



IN THE MATTER OF

V.

Docket No: AP 2022-1802

Terence Keel and the University of California-Los Angeles, Institute for Society and Genetics, Biostudies Lab (collectively, the “Requester”) submitted a request (“Request”) to Indiana County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking autopsy and toxicology reports. The County denied the Request arguing that the records are protected under the Health Insurance Portability and Accountability Act (HIPAA), and 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 County is required to take additional action as directed.

FACTUAL BACKGROUND

On June 28, 2022,¹ the Request was filed, seeking “the complete autopsy and toxicology reports” for fourteen individuals. On June 30, 2022, the County invoked a thirty-day extension during which to respond to the Request. 65 P.S. § 67.902(b). On July 28, 2022, the County denied the Request, arguing that the responsive reports are protected from disclosure by HIPAA, 45 C.F.R. § 164.502(a).

On August 2, 2022, the Requester appealed to the 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. 65 P.S. § 67.1101(c).

On September 1, 2022, the County submitted a position statement, arguing that “HIPPA [sic] prevents the disclosure of private medical information without the consent of the patient.” The County further argues that the “Indiana County Coroner does not perform an autopsy but rather, it is performed by a forensic or clinical pathologist, in other words, a physician who the Coroner asserts is subject to HIPPA [sic].”

On September 13, 2022,³ the Requester submitted a position statement, arguing, among other things, that autopsy and toxicology reports are not medical records, the County is not a “covered entity” under HIPAA, the next of kin argument is “not supported by statute,” and the records “are presumed to have been deposited with the Prothonotary in accordance with the coroner’s statutory obligations under the Coroners Act.”

¹ The Request was dated June 27, 2022 but was not received by the County until June 28, 2022.

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

³ On September 13, 2022, the OOR reached out to the Requester to confirm whether the Requester submitted a position statement. Although the Requester’s submission was made beyond the record closing date and without seeking an additional extension of time from the OOR, the OOR recognizes that the Requester raised similar arguments on appeal in different matters currently pending before the OOR. As such, to ensure sufficient due process, the submission was admitted. *See* 65 P.S. § 67.1102(b)(3) (stating, “[i]n the absence of a regulation, policy or procedure governing appeals under this chapter, the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute.”).

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

The County 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 County argues that the records are protected under HIPAA. However, the County has not submitted argument or evidence to demonstrate how the County falls within the definition of “covered entity” under HIPAA. *See Segelbaum and the York Daily Record v. York County*, OOR Dkt. AP 2017-1459, 2017 PA O.O.R.D. LEXIS 1332 (finding that York County 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 its coroner’s office is a covered entity under HIPAA).⁴ Furthermore, while 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 response, the County suggests that “[a]s the patient is deceased, the Coroner asserts that consent must come from the decedent’s personal representative or by a next of kin relative”; however, the County has not cited any legal precedent to support this argument.⁵ 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

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 County 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.

⁵ *See County of Lancaster v. Walker and LNP Media Group*, NO. CI-18-09547 (Lancaster County Court of Common Pleas, August 23, 2019) (stating that there is no case law to support the right to privacy that applies to the deceased, citing the Restatement (Second) of Torts § 6521(b) (the right of privacy is a personal right and cannot be maintained after the death of the individual whose privacy is invaded).

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, 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.”).⁶ 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 County has failed to establish that the requested autopsy and toxicology reports are protected from disclosure by HIPAA; therefore, they must be disclosed to the Requester.

CONCLUSION

For the foregoing reasons, the 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.⁷ 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 Indiana 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

⁶ Indiana County is a county of the sixth class.

⁷ 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.

a party.⁸ This Final Determination shall be placed on the OOR website at:
<http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: September 30, 2022

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

Sent via email to: Terence Keel;
Robin Maryai, AORO

⁸ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).