v. Constable Ronald Quinn; AP 2018-0471

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

michelleyvonnegrove@gmail.com (michelleyvonnegrove@gmail.com)

Subject: re: Grove v. Constable Ronald Quinn; AP 2018-0471

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From: Microsoft Outlook
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rqsvcs@comcast.net (rqsvcs@comcast.net)

Subject: re: Grove v. Constable Ronald Quinn; AP 2018-0471

Young, Joshua

From: Ron Quinn <rqsvecs@comcast.net>
Sent: Friday, April 13, 2018 1:35 PM
To: 'Michelle Grove'
Cc: Young, Joshua; pmilaw@verizon.net
Subject: RE: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

Yes, you misunderstand. I am merely reiterating my position on why I have not responded to your RTKL request.

Regards,
Ron Quinn Jr., MM
Constable
814.280.6647 (cell & text)
rqsvecs@comcast.net
www.ronquinnjr.com

From: Michelle Grove <michelleyvonnegrove@gmail.com>
Sent: Thursday, April 12, 2018 3:49 PM
To: Ron Quinn <rqsvecs@comcast.net>
Cc: Young, Joshua <joshyoung@pa.gov>; pmilaw@verizon.net
Subject: Re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

Constable Quinn,

Are you saying you will not comply with this request for records, regardless of the OOR's Final Determination? I don't want to misunderstand you.

Michelle Grove

On Thu, Apr 12, 2018, 2:57 PM Ron Quinn <rqsvecs@comcast.net> wrote:

Mr. Young and others,

I will restate my position one more time. Please realize that any RTKL request can only be made to those agencies that are government sponsored or tax payer supported. The office of the constable does not meet those requirements.

Therefore, I will not be complying to your request for any correspondence. The essence of my decision can be found in the established case law from the Commonwealth Court of Pennsylvania in re: Right to Know Law Request Served on

Venango County's Tourism Promotion Agency and Lead Economic Development Agency No. 2286 C.D. 2012 dtd
November 14, 2013.

Regards,

Ron Quinn Jr., MM

Constable

814.280.6647 (cell & text)

rqsvecs@comcast.net

www.ronquinnjr.com

From: Michelle Grove <michelleyvonnegrove@gmail.com>

Sent: Monday, April 09, 2018 3:08 PM

To: Young, Joshua <joshyoung@pa.gov>

Cc: pmilaw@verizon.net; rqsvecs@comcast.net

Subject: Re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458;
Grove v. Constable Ronald Quinn, AP 2018-0471

Mr. Young,

Yes.

Thank you,

Michelle Grove

On Mon, Apr 9, 2018, 3:02 PM Young, Joshua <joshyoung@pa.gov> wrote:

Dear Ms. Grove:

I write to request brief extensions of time, until **April 19, 2018**, to issue the Final Determinations in the above-referenced Right-to-Know appeals. At your earliest convenience, please confirm whether you will agree to the requested extensions.

Thank you for your kind attention to this matter.

Very truly yours,



Joshua T. Young | Attorney

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joshyoung@pa.gov | [@OpenRecordsPA](#)

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Cc: Young, Joshua; pmilaw@verizon.net
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Regards,

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Constable

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joshyoung@pa.gov | @OpenRecordsPA

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Young, Joshua

From: pmilaw@verizon.net
Sent: Monday, April 9, 2018 5:52 PM
To: Young, Joshua
Subject: Re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

On behalf of Weiser and Stouch, no objection. Phil Intrieri, Esq.

From: Young, Joshua
Sent: Monday, April 9, 2018 3:02 PM
To: michelleyvonnegrove@gmail.com
Cc: pmilaw@verizon.net ; rqsvecs@comcast.net
Subject: re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

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Young, Joshua

From: Young, Joshua
Sent: Monday, April 9, 2018 3:03 PM
To: 'michelleyvonnegrove@gmail.com'
Cc: 'pmilaw@verizon.net'; 'rqsvecs@comcast.net'
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Young, Joshua

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To: rqsvc@comcast.net
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Subject: Relayed: re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

rqsvc@comcast.net (rqsvc@comcast.net)

Subject: re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

Young, Joshua

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Sent: Thursday, April 12, 2018 2:57 PM
To: 'Michelle Grove'; Young, Joshua
Cc: pmilaw@verizon.net
Subject: RE: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

Mr. Young and others,

I will restate my position one more time. Please realize that any RTKL request can only be made to those agencies that are government sponsored or tax payer supported. The office of the constable does not meet those requirements.

