



On October 13, 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 County to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On October 17, 2022, the County made a submission in support of its position, which was verified, subject to the penalties set forth in 18 Pa.C.S. § 4904, by Stephen Libhart, the County's Open Records Officer. In this submission, the County reiterates that the requested reports are "non-financial records" of the County Prothonotary and argues that autopsy and toxicology reports are not available from the County Coroner.

On October 18, 2022, based upon the County's arguments concerning the records being deposited with the County Prothonotary, the OOR asked the Requester if they had attempted to obtain the records from the Prothonotary. The same day, the Requester made a submission in support of their appeal and informed the OOR that they had contacted the Prothonotary.

On October 20, 2022, the County made a supplemental submission, verified by Open Records Officer Libhart, which claimed that autopsy and toxicology reports cannot be obtained from the County Coroner.

On October 24, 2022, the Requester made a submission addressing the County's supplemental submission and arguing that the requested reports have not been deposited with the County Prothonotary as required by law.<sup>2</sup> In support of this argument, the Requester submits the declaration, made under penalty of perjury, of Paula Knudsen Burke, who visited the County Prothonotary and attempted to review the Coroner's files for three of the individuals listed in the

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<sup>2</sup> The Requester also made a separate submission that provides a copy of an email response from the County Prothonotary. The response notes that the Requester may conduct an in-person inspection of any records deposited under 16 P.S. § 1236-B.

Request: Edward C. Sinkovitz, Kyle J. Nadwodny, and Kejuan Cooke, all of whom died in 2021.

The Burke declaration further states, in relevant part, that:

4. I followed the [Prothonotary] employee to a corner behind the filing stacks, where I observed five brown banker's boxes.
5. I was given the box containing 2021 deaths and directed to an empty desk.
6. I was able to find one-page forms called "Coroner's View" for each deceased person, arranged by month, but not date within those months.
7. I viewed the one-page forms for Mr. Nadwodny and Mr. Cooke, but I was unable to locate any paper related to Mr. Sinkovitz....
10. At the back of the white binder labeled "Coroner's Reports 2021" there was a certification from Dauphin County Coroner Graham Hetrick that the documents contained within the binder comprised the documents he was submitting for the year. There were no autopsy reports, toxicology reports or any detailed records....

The OOR asked the County to address the Burke declaration, and specifically whether or not the requested autopsy and toxicology reports were ever deposited with the County Prothonotary as claimed. On October 27, 2022, the County responded, providing copies of records concerning the deposit of Coroner records for 2019, 2020, and 2021. In correspondence to the County Prothonotary dated November 19, 2019, the Coroner states: "This letter will confirm our agreement that the Office of the Coroner will store its official records within the Coroner's Office as an extension of the Prothonotary's office." Although there is a place for the Prothonotary to sign, the correspondence is unexecuted by the Prothonotary. In the February 3, 2021 and January 28, 2022 correspondence, the Coroner confirms that Coroner records for 2020 and 2021 have been deposited. With respect to this correspondence, the County's Open Records Officer "surmise[s] the documents actually provided to the Prothonotary by the [C]oroner are substantially the same as indicated in the [Burke declaration]."

## LEGAL ANALYSIS

The County is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a 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. As an agency subject to the RTKL, the County is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). 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 case at issue involves autopsy-related records originating from the County Coroner. While the RTKL makes “[a]n autopsy record of a coroner or medical examiner” exempt from disclosure, 65 P.S. § 67.708(b)(20), the RTKL’s exemptions do not apply when another law makes records public. 65 P.S. § 67.306.

In Pennsylvania, autopsy records of a coroner may be obtained through two mechanisms set forth in the County Code. First, autopsy records may be obtained from the judiciary after they are deposited by a coroner with the Prothonotary at the end of each year. 16 P.S. § 1236-B. Second, autopsy records may be obtained directly from a coroner, for a fee. 16 P.S. § 1252-B. The Pennsylvania Supreme Court has held that this second mechanism is “a rapid means of procuring an autopsy report for those who do not wish to wait until after the end of the year, and who are also willing to pay the charges associated with procuring it.” *Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632, 637 (Pa. 2009); *see also Hearst TV Inc. v. Norris*, 54 A.3d 23 (Pa. 2012) (reiterating that there are two mechanisms for obtaining coroner records).

**1. The County has not demonstrated that the requested autopsy and toxicology reports have been deposited with the County Prothonotary in accordance with the County Code**

With respect to the first mechanism, the portion of the County Code referred to as the Coroner's Act used to state:

Every coroner, within thirty (30) days after the end of each year, shall deposit all of his official records and papers for the preceding year in the office of the prothonotary for the inspection of all persons interested therein.

16 P.S. § 1251. However, that section was repealed and replaced by Act 154 of 2018, and the County Code now provides that:

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.

