

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

CHESTER County

For Prothonotary Use Only:

Docket No:

2022-08612-CS

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

Commencement of Action:

- ☐ Complaint ☐ Writ of Summons ☒ Petition ☐ Declaration of Taking

Lead Plaintiff's Name:

Chester County Coroner, Petitioner

Lead Defendant's Name:

Terence Keel, Assoc. Prof. UCLA

Are money damages requested? ☐ Yes ☒ No

Dollar Amount Requested: ☐ within arbitration limits ☐ outside arbitration limits (check one)

Is this a Class Action Suit? ☐ Yes ☒ No

Is this an MDJ Appeal? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: John S. Carnes, Jr.

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- ☐ Intentional
☐ Malicious Prosecution
☐ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☐ Other:

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other

- ☐ Employment Dispute: Discrimination
☐ Employment Dispute: Other

☐ Other:

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☒ Statutory Appeal: Other

☐ Zoning Board

☒ Other:

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other:

REAL PROPERTY

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other:

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☐ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations Restraining Order
☐ Quo Warranto
☐ Replevin
☐ Other:

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional:



**Chester County
Court of Common Pleas
Cover Sheet**

Docket No:

Plaintiff(s): (Name, Address)

Chester County Coroner, Petitioner
601 Westtown Road, Suite 090
West Chester, PA 19382

Plaintiff's/Appellant's Attorney (circle one)
(Name, firm, address, telephone and attorney ID#)

John S. Carnes, Jr., Esq., Solicitor
101 W. Main Street, Parkesburg, PA 19365
Phone: 610-857-5500 ID#47338

Defendant(s): (Name, Address)

Terence Keel, Assoc. Professor, UCLA
Director, UCLA Lab for Biostudies, Institute for
Society & Genetics, 3323A Life Sciences Bldg.,
Box 95722, Los Angeles, CA 90095

Are there any related cases? Please provide case nos.

Defendants who are proceeding without counsel are strongly urged to file with the Prothonotary a written statement of an address AND a telephone number at which they can be reached.

If this is an appeal from a Magisterial District Judgment, was appellant ☐ Plaintiff or ☐ Defendant in the original action?

Jury Trial Demanded ☐ Yes ☒ No

Nature of case if not on previous cover sheet – Please choose the most applicable

☐ Annulment
☐ Custody - Conciliation Required
☐ Custody - Foreign Order
☐ Custody - No Conciliation Required
☐ Divorce - Ancillary Relief Request
☐ Divorce - No Ancillary Relief Requested
☐ Foreign Divorce
☐ Foreign Protection from Abuse
☐ Paternity
☐ Protection from Abuse
☐ Standby Guardianship

☐ Writ of Certiorari
☐ Injunctive Relief
☐ Mechanics Lien Claim
☐ Issuance of Foreign Subpoena
☐ Name Change
☐ Petition for Structured Settlement

Arbitration Cases Only

Arbitration Date

Arbitration Time

Defendants are cautioned that the scheduling of an arbitration date does not alter the duty of the defendant to respond to the complaint and does not prevent summary disposition from occurring prior to the arbitration date.

This matter will be heard by a Board of Arbitrators at the time and date specified but, if one or more of the parties is not present at the hearing, the matter may be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to a trial *de novo* on appeal from a decision entered by a judge.

Notice of Trial Listing Date

Pursuant to C.C.R.C.P. 249.3, if this case is not subject to compulsory arbitration it will be presumed ready for trial twelve (12) months from the date of the initiation of the suit and will be placed on the trial list one (1) year from the date the suit was filed unless otherwise ordered by the Court.

To obtain relief from automatic trial listing a party must proceed pursuant to C.C.R.C.P. 249.3(b), request an administrative conference and obtain a court order deferring the placement of the case on the trial list until a later date.

File with: Chester County Justice Center, Prothonotary Office, 201 W. Market St., Ste. 1425, PO Box 2746, West Chester, PA 19380-0989

These cover sheets must be served upon all other parties to the action immediately after filing.
Submit enough copies for service.