Therefore, I will not be complying to your request for any correspondence. The essence of my decision can be found in the established case law from the Commonwealth Court of Pennsylvania in re: Right to Know Law Request Served on Venango County's Tourism Promotion Agency and Lead Economic Development Agency No. 2286 C.D. 2012 dtd November 14, 2013.

Regards,
Ron Quinn Jr., MM
Constable
814.280.6647 (cell & text)
rqsvcs@comcast.net
www.ronquinnjr.com

From: Michelle Grove <michelleyvonnegrove@gmail.com>
Sent: Monday, April 09, 2018 3:08 PM
To: Young, Joshua <joshyoung@pa.gov>
Cc: pmilaw@verizon.net; rqsvcs@comcast.net
Subject: Re: Grove v. Constable John-Walter Weiser, AP 2018-0457; Grove v. Constable Joshua Stouch, AP 2018-0458; Grove v. Constable Ronald Quinn, AP 2018-0471

Mr. Young,
Yes.
Thank you,
Michelle Grove

On Mon, Apr 9, 2018, 3:02 PM Young, Joshua <joshyoung@pa.gov> wrote:

Dear Ms. Grove:

I write to request brief extensions of time, until **April 19, 2018**, to issue the Final Determinations in the above-referenced Right-to-Know appeals. At your earliest convenience, please confirm whether you will agree to the requested extensions.

Thank you for your kind attention to this matter.

Very truly yours,



Joshua T. Young | Attorney

Office of Open Records
333 Market St., 16th Floor

Harrisburg, PA 17101-2234

(717) 346-9903 | <http://openrecords.pa.gov>

joshyoung@pa.gov | [@OpenRecordsPA](#)

Confidentiality Notice: This electronic communication is privileged and confidential and is intended only for the party or parties to whom it is addressed. If received in error, please return to sender.

Young, Joshua

From: Michelle Grove <michelleyvonnegrove@gmail.com>
Sent: Tuesday, March 27, 2018 11:44 PM
To: Young, Joshua
Cc: rqsvecs@comcast.net
Subject: Grove v. Constable Ronald Quinn: OOR Dkt 2018-0471

Mr. Young,

Since Constable Quinn has not submitted anything to the OOR, my only argument is this:

Pennsylvania State Constables are subject the RTKL.

Further, I ask the OOR to determine if this a "bad faith" denial. The Constable has made it clear in his initial response and subsequent inaction that he refuses to cooperate.

Michelle Grove



pennsylvania
OFFICE OF OPEN RECORDS

March 16, 2018

Via E-Mail only:

Michelle Grove
PO Box 253
Spring Mills, PA 16875
michelleyvonnegrove@gmail.com

Via E-Mail only:

Ronald Quinn
Agency Open Records Officer
Constable Ronald Quinn
2011 Highland
State College, PA 16803
rqsves@comcast.net

RE: OFFICIAL NOTICE OF APPEAL-DOCKET #AP 2018-0471

Dear Parties:

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, *et seq.* on **March 15, 2018**. This letter describes the appeal process. A binding Final Determination will be issued pursuant to the timeline required by the RTKL. In most cases, that means within 30 calendar days. The OOR’s Final Determination is currently due on **April 16, 2018**.

OOR Mediation: This is a voluntary, informal process to help parties reach a mutually agreeable settlement on records disputes before the OOR. To participate in mediation, both parties must agree in writing. The Parties agreement to mediate stays the Final Determination Deadline. If mediation is unsuccessful, both parties will be able to make submissions to the OOR, and the OOR will have 30 calendar days from the conclusion of the mediation process to issue a Final Determination, unless the Requester agreed to an additional 30 calendar day extension on the appeal form.

Note to Parties: Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Any factual statements or allegations submitted without an affidavit will not be considered. The agency has the burden of proving that records are exempt from public access (*see* 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.** The law requires the agency’s position to be supported by sufficient facts *and* citation to all relevant sections of the RTKL, case law and OOR Final Determinations. An affidavit or attestation is required to show that records do not exist. Blank sample affidavits are available on the OOR’s website.

Submissions to OOR: Both parties may submit information and legal argument to support their positions by **11:59:59 p.m. on March 27, 2018**. The record closing date is seven (7) business days from the date of this letter unless the proceedings have been stayed for the parties to submit a completed mediation agreement form, then the record will remain open for

seven (7) additional business days beyond the mediation agreement submission deadline. *Submissions sent via postal mail and received after 5:00 p.m. will be treated as having been received the next business day.* The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Include the above docket number on all submissions related to this appeal. Also, any information you provide to the OOR must be provided to all parties involved in this appeal. Information shared with the OOR that is not also shared with all parties will not be considered.