16 P.S. § 1236-B.

The Pennsylvania Supreme Court has made clear, on multiple occasions, that autopsy reports are "official records and papers" that are required to be deposited with a county prothonotary. *In re Buchanan*, 880 A.2d 568, 571 (Pa. 2005) (finding that it was reasonable to conclude that autopsy reports are considered "official records and papers"); *Grim*, 962 A.2d at 636-37 ("... [T]o the extent that *Buchanan* left any room for doubt, we now hold expressly that autopsy reports are 'official records and papers' under Section 1251"); *see also Norris*, 54 A.3d 23 (Pa. 2012) (reaffirming that "official records and papers" must be deposited with the county prothonotary). The caselaw cannot be any clearer: autopsy reports are "official records and papers" that are required to be deposited with the county prothonotary. Similarly, toxicology reports are also "official records and papers." According to the Court in *Grim*, if something is a duty of a coroner in their official capacity, the resulting record is thus "an official record or paper subject to disclosure." *Grim*, 54 A.3d at 636.

There can be no doubt that coroners in counties of the third through eight classes are still required to deposit their “official records and papers.” The language of 16 P.S. § 1236-B is nearly identical to 16 P.S. § 1251, which the Pennsylvania Supreme Court has extensively analyzed. In ascertaining legislative intent, we are to presume “[t]hat when a court of last resort has construed the language used in a statute, the General Assembly in subsequent statutes on the same subject matter intends the same construction to be placed upon such language.” 1 Pa.C.S. § 1922(4).

The County “concur[s] with the [Requester’s] understanding of the provisions of 16 P.S. § 1236-B,” requiring the depositing of autopsy and toxicology reports, and argues that the requested reports are therefore “non-financial records of a judicial agency” because they are coroner records that have been deposited with the Dauphin County Prothonotary. However, there is a material dispute regarding whether the autopsy and toxicology reports have, in fact, been deposited with the Prothonotary.

The Requester has submitted the Burke declaration, which supports a claim that, at least for 2021, the Coroner has not deposited any autopsy or toxicology reports. The County has produced correspondence concerning the transfer of some records from the Coroner to the Prothonotary for 2020 and 2021. If the Coroner believed that “Coroner’s View” forms were the only documents he was required to deposit in 2021, it is likely that he held such a belief for the 2020 records as well. For the 2019 Coroner records, the Coroner apparently did not deposit *any* records, choosing instead to “store its official records ... as an extension of the Prothonotary’s office.”<sup>3</sup> The County’s argument on appeal is also somewhat contradictory; it is, on one hand, arguing that the records have been deposited with the Prothonotary and are therefore judicial in nature, and on the other hand, arguing that records from the County Coroner are not subject to

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<sup>3</sup> It is not clear how such an arrangement would be legal under 16 P.S. § 1236-B or its predecessor, 16 P.S. § 1251.

disclosure at all. Because there is uncontradicted evidence that the County Coroner did not comply with 16 P.S. § 1236-B for 2019 and 2021, and because the County Coroner’s position appears to be that autopsy and toxicology reports can never be publicly disclosed, we cannot conclude that the requested reports have actually been deposited with the Prothonotary as required by law or that the records are judicial records.

While the OOR is unable to require the County Coroner to comply with 16 P.S. § 1236-B,<sup>4</sup> the abrogation of the Coroner’s statutory duties is relevant as to whether the County has acted in bad faith under the RTKL, which will be discussed below.

**2. The requested autopsy and toxicology reports are available, for a fee, under the County Code**

With respect to the second mechanism for obtaining coroner records, the County argues that its Coroner no longer has any obligation to provide autopsy and toxicology reports. Prior to 2018, the Coroner’s Act stated that:

*The coroner may charge and collect a fee of up to one hundred dollars (\$100) for each autopsy report, up to fifty dollars (\$50) for each toxicology report, up to fifty dollars (\$50) for each inquisition or coroner’s report and such other fees as may be established from time to time for other reports and documents requested by nongovernmental agencies....*

16 P.S. § 1236(c) (emphasis added). The County Code now provides that:

*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 required 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 (emphasis added).

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<sup>4</sup> The appropriate remedy appears to be a mandamus action. *See generally Grim*, 962 A.2d at 636 (stemming from mandamus actions to compel the coroner to deposit his “official records and papers”).

The County argues that because the Requester is not identified “as acting in a capacity of investigating a claim(s) asserted under a policy of insurance or to determine liability for the death of the decedents,” the Requester is prohibited from obtaining autopsy and toxicology reports under 16 P.S. § 1252-B. However, statutory construction does not support this argument; it actually contradicts it.