John S. Carnes, Jr., Esquire
Attorney I.D.#47338
101 W. Main Street
Parkesburg, PA 19365
Phone: 610-857-5500

Attorney for Petitioner, Chester County Coroner

CHESTER COUNTY CORONER, : IN THE COURT OF COMMON PLEAS
Petitioner :
v. : CHESTER COUNTY, PENNSYLVANIA
TERENCE KEEL AND THE UNIVERSITY: ^{CS}
OF CALIFORNIA-LOS ANGELES , : CIVIL ACTION No. 2022-08642
INSTITUTE FOR SOCIETY & GENETICS:
BIOSTUDIES LAB, Respondent :

PRAECIPE FOR DETERMINATION

TO THE PROTHONOTARY:


Kindly submit the following matter to **the assigned Judge** for determination:

Title: Petition for Judicial Review of a Final Determination of the Pennsylvania Office
of Open Records dated September 30, 2022

Oral Argument: Is Requested

Date of filing/service: October 28, 2022

BY:



John S. Carnes, Jr., Esquire, Attorney for
Petitioner, Chester County Coroner
Attorney I.D. No.: 47338
101 W. Main Street
Parkesburg, PA 19365
(610) 857-5500

2022 OCT 28 PM 2:55
OFFICE OF THE
PROTHONOTARY
CHESTER CO., PA.

FILED

CHESTER COUNTY CORONER, : IN THE COURT OF COMMON PLEAS
Petitioner :
v. : CHESTER COUNTY, PENNSYLVANIA
TERENCE KEEL AND THE UNIVERSITY: :
OF CALIFORNIA-LOS ANGELES , : CIVIL ACTION No. 2022- 08612-CS
INSTITUTE FOR SOCIETY & GENETICS: :
BIOSTUDIES LAB, Respondent :

ORDER

AND NOW, this _____ day of _____, 2022, upon consideration of Petition For Judicial Review Of A Final Determination Of The Pennsylvania Office Of Open Records Dated September 30, 2022 and briefing thereon, and after creation of a record by hearing or otherwise, it is hereby ORDERED AND DECREED that the relief as requested in the Petition For Review is GRANTED and the Court hereby REVERSES the Final Determination of the Pennsylvania Office of Open Records and affirms the Coroner's Office's denial of the Respondent's request.

BY THE COURT:

J.

JOHN S. CARNES, JR., ESQUIRE
Attorney I.D. No. 47338
101 West Main Street
Parkesburg, PA 19365
(610) 857-5500

Attorney for Chester County Coroner

CHESTER COUNTY CORONER,	:	IN THE COURT OF COMMON PLEAS
Petitioner	:	
v.	:	CHESTER COUNTY, PENNSYLVANIA
TERENCE KEEL AND THE UNIVERSITY:	:	
OF CALIFORNIA-LOS ANGELES ,	:	CIVIL ACTION No. 2022-08612-CS
INSTITUTE FOR SOCIETY & GENETICS:	:	
BIOSTUDIES LAB, Respondent	:	

RULE TO SHOW CAUSE

AND NOW, this _____ day of _____, 2022, upon consideration of the foregoing Petition For Judicial Review of a Final Determination of the Pennsylvania Office of Open Records Dated September 30, 2022, it is hereby ordered that:

- (1) A rule is issued upon the Respondent to show cause why the Petitioner is not entitled to the relief requested;
- (2) The Respondent shall file an answer to the Petition For Judicial Review of A Final Determination of the Pennsylvania Office of Open Records Dated September 30, 2022 within twenty (20) days of service upon the Respondent;
- (3) The Petition For Judicial Review shall be decided under Pa.R.C.P. No. 206.7;
- (4) Depositions shall be completed within forty-five (45) days of the service upon Respondent of the Petition For Judicial Review;
- (5) Notice of the Entry of this Order shall be provided to all parties by the Petitioner.

BY THE COURT:

J.

JOHN S. CARNES, JR., ESQUIRE
ATTORNEY ID# 47338
LAW OFFICES OF JOHN S. CARNES, JR.,
101 W. MAIN STREET
PARKESBURG, PA 19365
(610) 857-5500

ATTORNEY FOR PETITIONER

OFFICE OF THE
PROTHONOTARY
CHESTER CO., PA.

2022 OCT 28 PM 2:54

FILED

IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA

CHESTER COUNTY OFFICE OF THE
CORONER

Petitioner

v.

TERENCE KEEL AND THE UNIVERSITY
OF CALIFORNIA-LOS ANGELES,
INSTITUTE FOR SOCIETY AND
GENETICS, BIOSTUDIES LAB,

Respondent

2022-08642-CS

**PETITION FOR JUDICIAL REVIEW OF A FINAL DETERMINATION OF THE
PENNSYLVANIA OFFICE OF OPEN RECORDS DATED SEPTEMBER 30, 2022**

AND NOW, comes the Petitioner, the Coroner of Chester County, Sophia Garcia-Jackson, by and through her attorney, John S. Carnes, Jr., and respectfully presents this Petition for Judicial Review of a Final Determination of the Pennsylvania Office of Open Records¹ dated September 30, 2022, in the above-referenced matter (hereinafter the "Petition") and in support thereof, sets forth the following grounds for judicial review:

The Parties

1. The Petitioner is Sophia Garcia-Jackson the elected Coroner of Chester County (a

¹ The Pennsylvania Office of Open Records is a commonwealth agency organized and existing under the Right to Know Law as identified herein and is served with a copy of this Petition for Review, is not a party to the proceeding but has a right to respond as per Section 1303 of the RTKL. See, 65 P.S. § 1303.

third class county in the Commonwealth of Pennsylvania) maintaining an office in the County Government Services Center, 601 Westtown Road, Suite 090, West Chester, PA 19382 and subject to the Coroner's Act, 16 P.S. §1201-B et seq.