Agency Must Notify Third Parties: If records affect a legal or security interest of an employee of the agency; contain confidential, proprietary or trademarked records of a person or business entity; or are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.** Such notice must be made by (1) providing a copy of all documents included with this letter; and (2) advising that interested persons may request to participate in this appeal (*see* 65 P.S. § 67.1101(c)).

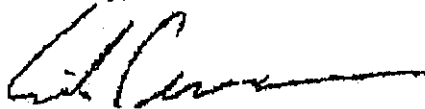
Commonwealth Court has held that “the burden [is] on third-party contractors ... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)). **Failure of a third-party contractor to participate in an appeal before the OOR may be construed as a waiver of objections regarding release of the requested records.**

Law Enforcement Records of Local Agencies: District Attorneys must appoint Appeals Officers to hear appeals regarding criminal investigative records in the possession of a local law enforcement agency. If access to records was denied in part on that basis, the Requester should consider filing a concurrent appeal with the District Attorney of the relevant county.

Public Record Notice: All dockets, filings and OOR orders and opinions in this appeal will be public records and subject to public access with limited exception. The OOR’s Final Determination will generally include a summary of the case including the identity of the parties and the relevant factual background. Final Determinations are available on the OOR’s website and searchable on-line.

If you have general questions about the appeal process, please contact the OOR at (717) 346-9903. If you have questions specific to your appeal, please e-mail the assigned Appeals Officer (contact information is enclosed) - and be sure to provide a copy of any correspondence to all other parties involved in this appeal.

Sincerely,



Erik Arneson
Executive Director

Enc.: Assigned Appeals Officer contact information
Entire appeal as filed with OOR



pennsylvania

OFFICE OF OPEN RECORDS

APPEALS OFFICER:

Joshua Young, Esq.

CONTACT INFORMATION:

Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

FACSIMILE:

(717) 425-5343

E-MAIL:

joshyoung@pa.gov

**Preferred method of contact and
submission of information:**

EMAIL

Please direct submissions and correspondence related to this appeal to the above Appeals Officer. Please include the case name and docket number on all submissions.

You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot speak to parties individually without the participation of the other party.

The OOR website, <http://openrecords.pa.gov>, is searchable and both parties are encouraged to review prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff are also available to provide general information about the appeals process by calling (717) 346-9903.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____ Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- An employee of the agency
- The owner of a record containing confidential or proprietary information or trademarked records
- A contractor or vendor
- Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

Sostar, Janelle K

From: no-reply@openrecords.pa.gov
Sent: Thursday, March 15, 2018 8:07 PM
To: michelleyvonnegrove@gmail.com
Subject: PA Office of Open Records - Appeal Confirmation



pennsylvania
OFFICE OF OPEN RECORDS

You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name: Michelle Grove
Address 1: PO Box 253
Address 2:
City: Spring Mills
State: Pennsylvania
Zip: 16875
Phone: 814-470-1132
Fax:
Email: michelleyvonnegrove@gmail.com
Agency (typed): Constable Ronald Quinn
Agency Address 1: 2011 Highland
Agency Address 2:
Agency City: State College
Agency State: Pennsylvania
Agency Zip: 16803
Agency Phone: 814-280-6647
Agency Fax:
Agency Email: rqsvcs@comcast.net
Records Requested: 1/1/2018-3/12/2018 All written communications (including email) to/from/regarding Constable Grove. Search keywords include: "Casey Grove" "Constable Grove" "Casey"

RECEIVED

MAR 15 2018

OFFICE OF OPEN RECORDS

"Grove" "In Defense of Rural Values" "www.constablegrove.com" "Gregg Township"
"Daul Alinsky" Include all replies.

Request Submitted to Agency Via: e-mail
Request Date: 03/12/2018
Response Date: 03/15/2018
No Response: No
Agency Open Records Officer: Ronald Quinn

Reasons for Appeal:

Attached a copy of my request for records: Yes

Attached a copy of all responses from the Agency regarding my request: Yes

Attached any letters or notices extending the Agency's time to respond to my request: No

Agree to permit the OOR an additional 30 days to issue a final order: No

Interested in resolving this issue through OOR mediation: No

Attachments:

- RTKRequestForm (4).pdf
- Screenshot_20180315-200134.png

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

Henry, Faith

From: Microsoft Outlook
To: michelleyvonnegrove@gmail.com
Sent: Friday, March 16, 2018 1:01 PM
Subject: Relayed: Grove v. Constable Ronald Quinn: OOR Dkt 2018-0471

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

michelleyvonnegrove@gmail.com (michelleyvonnegrove@gmail.com)

Subject: Grove v. Constable Ronald Quinn: OOR Dkt 2018-0471



Grove v.
Constable Ronal...

