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Request was deemed denied. 65 P.S. § 67.901. However, on July 20, 2022, the Office issued an untimely response to the Request, arguing that the responsive reports are protected from disclosure by the Health Information Portability and Accountability Act of 1996 (“HIPAA”), 45 C.F.R. § 164.502(a), and the Federal Privacy Rule, 42 U.S.C.A. § 1320d(6).¹

On July 21, 2022, the Requester appealed to the OOR, stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Office to notify any third parties of their ability to participate in this appeal.² 65 P.S. § 67.1101(c).

On August 2, 2022, the Requester submitted a position statement, arguing, among other things, that autopsy and toxicology reports are not medical records, the Office is not a “covered entity” under HIPAA and, as a result, the confidentiality provisions of HIPAA cannot apply to the reports, and Pennsylvania’s Coroners Act, which applies to York County, makes certain categories of documents “available for public access, regardless [of] the identity of the requestor or the purpose of the request.”

The County did not submit further legal argument or evidence to support its 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,

¹ While the Office references Pennsylvania’s Coroner’s Act (“Coroner’s Act”) within its correspondence, the Office does not argue that the Coroner’s Act prohibits disclosure of the reports but, instead, borrows a definition from the Act to support its other arguments.

² The OOR sent its Notice of Appeal documents to York County Coroner, Pamela Gay, Michelle Pokrifka, Esq., York County’s Solicitor, and the general email address used by York County for RTKL information. Furthermore, while the Office argues that it denied the Request on the advice of Susan Shanaman, Esq., the Solicitor for the “Coroner’s Association,” Attorney Shanaman has not entered her appearance on behalf of the Office. As such, she was not sent any documents regarding this appeal.

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 decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party requested a hearing.

The Office is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local agency are presumed 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 respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *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 from disclosure. 65 P.S. § 67.708(a)(1). In the present case, the Office did not comply with the RTKL by timely responding to the Request, nor did it provide any factual support for denying access to responsive records. Most notably, the Office has not submitted argument or evidence to demonstrate how the Office falls within the definition of “covered entity” under HIPAA and the Privacy Rule.³ *See Segelbaum and the York Daily Record v. York County*, OOR

³ The Office’s untimely response to the Request does not address the definition of a “covered entity” within HIPAA in any meaningful way.

Dkt. AP 2017-1459, 2017 PA O.O.R.D. LEXIS 1332 (finding that the Office is not a covered entity under HIPAA), *rev'd in part on other grounds, County of York v. Segelbaum*, 2017-SU-002770 (York Co. Com. Pl. April 4, 2018) (confirming that neither York County nor the Office is a covered entity under HIPAA).⁴ Furthermore, while the Office correctly notes that HIPAA provides for the confidentiality of a deceased individual's "protected health information" for a period of 50 years following the individual's death, this limitation pertains only to protected health information of covered entities. *See* 45 C.F.R. § 164.502(f) ("A *covered entity* must comply with the requirements of this subpart with respect to the protected health information of a deceased individual for a period of 50 years following the death of the individual) (emphasis added).

Finally, in its untimely response, the Office suggests that "there is created a 'chain of trust' by HIPAA and the individual representing the deceased that sensitive and private medical records and information will not be released without their authorization"; however, apart from a reference to a law journal article, the Office has not cited any legal precedent to support the application of this theory in Pennsylvania. To the contrary, the Pennsylvania Supreme Court has determined that autopsy reports constitute "official records and papers" of the coroner which, in accordance with the Coroner's Act, must be deposited with the county prothonotary for inspection by the public. *Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632, 636-37 (Pa. 2009) ("It is clear from these sections of the Coroner's Act 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 [of the Coroner's Act]") (internal citations omitted); *see also* 16 P.S. § 1236-B ("In counties of the third, fourth, fifth, sixth, seventh and eighth classes,

⁴ In this decision, the agency was permitted to redact medical information from emails responsive to the underlying RTKL request pursuant to Section 708(b)(5) of the RTKL, 65 P.S. § 67.708(b)(5); however, the Office has not raised this argument in the appeal, nor does the exemption apply to autopsy and toxicology reports, as they are made available for public inspection through the Coroner's Act. *See* 16 P.S. § 1236-B.

every coroner, within thirty (30) days after the end of each year, *shall* deposit all official records and papers for the preceding year in the Office of the Prothonotary for the inspection of all persons interested therein.”) (emphasis added).⁵ Likewise, the Court has concluded that the Coroner’s Act does not provide coroners with discretion to withhold records such as autopsy and toxicology reports. *Hearst TV, Inc. v. Norris*, 54 A.3d 23, 32-33 (Pa. 2012). Accordingly, the Office has not established that the autopsy and toxicology reports sought in the Request are protected from disclosure by HIPAA and the Privacy Rule; therefore, they must be disclosed to the Requester.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the Office is required to provide all responsive autopsy and toxicology records to the Requester 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 York 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. 65 P.S. § 67.1303. 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: 13 September 2022

/s/ Joshua T. Young

JOSHUA T. YOUNG
DEPUTY CHIEF COUNSEL

Sent via email to: Terence Keel;
Pamela Gay;
Michelle Pokrifka, Esq.

⁵ York County is a county of the third class.

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