2. The Respondent is Terence Keel identified in papers presented by him as "Associate Professor at UCLA's Institute for Society and Genetics and Primary Investigator of the Biostudies Lab" with an address of 3323A Life Sciences Building, Box 95722, Los Angeles, California 90095.

Jurisdiction

3. This Petition is filed with this Honorable Court pursuant to Section 67.1302 of the Pennsylvania Right to Know Law (hereinafter the "RTKL", Pa. Stat. Ann. Tit. 65 §67.1302), as the result of the Final Determination of the Pennsylvania Office of Open Records (hereinafter the "OOR") as issued and mailed by Appeals Officer Lyle Hartranft, Esquire on September 30, 2022.

Procedural and Factual History

4. On June 27, 2022, the Office of the Chester County Coroner received an emailed request for information from Terence Keel and the University of California – Los Angeles, Institute for Society and Genetics, Biostudies Lab (hereinafter "Respondent") pursuant to the aforementioned RTKL 65 P.S. §§67.101 et seq., requesting:

"the complete autopsy and toxicology reports for all decedents listed below:
Melvin James Anderson, date of death 12/6/2021
Kenneth John Petitt, date of death 10/6/21
Dimitrios Moscharis, date of death 6/18/2021
John Patrick Deamics, date of death 4/24/2021
Charles Raymond Troupe, date of death 5/9/2020
Michael McCarragher, date of death 9/18/2017
Kevin Johnson, date of death 12/26/2016
Corey Lange, date of death 5/12/2016
Michael Ferko, date of death 1/1/2016
Jason Walling, date of death 12/22/2015
Samuel Downs, date of death 6/18/2014

Raemone Carter, date of death 3/16/2012
Terry Saunders, date of death 9/14/2009
Rebecca Haslip, date of death 8/4/2008
Theodore Burley, date of death 6/3/2008
Linda Vaughn, date of death 4/18/2008”

A true and correct copy of Dr. Keel’s RTKL request to the Chester County Coroner’s Office is attached as Exhibit “A” hereto.

5. On July 1, 2022, County Coroner, Sophia Garcia-Jackson, identified that the Coroner would require an additional thirty (30) days to respond due to bona fide staffing limitations and because the extent or nature of the request precluded a response within the required time period - with a response expected on or before August 5, 2022. A true and correct copy of this letter requesting an additional thirty (3) days to respond is attached as Exhibit “B” hereto.

6. On August 2, 2022, the County Coroner issued a detailed denial of the request citing as grounds for denial, *inter alia*, provisions of the RTK Law including: §705 which establishes that an agency has no duty to create a record; § 708 (b)(5) which exempts from disclosure medical records; § 708 (b)(20) which specifically exempts “an autopsy record of a coroner or medical examiner” other than the “name of the individual and the cause and manner of death” (noting that the latter information was not requested but is publicly disclosed by the Coroner’s Office on an annual basis and filed of record with Chester County Prothonotary’s Office or can be obtained by “next of kin” by specific request); § 708 (b) (16)(i) (ii)(iii) and (vi) which exempt records of an agency relating to or resulting in a criminal investigation - (potential criminal conduct) (investigative materials)(identity of source or suspect)(disclosed records that should not be disclosed which could (A) reveal information regarding a criminal investigation (B) deprive a person of a fair trial ; (C) impair the ability to locate a defendant or (D) hinder an arrest prosecution or conviction; § 708 (b)(17) which exempts “a record of an agency relating to

a noncriminal investigation” including the following subcategories; § 708 (b)(17)(ii) which exempts “investigative materials, notes, correspondence and reports” (further, to the extent that this request would involve an investigation by the Chester County District Attorney’s Office or other law enforcement agency or agencies said parties would have a third-party right to protect information from such agency’s records pursuant to the authority of §707 of the RTKL);§708 (b)(17) (iii) “a record that includes a confidential source”; §708 (b)(17)(vi) (A) prohibiting the release of the “progress or result of an agency investigation”; B) “deprive a person of an impartial adjudication”; or, (C) “constitute and unwarranted invasion of privacy” and, §708 (b)(17)(iv) “a record made confidential by law”.