Henry, Faith

From: Microsoft Outlook
To: rqsvcs@comcast.net
Sent: Friday, March 16, 2018 1:01 PM
Subject: Relayed: Grove v. Constable Ronald Quinn: OOR Dkt 2018-0471

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

rqsvcs@comcast.net (rqsvcs@comcast.net)

Subject: Grove v. Constable Ronald Quinn: OOR Dkt 2018-0471



Grove v.
Constable Ronal...



Ron Quinn
to me

6:42 PM



Mrs. Grove,

First, let me state to you that I do not represent any organization in my response, and I will only answer for my elected position.

In both you and Constable Grove's zeal to obtain an air of importance and relevance, you neglected to realize that any RTKL request can only be made to those agencies that are government sponsored or tax payer supported. The office of the constable does not meet those requirements.

Therefore, I will not be complying to your request for any correspondence.

Regards,
Ron Quinn Jr., MM
Constable
814.280.6647 (cell & text)
rqsucs@comcast.net
www.ronquinnjr.com

...





pennsylvania

OFFICE OF OPEN RECORDS

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: 3/12/2018

REQUEST SUBMITTED BY: E-MAIL U.S. MAIL FAX IN-PERSON

REQUEST SUBMITTED TO (Agency name & address): Constable Ronald Quinn, 2011 Highland,
State College, PA 16803

NAME OF REQUESTER: Michelle Grove

STREET ADDRESS: PO Box 253

CITY/STATE/COUNTY/ZIP(Required): Spring Mills, PA 16875

TELEPHONE (Optional): 814-470-1132 EMAIL (optional): michelleyvonnegrove@gmail.com

RECORDS REQUESTED: **Provide as much specific detail as possible so the agency can identify the information. Please use additional sheets if necessary*

1/1/2018-3/12/2018 All written communications (including email) to/from/regarding Constable Grove. Search keywords include: "Casey Grove" "Constable Grove" "Casey" "Grove" "In Defense of Rural Values" "www.constablegrove.com" "Gregg Township" "Saul Alinsky" Include all replies.

IF ELECTRONIC COPIES ARE UNAVAILABLE, I WILL INSPECT THE RECORDS AT YOUR OFFICE.

DO YOU WANT COPIES? YES NO

DO YOU WANT TO INSPECT THE RECORDS? YES NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? YES NO

DO YOU WANT TO BE NOTIFIED IN ADVANCE IF THE COST EXCEEDS \$100? YES NO

**** PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES ****
**** IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL ****

FOR AGENCY USE ONLY

OPEN-RECORDS OFFICER:

I have provided notice to appropriate third parties and given them an opportunity to object to this request

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE:

***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*

Henry, Faith

From: DC, OpenRecords
Sent: Friday, March 16, 2018 12:58 PM
To: 'michelleyvonnegrove@gmail.com'; 'rqsvcs@comcast.net'
Subject: Grove v. Constable Ronald Quinn: OOR Dkt 2018-0471
Attachments: 2018-0471_Grove-ConstableRonaldQuinn.pdf

Dear Parties,

Please see the attached appeal that has been filed with the Office of Open Records. This matter has been assigned to an Appeals Officer (contact information can be found on page 3 of the attachment).

Please forward all future correspondence directly to the Appeals Officer and all other parties.

Sincerely,



Faith Henry

Administrative Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | <http://openrecords.pa.gov>

Confidentiality Notice: This electronic communication is privileged and confidential and is intended only for the party to whom it is addressed. If received in error, please return to sender.

As of Monday, February 5, 2018, the OOR's new physical and mailing address is 333 Market Street, 16th Floor, Harrisburg, PA 17101-2234. The other contact information has not changed: telephone (717) 346-9903; fax (717) 425-5343; e-mail address openrecords@pa.gov; webpage www.openrecords.pa.gov.



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**MICHELLE GROVE,
Requester**

v.

**CONSTABLE JOHN-WALTER WEISER,
Respondent**

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Docket No.: AP 2018-0457

INTRODUCTION

Michelle Grove (“Requester”) submitted a request (“Request”) to Constable John-Walter Weiser (“Constable”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking written communications regarding another constable. The Constable denied the Request, arguing, among other things, that he is not an agency subject to the RTKL. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **denied**, and the Constable is not required to take any further action.