First, the language that the County focuses upon in 16 P.S. § 1252-B – “in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased” – clearly modifies “other fees as may be established from time to time for other reports or documents.” This section sets forth specific fees for specific records, and then includes a “catch-all” for *other* reports or documents that may be requested “from time to time”<sup>5</sup> from a coroner; this “catch-all” does not affect or modify the prior specific fees for specific records. *See* 1 Pa.C.S. § 1903(b) (“General words shall be construed to take their meanings and be restricted by preceding particular words”). While the “catch-all” is limited to records needed by nongovernmental agencies, it has absolutely nothing to do with an individual’s ability to request and obtain autopsy or toxicology reports from a coroner. Indeed, the Coroner’s Act *also* referred to “such other fees as may be established from time to time for other reports and documents requested by nongovernmental agencies,” and the Court in *Grim* did not attach any significance to that phrase because autopsy reports, not unnamed “other reports and documents,” were at issue. *See also* Norris, 54 A.3d 23 at 32 (treating “other reports and documents” as a distinct category separate from autopsy and toxicology reports”). Here, autopsy and toxicology reports are at issue; because both records are specifically addressed in 16 P.S. § 1252-B, the language referencing “other fees” is meaningless to our analysis.

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<sup>5</sup> The use of the phrase “from time to time” is quite telling, evidencing a belief from the General Assembly that these “other fees for other reports or documents” may not be commonplace. 1 Pa.C.S. § 1903(a).

Further, there is clear legislative intent for coroners to provide copies of autopsy and toxicology reports upon payment of fees. “The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.” 1 Pa.C.S. § 1921. Absent certain exceptions that are not at issue here, we must liberally construe statutes “to effect their objects and to promote justice.” 1 Pa.C.S. § 1928(c). In ascertaining legislative intent, we are to presume “[t]hat when a court of last resort has construed the language used in a statute, the General Assembly in subsequent statutes on the same subject matter intends the same construction to be placed upon such language.” 1 Pa.C.S. § 1922(4).

In *Norris*, the Court found that the Coroner’s Act “allows the coroner to charge fees for records, but does not afford the coroner any discretion with regard to releasing such records.” *Norris*, 54 A.3d at 32. The County Code likewise does not afford a coroner any discretion; instead the General Assembly chose to use even stronger language to explain that a coroner “*shall* charge and collect a fee.” 16 P.S. § 1252-B (emphasis added). Using the rules of statutory construction, the General Assembly clearly intended to ensure that no discretion is involved – a fee is paid to the coroner, and the coroner provides the record. In fact, the heading of 16 P.S. § 1252-B is simply entitled “Fees for reports.” 1 Pa.C.S. § 1924 (noting that headings “shall not be considered to control but may be used to aid in the construction thereof”). The General Assembly intended for a process where specific fees are paid to obtain specific reports from coroners, without limitation.

The County Code makes autopsy and toxicology reports available from county coroners for a fee. Despite that mandate, the County sets forth a variety of arguments as to why these reports should not be available from its Coroner: that the records are protected 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. § 1320d(6); that the records are made confidential based upon guidance found in a publication from the Pennsylvania Department of Drug and Alcohol Programs<sup>6</sup>; and that several RTKL exemptions apply. All of these arguments disregard the known fact that we are dealing with settled law: the Pennsylvania Supreme Court has interpreted the prior Coroner’s Act, and the General Assembly enacted “new” provisions within the County Code that are largely the same as the prior Coroner’s Act. There is only one reference to Court precedent on the matter, a footnote citation to a concurring and dissenting opinion in *Grim*. It appears that the County prefers to ignore this precedent rather than address it or even acknowledge its existence.

Regardless, the County’s arguments have no merit. The County does not explain how the Department of Drug and Alcohol Programs’ publication has the force and effect of law or negates a statutory enactment. The RTKL exemptions cited by the County do not apply, as nothing in the RTKL can “supersede or modify the public or nonpublic nature of a record or document established” in another law. 65 P.S. § 67.306. Finally, with respect to HIPAA and the Privacy Rule, the County does not set forth any credible argument how the County Code is superseded by federal law. The County’s argument is devoid of any citation to any controlling caselaw, and its citation to a Rutgers Law Journal article for a theory concerning a “chain of trust” under HIPAA amplifies that defect. Importantly, the County does not explain how its coroner can be a “covered entity” for purposes of HIPAA<sup>7</sup>. However, the simplest argument against the County’s invocation of HIPAA and the Privacy Rule is that the application of those laws was already considered by the Pennsylvania Supreme Court when it found, repeatedly, that autopsy reports are subject to public access. *See, e.g., Grim, supra* (concurring and dissenting opinion of Justice Eakin).

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<sup>6</sup> The County does not provide any formal citation or link to the publication, but it appears to be accessible at [https://www.ddap.pa.gov/Documents/Agency%20Publications/Confidentiality\\_Federal\\_State\\_Regulations\\_Guide.pdf](https://www.ddap.pa.gov/Documents/Agency%20Publications/Confidentiality_Federal_State_Regulations_Guide.pdf) (last accessed Oct. 27, 2022).

