



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**TERENCE KEEL,
Requester**

v.

**BEAVER COUNTY,
Respondent**

:
:
:
:
:
:
:
:
:
:
:
:

Docket No: AP 2022-1577

On June 27, 2022, Terence Keel (“Requester”) submitted a request (“Request”) to Beaver County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking the “autopsy and toxicology reports for ... Rodney James Harper, date of death 1/18/2012.” On July 5, 2022,¹ the County denied the Request, arguing the records are exempt autopsy records. *See* 65 P.S. § 67.708(b)(20).

On July 5, 2022, the Requester filed an appeal with the Office of Open Records (“OOR”), stating grounds for disclosure.² The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On July 13, 2022, the County submitted a position statement, reiterating its grounds for denial. Specifically, the County argues that the Coroner’s Act “does allow for various reports to

¹ The County was closed on July 4, 2022, in observance of Independence Day.

² The Requester granted the OOR a 30-day extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1).

be turned over for specified fees if ‘requested by nongovernmental agencies in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased.’” 16 P.S. § 1252-B. In support of its position, the County cites to a recent Allegheny County Court of Common Pleas case. *Allegheny County v. Hailer and Pittsburgh Current*, No. SA-21-000108, (Allegheny Cnty. C.C.P. Dec. 1, 2021), *appeal pending* at No. 1469 C.D. 2021 (Pa. Commw. Ct. 2021).

On July 15, 2022, the Requester submitted a position statement arguing that the Coroner’s Act requires the Coroner to deposit autopsy reports with the Office of the Prothonotary and, therefore, the reports should be accessible. The Requester further argues that the “standard fees enumerated in Section 1252-B of the Coroner[’]s Act are not applicable in this matter.”

The County argues that the autopsy report and photos accompanying it are exempt under Section 708(b)(20) of the RTKL, which provides:

[a]n autopsy record of a coroner or medical examiner and any audiotape of a postmortem examination or autopsy, or a copy, reproduction or facsimile of an autopsy report, a photograph, negative or print, including a photograph or videotape of the body or any portion of the body of a deceased person at the scene of death or in the course of a postmortem examination or autopsy taken or made by or caused to be taken or made by the coroner or medical examiner. This exception shall not limit the reporting of the name or the deceased individual and the cause and manner of death.

65 P.S. § 67.708(b)(20). However, the exemption “shall not limit the reporting of the name of the deceased individual and the cause and manner of death.” *Id.* While certain records of a coroner, such as autopsy reports, are exempt under Section 708(b)(20) of the RTKL, these records are available pursuant to the Coroner’s Act, 16 P.S. §§ 1201-B, *et seq.*³ See 65 P.S. § 67.3101.1 (“If

³ See *Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632, 636 (Pa. 2009) (“It is clear ... that conducting autopsies is one of the official duties of a coroner. It follows logically that a coroner’s resulting autopsy reports constitute ‘official records and papers’ within the meaning of Section 1251”).

the provisions of this act regarding access to records conflicts with any other ... state law, the provisions of this act shall not apply”).

Section 1252-B of the Coroner’s Act states:

The coroner shall charge and collect a fee of \$ 500 for an autopsy report, \$ 100 for a toxicology report, \$ 100 for an inquisition or coroner’s report, \$ 50 for a cremation or disposition authorization and other fees as may be established from time to time for other reports or documents requested by nongovernmental agencies in order to investigative a claim asserted under a policy of insurance or to determine liability for the death of the deceased.

16 P.S. § 1252-B. The Pennsylvania Supreme Court analyzed this section under the prior Coroner’s Act⁴ in *Hearst Television, Inc. v. Norris*, finding that “[t]he RTKL provides the procedure for accessing those records that are available for immediate release for a fee pursuant to Section [1252-B].” 54 A.3d 23, 33 (Pa. 2012). The Court further noted that there was no mention of discretion when charging or collecting these fees; as a result, Section 1252-B “allows the coroner to charge fees for records but does not afford the coroner any discretion with regard to releasing such records.” *Id.* at 32. Although the General Assembly updated the Coroner’s Act in 2018, the OOR has found that there was no substantial change to the operative language governing these releases, and therefore, *Hearst* controls in Coroner’s Act cases. *Hailer v. Allegheny Cnty. Medical Examiner*, OOR Dkt. AP 2021-0117, 2021 PA O.O.R.D. LEXIS 491.