FACTUAL BACKGROUND

On March 12, 2018, the Request was filed, seeking, for the time period of January 1, 2018 through March 12, 2018, “[a]ll written communications (including email) to/from/regarding Constable Grove.” The Requester also identified several “[s]earch keywords[.]” including “Casey Grove,” “Constable Grove,” “Casey,” “Grove,” “In Defense of Rural Values,” “www.constablegrove.com,” “Gregg Township,” and “Saul Alinsky[.]” On March 13, 2018, the

Constable denied the Request, arguing that he is not a public agency subject to the provisions of the RTKL and, alternatively, that the requested records would reflect internal, predecisional deliberations, 65 P.S. § 67.708(b)(10)(i)(A).

On March 13, 2018, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited the parties to supplement the record and directed the Constable to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On March 20, 2018, the Constable submitted a position statement, reiterating the arguments above, and further arguing that the Request is disruptive, *see* 65 P.S. § 67.506(a), that the appeal is deficient under 65 P.S. § 67.1101(a), and that the Constable does not possess the requested records.¹ In support of his arguments, the Constable provided an attestation, made under the penalty of perjury, from the Constable.

Along with the Constable's position statement, the Commonwealth Constable Association ("Association") submitted a request to participate as a direct interest participant. However, in support of its request to participate, the Association attached the same position statement and attestation submitted by the Constable.² Because the submission provided by the Association was duplicative and the Association failed to establish its interest in the requested records, the OOR denied the Association's request to participate on March 27, 2018. *See* 65 P.S. § 67.1101(c)(2) (permitting an appeals officer to grant a request to participate if "the appeals officer believes the information will be probative"); 65 P.S. § 67.1102(a)(2) (permitting an appeals officer to "limit the nature and extent of evidence found to be cumulative").

¹ The Constable is permitted to raise additional reasons for denying access to records on appeal to the OOR. *See Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013).

² The Constable and the Association are represented by the same legal counsel, Philip Intrieri, Esq., who provided the OOR with the Constable's submission and the Association's request to participate at the same time.

On March 21, 2018, the Requester submitted an unsworn position statement addressing the Constable's arguments.

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff'd* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* The decision to hold a hearing is discretionary and non-appealable. *Id.*; *Giurintano v. Pa. Dep't of Gen. Servs.*, 20 A.3d 613, 617 (Pa. Commw. Ct. 2011). Here, the parties did not request a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate the matter.

Records in the possession of a Commonwealth or local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether

a record requested is within its possession, custody or control and to respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemption(s). *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)). “The burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

1. The appeal is sufficient under Section 1101(a)(1) of the RTKL

The Constable argues that the appeal is deficient because the Requester did not submit “a concise statement of the grounds supporting why the records are public records.” Section 1101(a)(1) of the RTKL requires appeals to “state the grounds upon which the requester asserts that the record is a public record ... and address any grounds stated by the agency for delaying or denying the request.” 65 P.S. § 67.1101(a)(1); *see also Pa. Dep’t of Corr. v. Office of Open Records*, 18 A.3d 429, 434 (Pa. Commw. Ct. 2011) (“[I]t is appropriate and, indeed, statutorily required that a requester specific in its appeal to Open Records the particular defects in an agency’s stated reasons for denying a RTKL request”). Pursuant to this section, the Commonwealth Court

has held that a requester must “state why the records [do] not fall under the asserted exemptions and, thus, [are] public records subject to access.” *Saunders v. Pa. Dep’t of Corr.*, 48 A.3d 540, 543 (Pa. Commw. Ct. 2012); *see also ACLU of Pa. v. City of Pittsburgh*, 116 A.3d 1189 (Pa. Commw. Ct. 2015) (holding that an appeal did not sufficiently address an agency’s grounds by “argu[ing] that the RTKL places the burden of proof upon the [agency] and that the [agency] has provided no ... information in support of its assertions that” the records were exempt).

When filing her appeal, the Requester used the OOR’s Standard Appeal Form, which states that “[b]y submitting this form, I am appealing the Agency’s denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.” Even though the Requester does not specifically address each reason for denial raised by the Constable or provide additional detail regarding the public nature of the requested records, the Commonwealth Court has held that a general statement that records are public and not subject to an exemption is sufficient to meet the requirements of Section 1101(a)(1). *See Barnett v. Pa. Dep’t of Pub. Welf.*, 71 A.3d 399, 406 (Pa. Commw. Ct. 2013). Therefore, the appeal is sufficient, and the OOR may reach the merits of the appeal.

2. The Constable is a local agency subject to the RTKL

The Constable argues that he is not an agency subject to the RTKL; rather, he claims that constables are “locally-elected in boroughs, townships, and all cities except Philadelphia” and “perform the majority of their work for the unified judicial system....” As such, the Constable contends that he neither acts for nor is he controlled by the Commonwealth or the local agency from which he is elected. In support of his argument, the Constable attests as follows:

That under the current state of the law, I [cannot] claim to be an agency subject to the Pennsylvania Open Records Law.