7. The denial also noted that with respect to the records made “confidential by law”, the autopsy and toxicology records constitute records protected under the “Privacy Rule” of HIPAA and do not fall within an exception under 45 CFR §164.512 or applicable state law and that these records constitute protected health information absent appropriate written authorization by an individual representing the deceased.

8. The denial further noted that Pennsylvania State Law in the context of managed care plans, including HMOs and utilization review entities must protect against the release of individually identifiable information. Such information also constitutes privileged communications by statutory and common law and the release of substance abuse information (toxicology) is specifically prohibited with respect to deceased patients without consent by a personal representative. See, 82 FR 6115, Jan. 18, 2017, as amended qat 83 FR 251, Jan. 3, 2018. A copy of the letter of denial is attached as Exhibit “C” hereto.

9. On August 3, 2022, Respondent filed an immediate appeal with briefing thereon due on or by August 12, 2022. A true and correct copy of this appeal is attached as Exhibit “D” hereto.

10. The Coroner's Office, through its attorney, sought additional time for briefing and this was granted by the Hearing Officer, extending the deadline until August 26, 2022. A true and correct copy of this communication and the ruling of the Appeals Officer granting this extension are collectively marked as Exhibit "E" hereto.

11. On August 26, 2022 Petitioner filed a Memorandum of Law reiterating the argument in the denial and supported by the Affidavit of the First Deputy Coroner explaining that it had no records for three (3) of the persons for whom information was requested and explaining that a "verification of death form" was prepared and is available at the Office of the Prothonotary and retained by the Office of the Coroner but that the request for "autopsy reports and toxicology reports" were highly sensitive and private information protected from disclosure under the Coroner's Act at the discretion of the Coroner, and under the RTKL at Section 708 (b)(20) the "privacy rule under HIPAA. A corrected Memorandum of Law was filed on September 9, 2022 (revised to correct minor typographical errors) and the aforementioned Memorandum of Law and supporting Affidavit are attached hereto and collectively marked as Exhibit "F" hereto.

12. On August 26, 2022, Respondent also filed its Memorandum of Law. A true and correct copy of this Memorandum is attached as Exhibit "G" hereto.

13. On September 30, 2022, the OOR through its Appeals Officer, Lyle Hartranft issued the Final Determination granting the requests of the Respondent and Ordering that which is herein appealed. A true and correct copy of the Petition is attached as Exhibit "H" hereto.

14. While the Respondent was formulating its appeal and prior to the period of time for reconsideration or appeal under § 1302 of the RTKL, the Respondent sent an email to the Prothonotary of Chester County, copying the Coroner of Chester County and demanding that the Prothonotary produce the requested autopsy and toxicology reports that had been requested and

directing the Prothonotary to confirm the possession of these records. A true and correct copy of this email is attached as Exhibit "I" hereto.

STANDARD AND SCOPE OF REVIEW

15. Under Chapter 13 of the RTKL, common pleas courts "are the ultimate finders of fact and that they are to conduct full *de novo* reviews of appeals from decisions made by the RTKL appeals officers." Bowling v. Office of Open Records, 75 A.3d 453, 474 (Pa.2013).

16. Further, the "scope of review" of common pleas courts hearing appeals of a decision made by the RTKL appeals officer is broad or plenary, and permits trial courts "to expand the record" to fulfill their statutory function as factfinders and thereby consider matters beyond the record that is certified by the OOR. Bowling v. Office of Open Records, *supra*.

WHEREFORE, petitioner prays the Court to exercise its full authority of *de novo* review and after a hearing, reverse the Final Determination of the Pennsylvania Office of Open Records and deny release of autopsy and toxicology reports under the Coroner's Act and the RTKL.

GROUND FOR REVIEW

The Final Determination of the OOR Appeals Officer granted the Respondent's RTKL Appeal and directed the Coroner's Office "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". This Final Determination noted in the attached footnote 6 that "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". It is asserted that this Final Determination should be reversed for the following reasons:

- a) The Final Determination fails to understand the Coroner's Act and its procedures for the release of information as identified by the First Assistant Coroner in her affidavit specifying that under Section 1236-B of the Act, the Coroner has deposited the

“verification of death form” with the Prothonotary (a form that is not the same as a complete autopsy report or toxicology report as sought) and that other records of the Coroner are subject to discretionary determinations of the Coroner and release of information pursuant to Section 1252- B of the Act.

