



IN THE MATTER OF

V.

Docket No: AP 2022-1801

Terence Keel and the University of California-Los Angeles, Institute for Society and Genetics, Biostudies Lab (collectively, the “Requester”) submitted a request (“Request”) to the Chester County Office of the Coroner (“Office”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking autopsy and toxicology reports. The Office denied the Request arguing, among other things, that the records are exempt autopsy records, 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 Office is required to take additional action as directed.

FACTUAL BACKGROUND

On June 27, 2022, the Request was filed, seeking “the complete autopsy and toxicology reports” for seventeen individuals. On July 1, 2022, the Office invoked a thirty-day extension during which to respond to the Request. 65 P.S. § 67.902(b). On August 2, 2022, the Office denied the Request, arguing that the Office has no duty to create a record, 65 P.S. § 67.705, and that the records are exempt medical records, autopsy records, criminal investigatory records, and noncriminal investigatory records, 65 P.S. §§ 67.708(b)(5), (20), (16), and (17).

On August 2, 2022, the Requester appealed to the OOR, challenging the denial and 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.¹ 65 P.S. § 67.1101(c).

On August 26, 2022, the Office submitted a position statement arguing that the Office is subject to the Health Insurance Portability and Accountability Act (“HIPAA”) and that the records are exempt under Section 708(b)(20) of the RTKL. The Office further argues that the records contain “very private and confidential medical records” subject to exemption pursuant to Sections 708(b)(5), (16) and (17) of the RTKL. Finally, the Office argues that the Pennsylvania Supreme Court’s decision in *Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632 (Pa. 2009) is “not controlling with respect to the case at bar.” In support of its argument, the Office submitted the attestation of Jesse Poole-Gulick, First Deputy Coroner for the Office.²

On August 26, 2022, the Requester submitted a position statement, arguing, among other things, that autopsy and toxicology reports “must be made available for inspection.”

¹ The Office attests that it has “sent notice to the Chester County District Attorney’s Office and the County Prison/County Solicitor regarding any third party rights that such agencies might have with respect to the requests for information but said parties have chosen not to intervene in this matter.” See Poole-Gulick Attestation at ¶7.

² On September 9, 2022, the Office submitted a Memorandum of Law correcting typographical errors submitted in its August 26, 2022 submission.

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 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).

1. Autopsy and toxicology reports are not exempt under the RTKL and HIPAA.

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 first argues that the autopsy reports are “prepared by a forensic pathologist (a medical doctor) under contract with the County and subject to HIPAA”. 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 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). Furthermore, while the OOR 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, the Office suggests that it “makes other information available to the ‘next of kin’ or in response to a subpoena in a legal action in which the interests of the decedent are being represented and as appropriate in the exercise of [the Coroner’s] discretion”; however, apart from the Coroner’s attestation and citing to Section 1217-B, the Office provides no case citation specifically excluding this type of information. To the contrary, the Pennsylvania Supreme Court has determined that autopsy reports constitute “official records and papers” of the coroner which,

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

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);⁴ *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.").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 failed to establish that the requested autopsy and toxicology reports are protected from disclosure by HIPAA and the Privacy Rule; therefore, they must be disclosed to the Requester.

2. The Office failed to meet its burden that autopsy and toxicology reports are subject to any RTKL exemptions

The Office also argues that the autopsy and toxicology reports are exempt under Sections 708(b)(5), (b)(16), (b)(17) and (b)(20) of the RTKL. 65 P.S. §§ 67.708(b)(5) (b)(16)-(17), (b)(20). However, for the reasons set forth above, the Coroner's Act makes the reports subject to public access, as such the RTKL yields to the Act. *See* 65 P.S. § 67.306 ("Nothing in this act shall supersede or modify the public or nonpublic nature of a record or document established in ... State

⁴ The Office asks the OOR to not consider the *Penn Jersey* case because "[i]t did not address the Right to Know Law and was a very different case from this case before the OOR." As *Penn Jersey* has not been explicitly overturned, we find this argument unpersuasive.

⁵ Chester County is a county of the third class. The OOR notes that the Requester provided the dates of deaths of the decedents and all were the years 2021 or prior; therefore, the autopsy reports should have been deposited in the County Prothonotary.

law....”); 65 P.S. § 67.3101.1 (“If the provisions of th[e RTKL] regarding access to records conflict with any other ... state law, the provisions of th[e RTKL] shall not apply”).

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the Office 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.⁶ 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 Chester 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.⁷ 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;
Sophia Garcia-Jackson;
John Carnes, Jr., Esq.

⁶ 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.

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