<sup>7</sup> The Coroner is not a health plan, a health care clearinghouse, or a health care provider. 45 CFR § 160.103.

The OOR notes a recent decision of the Centre County Court of Common Pleas in *County of Centre v. Richard Cowen*, Centre County Docket 2022-1053 AP, where that court “concludes, in light of the amendments to the Coroners Act, the requested records are exempt under § 708(b)(20) of the Right to Know Law.” However, that one-page Order does not acknowledge, address or analyze the Supreme Court precedent on the matter, nor does it explain how “the amendments to the Coroners Act” affect that precedent.<sup>8</sup> Based upon these missing components, the OOR does not believe that the *Cowen* Order is persuasive, much less binding, authority on the matter. We cannot disregard settled caselaw on a subject due to minor changes in a statute.

### **3. The County, based upon the actions of its Coroner, may have acted in bad faith**

Under the RTKL, courts are permitted to impose sanctions and civil penalties if they conclude that an agency has acted in bad faith. 65 P.S. §§ 67.1304-1305. A finding of bad faith may be appropriate where an agency fails to perform its statutory duties. *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161, 1172 (Pa. Commw. Ct. 2018), *aff’d*, 243 A.3d 19 (Pa. 2020) (bad faith involves failing to perform a good faith search and review of records to ascertain if the requested material exists or if any exclusion applies prior to denial of access); *see also Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119 (Pa. Commw. Ct. 2017) (a finding of bad faith was warranted where the agency based a denial on the identity of the requester, refused to provide a legal rationale for denial and did not perform a good faith search).

Although the OOR has made such findings, only the courts have the authority to impose sanctions on agencies. *See* 65 P.S. § 67.1304; *Bowling v. Office of Open Records*, 75 A.3d 453 (Pa. 2013) (“As we observed, Section 1304 of the RTKL permits a Chapter 13 court to award costs and attorneys’ fees, and to impose sanctions, after the court, not the appeals officer, makes relevant

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<sup>8</sup> Decisions from courts of common pleas in RTKL matters “shall clearly and concisely explain the rationale for the decision.” 65 P.S. § 67.1302(a).

factual findings and legal conclusions.... Section 1304(a)(1) requires a court to make factual findings regarding whether an agency denying access to records acted ‘willfully or with wanton disregard’ or ‘otherwise ... in bad faith.’”); *Mission Pa., LLC v. McKelvey*, 212 A.3d 119, 138 (Pa. Commw. Ct. 2019) aff’d in part, 255 A.3d 385 (Pa. 2021) (“the statute is clear that only a court may make a finding regarding an agency’s bad faith”); *Uniontown, supra* (“[t]he RTKL reserves bad faith determinations for disposition by Chapter 13 Courts”).

In this case, there is no evidence that the requested autopsy and toxicology reports were ever deposited with the County Prothonotary pursuant to 16 P.S. § 1236-B, despite the County informing the Requester the records had been deposited. The County and its Coroner recognize this obligation under 16 P.S. § 1236-B, yet the record shows that the Coroner and County appear to have ignored clear directives from the Pennsylvania Supreme Court that autopsy and toxicology reports must be deposited annually. Further, the County and its Coroner refuse to follow 16 P.S. § 1252-B, despite the clear statutory language and caselaw on the matter. Instead, they have made frivolous arguments that do not address that binding precedent.

An agency cannot ignore a clear statutory mandate that has been thoroughly analyzed by every level of the judiciary simply because they do not believe it to be correct or wise. The Coroner’s actions not only directly impact the Requester but also the public interest as a whole. Because the records have not been deposited with the Prothonotary as mandated by the Coroner’s Act, the practical effect is that any requester, including the Requester here, is left to obtain them, at great cost, under 16 P.S. § 1252-B. For these reasons, the OOR believes that a finding of bad faith by a reviewing court would be appropriate to not only provide the public access to coroner records envisioned by the General Assembly and reenforced by the Pennsylvania Supreme Court, but also to discourage other agencies from acting similarly in violation of the public interest.

Additionally, an award of sanctions and civil penalties is appropriate to offset the costs of the Requester having to obtain the records that should have been easily and readily accessible under 16 P.S. § 1252-B.

### CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is required to provide access to the requested autopsy and toxicology reports, either by depositing those records with the Prothonotary or by providing them to the Requester pursuant to the fees set forth in the County Code. 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 Dauphin 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.<sup>9</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: November 3, 2022**

/s/ Kyle Applegate  
Kyle Applegate, Esq.  
Chief Counsel

Sent via email to: Terence Keel;  
Stephen Libhart

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<sup>9</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).