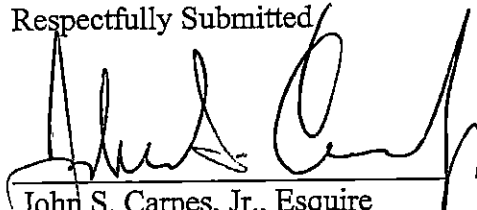
- b) The Final Determination is erroneous and turns the RTKL on its head as the RTKL specifically exclude an “autopsy” and yet this exclusion under the RTKL is removed due to a contorted interpretation of the Coroner’s Act and misapplication of cases involving injunctive relief where court intervention is readily available to protect against the improper release of confidential information – protections not available under the RTKL.
- c) The Final Determination fails to take into consideration changes by the state legislature made to Coroner’s Act which give the Coroner discretion over the release of records for fees and limits the circumstances of such release of information – changes to the Coroner’s Act enacted after various court decisions interpreting the Coroner’s Act as referenced in the Final Determination and which renders such reliance inapposite.
- d) The Final Determination improperly suggest in a footnote that the RTKL can force the Prothonotary to provide records under the authority of the RTKL when in fact as a judicial agency the Prothonotary is exempt from the RTKL. See, Edison Frazier v. Philadelphia County Office of the Prothonotary, 58 A.3d 858 (Pa. Cmwlth. 2012)
- e) The Final Determination disregards the fact that the Coroner employs a medical examiner to conduct autopsies and the medical examiner as a doctor in the Commonwealth of Pennsylvania is bound by HIPAA, and this obligation binds the Coroner as the employer for whom the medical examiner works.

- f) The Final Determination disregards the fact that a toxicology report is also exempt from disclosure as it contains personal medical records protected by statute.
- g) The Final Determination disregards the fact that the Coroner has authority and discretion to protect the privacy rights of the decedents falling within her jurisdiction and to act on behalf of the families of said decedents in keeping private and confidential such records.
- h) The Final Determination disregards the fact that the Coroner assists the District Attorney and becomes involved in both criminal investigations and civil investigations which contain information that is protected under the RTKL.
- i) The Final Determination is not based upon controlling legal decisions, is contrary to the law and constitutes an abuse of discretion and is a determination in disregard of the protected statutory and constitutional rights of the decedent and decedent's family.

For these reasons and any other reasons that may become apparent at the filing of the Record before the OOR and the creation off a record on appeal, it is asserted that the OOR Appeals Officer erred in granting the Respondent's appeal and requiring the release of protected private information outside of the information supplied in the "verification of death form" and that such Final Determination should be reversed.

Date: 10/28/22

Respectfully Submitted



John S. Carnes, Jr., Esquire
Attorney for Petitioner/Appellant

Sophia Garcia-Jackson, Coroner of Chester County

IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA

CHESTER COUNTY OFFICE OF THE
CORONER

Petitioner

v.

TERENCE KEEL AND THE UNIVERSITY
OF CALIFORNIA-LOS ANGELES,
INSTITUTE FOR SOCIETY AND
GENETICS, BIOSTUDIES LAB,

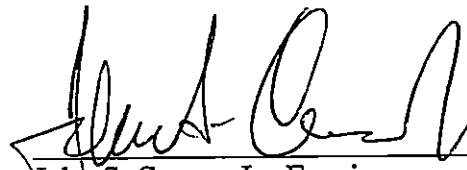
Respondent

VERIFICATION

I, John S. Carnes, Jr., Esquire, Solicitor for the Chester County Coroner verify that the facts set forth in the within Petition are true and correct to the best of my knowledge, information and belief. I understand that false statements made therein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date

10/28/22



John S. Carnes, Jr., Esquire
Solicitor, Chester County Coroner

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Law Offices of John S. Carnes, Jr.
Signature: [Handwritten Signature]
Name: John S. Carnes, Jr.
Attorney No. if applicable: #42330



DEPT BIOSTUDIESLAB <biostudieslab@g.ucla.edu>

Request for Autopsy and Toxicology Records

1 message

DEPT BIOSTUDIESLAB <biostudieslab@ucla.edu>
To: chester@pacoroners.org

Mon, Jun 27, 2022 at 2:35 PM

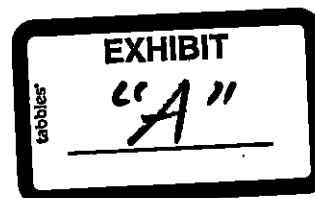
Dear Sophia Garcia-Jackson,

I am writing on behalf of Dr. Terence Keel, Associate Professor at the Institute for Society and Genetics, University of California - Los Angeles. Please find attached a letter containing our request for autopsy and toxicology records under the Pennsylvania Right-To-Know Law (65 P.S.) and Coroners Act (16 P.S.). The letter contains a lengthy list of decedent names and dates of death; please also find attached a spreadsheet containing this same information, for your convenience.