However, on appeal, the OOR’s decision in *Hailer* was overturned by the Allegheny Court of Common Pleas, which held that “the plain language of Section 1252-B must be read as vesting discretion in the Medical Examiner to determine whether a requester is a ‘nongovernmental agency[y]...investigat[ing] a claim asserted under a policy of insurance or [seeking] to determine

⁴ In 2018, the Pennsylvania General Assembly repealed and replaced the Coroner’s Act. The *Hearst* Court analyzed Section 1236.1 while the instant matter involves Section 1252-B. Both sections include almost the same statutory language; however, Section 1252-indicates that the “coroner *shall* charge” while Section 1236.1 indicated that the “coroner *may* charge.” This difference further implies that the coroner lacks discretion when charging for an autopsy report or toxicology report.

liability for the death of the deceased.” *Hailer, supra*. The Allegheny Court of Common Pleas found the OOR in *Hailer* incorrectly determined the Medical Examiner lacked discretion under Section 1252-B. An appeal of that decision is currently pending before the Commonwealth Court.

Here, the County relies on *Hailer* and argues that the Requester is not “investigating a claim asserted under a policy of insurance or to determine liability for the death of the deceased.” However, the OOR notes that the Allegheny County Court of Common Pleas decision in *Hailer* is not binding precedent and the instant matter involves Beaver County, a fourth class county. Thus, the County’s reliance on *Hailer* is misplaced and, as outlined in the Pennsylvania Supreme Court’s decision in *Hearst*, Section 1252-B “allows the coroner to charge fees for records but does not afford the coroner any discretion with regard to releasing such records.” *Hearst* at 32. Section 1252-B provides that “[t]he coroner shall charge and collect a fee of \$500 for an autopsy report, \$100 for a toxicology report, \$100 for an inquisition or coroner’s report, \$50 for a cremation or disposition authorization.” The County seems to suggest that the phrase “nongovernmental agencies in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased” applies to and modifies the *entire* Section 1252-B and rather than just “other fees as may be established from time to time for other reports or documents”. However, such an interpretation is contrary to the Rules of Statutory Construction, 1 Pa.C.S. § 1903(b), is contrary to a common-sense reading of the statute, and contrary to the above-referenced caselaw from the Supreme Court. Therefore, any Coroner’s records responsive to the Request identified in Section 1252-B of the Coroner’s Act are available through the RTKL for the fees set forth in the Coroner’s Act. *See Ciavaglia v. Bucks County*, OOR Dkt. AP 2020-0761, 2020 PA O.O.R.D. LEXIS 1528; *Bowen v. Indiana County*, OOR Dkt. AP 2019-2064, 2019 PA O.O.R.D. LEXIS 2068.

There is also a second means of accessing records under the Coroner's Act directly from the Prothonotary. Section 1236-B of the Coroner's Act requires coroners of the third, fourth, fifth, sixth, seventh and eight classes to "deposit all official records and papers for the preceding year" with the Prothonotary, 16 P.S. § 1236-B. As Beaver County is listed as a fourth class county, the coroner is required to deposit its records with the Prothonotary within thirty days after the end of each year for the preceding year. The Request seeks autopsy and toxicology reports from a decade ago. It is unclear whether the Coroner has deposited the records with the Prothonotary as required by law because no evidence was submitted by the County. If they have been deposited, the Requester may also obtain the responsive records through the County Prothonotary's office.

For the foregoing reasons, Requester's appeal is **granted**, and the County is required to provide copies of all available reports under 16 P.S. § 1252-B, upon receipt of the fees for autopsy and toxicology reports set forth in that section.⁵ 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 Beaver 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 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>.

FINAL DETERMINATION ISSUED AND MAILED: August 30, 2022

/s/ Lyle Hartranft
Lyle Hartranft, Esq.
Appeals Officer

Sent via email to: Terence Keel; Stacey Householder, AORO

⁵ The Requester may also access the available reports under 16 P.S. § 1236-B from the County Prothonotary's office, to the extent that the County Coroner has complied with that statutory section.

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