That I have neither the authority, nor the government funding to appoint an Open Records Officer....

That it is my belief that the Requester is attempting to obtain electronic and other communications arising from my membership in the Capital Area Constables Association, Inc. d/b/a Commonwealth Constables Association; a duly-incorporated, private, non-profit association not subject to the Open Records Law. That further, such records, if they exist, relate to issuance of a press release of that Association regarding one Constable Grove on February 2, 2018....

That it is my belief that the instant [R]equest is actually an inappropriate attempt to obtain the private records of a fraternal association under the pretense of a [RTKL R]equest addressed to a public official.

The question of whether the Constable is a Commonwealth or local agency is a jurisdictional one, as the OOR only retains authority to review decisions of Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). The RTKL defines a “Commonwealth agency” as:

(1) Any office, department, authority, board, multistate agency or commission of the executive branch; an independent agency; and a State-affiliated entity. The term includes:

- i. The Governor’s Office.
- ii. The Office of Attorney General, the Department of the Auditor General and the Treasury Department.
- iii. An organization established by the Constitution of Pennsylvania, a statute or executive order which performs or is intended to perform an essential governmental function.

65 P.S. § 67.102. An “Independent agency” is defined as “[a]ny board, commission or other agency or officer of the Commonwealth that is not subject to the policy supervision and control of the Governor.” *Id.* Meanwhile, a “State-affiliated entity” is defined as “[a] Commonwealth authority or Commonwealth entity.” *Id.* The definition:

includes the Pennsylvania Higher Education Assistance Agency and any entity established thereby, the Pennsylvania Gaming Control Board, the Pennsylvania

Game Commission, the Pennsylvania Fish and Boat Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement Board, the State System of Higher Education, a community college, the Pennsylvania Turnpike Commission, the Pennsylvania Public Utility Commission, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Interscholastic Athletic Association and the Pennsylvania Educational Facilities Authority.

Id.

In Pennsylvania, constables are a statutory creation, but are not subject to the direct policy supervision or control of the Governor, nor do they fall within the definition of a State-affiliated entity; therefore, we must determine whether constables are independent agencies. *See generally Appeal of Hadley*, 83 A.3d 1101, 1106-07 (Pa. Commw. Ct. 2014) (“[W]e reject [the r]equester’s broad interpretation that anything referred to as an agency under any law qualifies as an agency under the RTKL”). The Commonwealth Court has noted that “the financial relationship between the Commonwealth and the agency in question is a primary factor in determining whether the agency is a Commonwealth agency.” *S.A.V.E., Inc. v. Delaware Valley Regional Planning Comm’n*, 819 A.2d 1235, 1238 (Pa. Commw. Ct. 2013). Furthermore, “[a]n organization performs an essential governmental function only where (1) the statute identifies the organization as providing essential services, or (2) the organization provides constitutionally mandated services or services undisputedly necessary to the continued existence of the Commonwealth.” *Id.* at 1241 (citing *Commonwealth College of Phila. v. Brown*, 674 A.2d 670 (Pa. 1996)).

With respect to constables, the Pennsylvania Supreme Court has concluded that:

... a constable does not act for or under the control of the Commonwealth or a political subdivision. A constable is not an employee of the state, judiciary, county, or municipality in which he or she works. A constable is an independent contractor.

Ward v. Commonwealth, 65 A.3d 1078, 1082 (Pa. Commw. Ct. 2013) (citing *In re Act 147 of 1990*, 598 A.2d 985, 990 (Pa. 1991)). Additionally, constables have little financial relationship with the

Commonwealth, as they are not salaried employees of the Commonwealth, do not depend on state funding to operate and are not subject to annual audits by the Commonwealth; rather, constables are independent contractors who collect payment on a per job basis in accordance with statute. *See* 44 Pa.C.S. §§ 7161-7166 (setting forth fees and compensation that may be collected by constables). Constables do not have a direct financial relationship with the Commonwealth and do not perform an essential governmental function, as their services are not identified as essential within their governing statute, are not mandated by the Pennsylvania Constitution, and there is no indication that “the survival of the Commonwealth would be in jeopardy” without the functions performed by constables. *See Brown*, 674 A.2d at 671. Therefore, constables are not independent agencies as contemplated in the RTKL.

However, the inquiry is not complete. The RTKL defines “local agency” as:

- (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.