Please direct your response to this request to this email address. We are aware that your office may have limited resources for responding to requests such as this. If this is the case, I hope we can discuss possible strategies for fulfilling the request, and together agree upon a timeline for completion.

On behalf of Dr. Keel, I thank you in advance for your attention and accommodation in this matter.

Best regards,
UCLA Biostudies Lab

2 attachments **Chester_RecordsRequest.docx.pdf**
147K **Chester_RecordsRequest.xlsx**
6K



UCLA Lab for Biostudies
Box 957221, 3360 Life Sciences Building
Los Angeles, California 90095-7221
T: 310-267-4454
F: 310-206-1880
www.socgen.ucla.edu

Terence D. Keel
Associate Professor
Director, UCLA Lab for Biostudies
Institute for Society and Genetics

Sophia Garcia-Jackson
Chester County Coroner
Sent by email to chester@pacoroners.org.

Re: Request for Autopsy and Toxicology Records

Sophia Garcia-Jackson:

I write to request autopsy and toxicology records under the Pennsylvania Right-To-Know Law and Coroners Act.

The Office of the Coroner is a public agency subject to the Pennsylvania Right-To-Know Law. Records are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. 65 P.S. § 67.305. While Section 708(b)(20) exempts autopsy reports from disclosure under the RTKL, these records are available pursuant to the Coroners Act. 16 P.S. §§ 1201-B–1252-B. Pennsylvania Right-To-Know Law states “If the provisions of this act regarding access to records conflict with any other Federal or State law, the provision of this act shall not apply.” 65 P.S. § 67.3101.1.

The Pennsylvania Coroners Act requires the disclosure of records produced by the coroner, including autopsy and toxicology reports. 16 P.S. §§ 1236-B, 1252-B. The Coroners Act provides two methods through which requesters may obtain such records. Firstly, “in counties of the third, fourth, fifth, sixth, seventh and eighth classes, every coroner, within 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. Secondly, a requester may obtain such records directly from the Coroner. 16 P.S. § 1252-B.

The Supreme Court has affirmed in *Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632, 637 (2009) the right of a requester to obtain autopsy reports and other records directly from the Office of the Coroner. Subsequently, the Supreme Court further held in *Hearst Television, Inc. v. Norris*, 54 A.3d 23, 33 (2012) that 16 P.S. 1252-B “does not afford the coroner any discretion with regard to releasing such records.”

The availability of these records under the Coroners Act has been affirmed at least thrice in the previous four years by the Pennsylvania Office of Open Records (OOR): first in its Final Determination *In the Matter of Barbara Miller and PennLive vs. Lancaster County*, AP 2018-0187 (March

2018); again in its Final Determination *In the Matter of Brittany Hailer and the Pittsburgh Current vs. Allegheny County Medical Examiner*, AP 2021-0117 (March 2021); and again in its Final Determination *In the Matter of Richard Cowen vs. Centre County Office of the Coroner*, AP 2022-0559 (April 2022).


Based upon these laws and precedents, I request the complete autopsy and toxicology reports for all decedents listed below:

- Melvin James Anderson, *date of death* 12/6/2021
- Kenneth John Petitt, *date of death* 10/6/2021
- Dimitrios Moscharis, *date of death* 6/18/2021
- John Patrick Deamics, *date of death* 4/24/2021
- Charles Raymond Troupe, *date of death* 5/9/2020
- Michael McCarraher, *date of death* 9/18/2017
- Kevin Johnson, *date of death* 12/26/2016
- Corey Lang, *date of death* 5/12/2016
- Michael Ferko, *date of death* 1/1/2016
- Jason Walling, *date of death* 12/22/2015
- Samuel Downs, *date of death* 6/18/2014
- Raemone Carter, *date of death* 3/16/2012
- Terry Saunders, *date of death* 9/14/2009
- Roderick Lloyd, *date of death* 9/17/2008
- Rebecca Haslip, *date of death* 8/4/2008
- Theodore Burley, *date of death* 6/3/2008
- Linda Vaughn, *date of death* 4/18/2008

I prefer these files in electronic format but will also accept paper copies if digital files are not feasible. I swear under penalty of perjury that no data obtained through this request shall be used for commercial purposes. Because all requested data are to be used exclusively for research and educational purposes, I also request that all relevant fees be waived.

Please send your response to this request to: biostudieslab@ucla.edu.

I appreciate your help and cooperation.



Dr. Terence Keel
Associate Professor, UCLA
Director, UCLA Lab for Biostudies
Institute for Society and Genetics
3323A Life Sciences Building
Box 95722

Los Angeles, CA 90095
Office: 310-267-4454

Last Name	First Name	Date of Death
Anderson	Melvin James	12/6/2021
Petitt	Kenneth John	10/6/21
Moscharis	Dimitrios	6/18/2021
Deamicks	John Patrick	4/24/21
Troupe	Charles Raymo	5/9/2020
McCarraher	Michael	09/18/2017
Johnson	Kevin	12/26/2016
Lang	Corey	05/12/2016
Ferko	Michael	01/01/2016
Walling	Jason	12/22/2015
Downs	Samuel	06/18/2014
Carter	Raemone	03/16/2012
Saunders	Terry	09/14/2009
Lloyd	Roderick	09/17/2008
Haslip	Rebecca	08/04/2008
Burley	Theodore	06/03/2008
Vaughn	Linda	04/18/2008



DEPT BIOSTUDIESLAB <biostudieslab@g.ucla.edu>

RE: Request for Autopsy and Toxicology Records

2 messages

Coroner's Office <coronerooffice@chesco.org>
To: DEPT BIOSTUDIESLAB <biostudieslab@ucla.edu>

Fri, Jul 1, 2022 at 2:18 PM

Please see the attached extension for this Right to Know request.

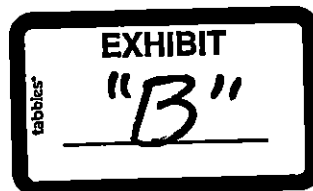
Sophia Garcia-Jackson, M.S., D-ABMDI

Coroner

Chester County Coroner's Office
601 Westtown Road, Suite 090
West Chester, PA 19382

Main Office: 610-344-6165

Office Fax: 610-344-6018



From: DEPT BIOSTUDIESLAB <biostudieslab@ucla.edu>
Sent: Monday, June 27, 2022 2:35 PM
To: chester@pacoroners.org
Subject: [EXTERNAL] - Request for Autopsy and Toxicology Records

EXTERNAL: Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Sophia Garcia-Jackson,

I am writing on behalf of Dr. Terence Keel, Associate Professor at the Institute for Society and Genetics, University of California - Los Angeles. Please find attached a letter containing our request for autopsy and toxicology records under the Pennsylvania Right-To-Know Law (65 P.S.) and Coroners Act (16 P.S.). The letter contains a lengthy list of decedent names and dates of death; please also find attached a spreadsheet containing this same information, for your convenience.

Please direct your response to this request to this email address. We are aware that your office may have limited resources for responding to requests such as this. If this is the case, I hope we can discuss possible strategies for fulfilling the request, and together agree upon a timeline for completion.

On behalf of Dr. Keel, I thank you in advance for your attention and accommodation in this matter.

Best regards,

UCLA Biostudies Lab

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 RTK Extension Dr. Terence Keel_07.01.2022.pdf
191K

DEPT BIOSTUDIESLAB <biostudieslab@ucla.edu>
To: Coroner's Office <coronerooffice@chesco.org>

Fri, Jul 1, 2022 at 4:59 PM

Dear Sophia Garcia-Jackson,

Thank you for your letter informing Dr. Keel that Chester County will require 30 days to reach a determination in this matter. We await your decision on or before August 5, as per your letter. Please do not hesitate to reach out if we can provide any further clarity about this request or our argument in support of it.

Best regards,
UCLA BioStudies Lab
[Quoted text hidden]



**OFFICE OF THE CORONER
COUNTY OF CHESTER**

Coroner: Sophia Garcia-Jackson, M.S., D-ABMDI

"Committed Service and
Responsiveness"

601 Westtown Road, Suite 090
West Chester, PA 19382

Phone: 610- 344-6165
Fax: 610- 344-6018

Right-To-Know Law Extension Notice

Via email only to: biostudieslab@ucla.edu

Date July 1, 2022

Dr. Terence Keel
Associate Professor, UCLA
Director, UCLA Lab for Biostudies
Institute for Society and Genetics
3323A Life Sciences Building
Box 97522
Los Angeles CA 90095

Dear Dr. Teel:

Thank you for writing to Sophia Garcia-Jackson Chester County Coroner via email on June 27, 2022 with your request for records pursuant to Pennsylvania's Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.* More specifically, you requested "autopsy and toxicology records" stating, after an exposition on legal matters as follows:

"Based upon these laws and precedents, I request the complete autopsy and toxicology reports for all decedents listed below:

- Melvin James Anderson, date of death 12/6/2021
- Kenneth John Petitt, date of death 10/6/21
- Dimitrios Moscharis, date of death 6/18/2021
- John Patrick Deamics, date of death 4/24/2021
- Charles Raymond Troupe, date of death 5/9/2020
- Michael McCarraher, date of death 9/18/2017
- Kevin Johnson, date of death 12/26/2016
- Corey Lange, date of death 5/12/2016
- Michael Ferko, date of death 1/1/2016
- Jason Walling, date of death 12/22/2015
- Samuel Downs, date of death 6/18/2014
- Raemone Carter, date of death 3/16/2012
- Terry Saunders, date of death 9/14/2009