65 P.S. § 67.102. While constables do not meet the definition of “local agency” as defined in subsection (1) of Section 102 of the RTKL, we must determine whether they fall under one of the types of entities delineated in subsection (2), such as a “local” or “municipal” agency. *See Appeal of Hadley*, 83 A.3d at 1106-07 (focusing on whether an agency was “governmental in nature” and whether the agency served an exclusively “governmental function” when determining whether it was any entity set forth in subsection (2) of the definition of local agency). The Supreme Court, during its discussion of constables’ proper place within government, compared constables to district attorneys and sheriffs, explaining as follows:

As a peace officer, and as a process server, a constable belongs analytically to the *executive branch of government*, even though his job is obviously related to the

courts. It is the constable's job to enforce the law and carry it out, just as the same is the job of district attorneys, sheriffs, and police generally. Act 147 is unconstitutional and violates the separate of powers doctrine in our Constitution because it attempts to place constables within the judicial branch of government and under the supervisory power of the judicial branch.... Personnel whose central functions and activities partake of *exercising executive powers* cannot be arbitrarily made part of another branch of government whose functions they do not perform.

In re Act 147, 598 A.2d at 990 (internal citations omitted) (emphasis added); *see also Miller v. County of Centre*, 173 A.3d 1162, 1175-76 (Pa. 2017) (stating that the “function” of constables “is law enforcement and thus makes them members of the executive branch...”).

Constables are authorized, by statute, to perform certain enumerated duties, including preserving the peace during elections, *see* 44 Pa.C.S. § 7152; serving process, *see* 44 Pa.C.S. § 7153; executing warrants for the purpose of delinquent tax collection, 44 Pa.C.S. § 7154; arresting persons who violate forest laws, 44 Pa.C.S. § 7155; and, in the case of boroughs, arresting those guilty of, among other things, breaching the peace, disorderly conduct, drunkenness or acts tending to imperil the personal security or property of citizens, as well as those violating any borough ordinance for which a fine or penalty is imposed, 44 Pa.C.S. § 7158. Furthermore, “[a] court may summon a constable to appear before it and direct the constable to investigate a complaint of a violation of law or of a condition which a constable is required to report to the court and to make a report of his investigation.” 44 Pa.C.S. § 7157(b).³ Many of a constable's functions, particularly those involving law enforcement and the powers of arrest, are governmental in nature.

Unlike the economic development corporation in *Hadley*, constables perform some governmental functions,⁴ yet they do not fall within the supervisory orbit or control of any

³ Constables are also authorized to appoint deputy constables, subject to the approval of the county court of common pleas, so long as the prospective deputy constable is a *bona fide* resident of the ward, borough or township for which he or she is appointed and continues to be a *bona fide* resident for the duration of the appointment. 44 Pa.C.S. § 7122.

⁴ While the issue of whether an entity performs an “essential governmental function” is relevant to the definition of “Commonwealth agency,” there is no requirement that an entity perform essential functions to qualify as a local agency.

Commonwealth, local or judicial agency. *See In re Act 147*, 598 A.2d at 986 (holding that a constable is an independent contractor); *see also Rosenwald v. Barbieri*, 462 A.2d 644 (Pa. 1983). Additionally, the statute governing constables is silent regarding the constables' status as an agency under the RTKL and whether their records may be requested thereunder. *Cf.* 72 P.S. §§ 5511.4c(a), (c)(1) (providing that a tax collector is not an "agency" under the RTKL); *Honaman v. Twp. of Lower Merion*, 13 A.3d 1014 (Pa. Commw. Ct. 2011) (concluding that the locally elected tax collector's records may not be requested directly from the tax collector and that the tax collector's records were not records under the RTKL). **Accordingly, because the Constable's primary functions are as a process server and peace officer tasked with "enforc[ing] the law and carry[ing] it out," we find that constables are governmental in nature and are, therefore, local agencies as defined by the RTKL.**⁵



While the Constable correctly notes that the Commonwealth Court has found constables not to be governmental or quasi-governmental agencies for purposes of the Motor Vehicle Code ("Vehicle Code"), *see Ward*, 65 A.3d 1078; *Office of the Constable v. Pa. Dep't of Transp.*, 112 A.3d 678 (Pa. Commw. Ct. 2015), the Vehicle Code defines "governmental and quasi-governmental entities" as "[t]he Commonwealth," "[p]olitical subdivisions," "[s]tate and local authorities," "[s]tate-related institutions of higher learning," "[t]he Federal Government," and "[o]ther states[,]" *see* 75 Pa.C.S. § 1901(a), but limits its definition of "local authorities" to "County, municipal and other local boards or bodies *having authority to enact laws relating to*

⁵ The OOR has previously determined that records may not be requested directly from an elected official but, instead, must be sought from the underlying agency. *See, e.g., Campbell v. Stacy Parks Miller*, OOR Dkt. AP 2016-1610, 2016 PA O.O.R.D. LEXIS 1464 (holding that an individual district attorney is not a local agency under the RTKL); *Donahue v. Office of Schuylkill County Commissioner Frank Staudenmeier*, OOR Dkt. AP 2012-0786, 2012 PA O.O.R.D. LEXIS 780 (holding that "[a]n individual county commissioner is neither a 'Commonwealth agency' nor a 'local agency' for purposes of the [RTKL]"). However, given the unique nature of constables and the fact that there is not a defined, uniform office through which public records may be accessed, such as a district attorney's office, as constables are not employees of any Commonwealth or local agency, the holdings in *Campbell* and *Donahue* are inapplicable to constables.

traffic” and certain “airport authorities....” 75 Pa.C.S. § 102 (defining “local authorities”) (emphasis added). As noted above, the definition of a “local agency” under the RTKL is more expansive and is not limited only to those local agencies authorized to enact traffic laws; rather, the definition includes entities such as intermediate units, charter schools, water and sewer authorities, intergovernmental agencies and other similar governmental entities.

3. The Request is not disruptive

The Constable next argues that the Request is disruptive. *See* 65 P.S. § 67.506(a). To deny a request under Section 506(a) of the RTKL, “an agency must demonstrate that (1) ‘the requester has made repeated requests for th[e] same record[(s)]’ and (2) ‘the repeated requests have placed an unreasonable burden on the agency.’” *Office of the Governor v. Bari*, 20 A.3d 634, 645 (Pa. Commw. Ct. 2011); *see also Slate v. Pa. Dep’t of Env’tl. Prot.*, OOR Dkt. AP 2009-1143, 2010 PA O.O.R.D. LEXIS 97 (“A repeated request alone is not enough to satisfy § 506(a)(1)”). Repeated requests for the same records, although phrased differently, may be denied as disruptive. *See Cohen v. Pa. Dep’t of Labor and Indus.*, OOR Dkt. AP 2009-0296, 2009 PA O.O.R.D. LEXIS 159; *Dougher v. Scranton Sch. Dist.*, OOR Dkt. AP 2009-0798, 2009 PA O.O.R.D. LEXIS 318 (“Slight differences in phraseology do not preclude application of [Section 506(a)]”).

Here, the Constable has not submitted evidence demonstrating that the Request has been repeatedly made to the Constable by the Requester or that responding to the Request has placed an unreasonable burden on the Constable. Therefore, the Constable has not established that the Request is disruptive. *See, e.g., Cardwell v. Southampton Twp.*, OOR Dkt. AP 2017-0163, 2017 PA O.O.R.D. LEXIS 185.

4. The Constable has proven that the requested records do not exist within its possession, custody or control

The Constable claims that he does not possess the records sought in the Request. In his attestation, the Constable attests as follows:

That upon receipt of the [R]equest, [he] conducted a thorough examination of files in the possession, custody and control of my public office for records responsive to the [R]equest underlying this appeal, specifically, I searched text messages, instant messages, Facebook posts, email, and any other written communications sent or received in my official capacity as an elected constable, and [found] such records do not exist.

That while I may be an independent contractor performing government civil process, and law enforcement functions, I have no such records responsive to this [R]equest that arise from any judicial agency....

Under the RTKL, an attestation made under the penalty of perjury is competent evidence to sustain an agency's burden of proof. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any competent evidence that the Constable acted in bad faith or that the records exist, "the averments in [the attestation] should be accepted as true." *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). Based upon the evidence provided, therefore, the Constable has proven that the requested records do not exist within his possession, custody or control.⁶ *See Hodges*, 29 A.3d at 1192.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **denied**, and the Constable is not required to take any further action. This Final Determination is binding on all parties. Within

⁶ There is an open question as to whether the requested records would "document[] a transaction or activity of" the Constable and, thus, be "records" under the RTKL. *See* 65 P.S. § 67.102 (defining "record"). However, because the Constable has proven that the records do not exist within his possession, custody or control, we need not address the issue in this final determination.

thirty days of the mailing date of this Final Determination, any party may appeal to the Adams County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁷ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: 16 April 2018

/s/ Joshua T. Young

JOSHUA T. YOUNG
APPEALS OFFICER

Sent to: Michelle Grove (via e-mail only);
Philip Intrieri, Esq. (via e-mail only)

⁷ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).