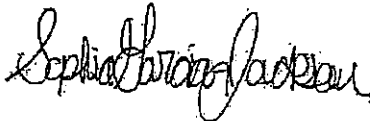
- Roderick Lloyd, date of death 9/17/2008
- Rebecca Haslip, date of death 8/4/2008
- Theodore Burley, date of death 6/3/2008
- Linda Vaughn, date of death 4/18/2008

Under the RTK law, a written response to your request is due on or before July 6, 2022 (five (5) business days after the request). Pursuant to Section 902(a) of the RTKL, an additional 30 days are required after the expiration of the five (5) business days, i.e., until August 5, 2022 to respond because one or more of the following apply:

- ☐ The request requires redaction in accordance with Section 706 of the RTKL.
- ☐ The request requires the retrieval of a record stored in a remote location.
- ☒ A timely response cannot be accomplished due to bona fide staffing limitations.
- ☐ A legal review is needed to determine whether the record is subject to access.
- ☐ The requester has not complied with the Agency's policies regarding access to records.
- ☐ The requester refuses to pay applicable fees authorized by the RTKL.
- ☒ The extent or nature of the request precludes a response within the required time period.

The Chester County Coroner's Office expects to respond to your request on or before August 5, 2022. Pursuant to Section 901 of the RTKL, all applicable fees shall be paid prior in order to receive access to any responsive records if the estimated fees are expected to exceed \$100.00. The County has not yet determined if any fees will apply or exceed \$100.00, but, if so, will provide a good-faith estimate of duplication fees as soon as possible.

Respectfully,



Sophia Garcia-Jackson, Coroner
 601 Westtown Road, Suite 090
 West Chester, PA 19382
 610-344-6165
coronerooffice@chesco.org



**OFFICE OF THE CORONER
COUNTY OF CHESTER**

Coroner: Sophia Garcia-Jackson, M.S., D-ABMDI

"Committed Service and
Responsiveness"

601 Westtown Road, Suite 090
West Chester, PA 19382

Phone: 610- 344-6165
Fax: 610- 344-6018

August 2, 2022
Via E-Mail Only
biostudieslab@ucla.edu

Dr. Terence Keel
Associate Professor, UCLA
Director, UCLA Lab for Biostudies
Institute for Society and Genetics
3323A Life Sciences Building
Box 97522
Los Angeles CA 90095

Dear Dr. Teel:

On June 27, 2022, the County and this Office received your request for information pursuant to the Pennsylvania Right to Know Law, 65 P.S. §§67.101 et seq. (hereinafter "RTKL"). You submitted the following request for "autopsy and toxicology records" stating, after an exposition on legal matters as follows:

"Based upon these laws and precedents, I request the complete autopsy and toxicology reports for all decedents listed below:

- Melvin James Anderson, date of death 12/6/2021
- Kenneth John Pettit, date of death 10/6/21
- Dimitrios Moscharis, date of death 6/18/2021
- John Patrick Deamics, date of death 4/24/2021
- Charles Raymond Troupe, date of death 5/9/2020
- Michael McCarraher, date of death 9/18/2017
- Kevin Johnson, date of death 12/26/2016
- Corey Lange, date of death 5/12/2016
- Michael Ferko, date of death 1/1/2016
- Jason Walling, date of death 12/22/2015
- Samuel Downs, date of death 6/18/2014
- Raemone Carter, date of death 3/16/2012
- Terry Saunders, date of death 9/14/2009



- Roderick Lloyd, date of death 9/17/2008
- Rebecca Haslip, date of death 8/4/2008
- Theodore Burley, date of death 6/3/2008
- Linda Vaughn, date of death 4/18/2008

Pursuant to Section 902(a) of the RTKL, the County by letter dated, July 1, 2022, identified that it would require an additional thirty (30) days to respond due to bona fide staffing limitations and because the extent or nature of the request precluded a response within the required time period - with a response expected on or before August 5, 2022. This extension accords with the requirements of the RTKL § 67.902 which permits a 30-day extension from the five (5) business day period.

Please be advised that your request for information as set forth above is clearly excluded under the pertinent terms of the RTKL as referenced previously for a variety of reasons as listed below based upon the pertinent authority as stated:

- §705 establishes that an agency has no duty to create a record.
- § 708 (b)(5) exempts from disclosure medical records. The autopsy and toxicology records constitute records protected under the "Privacy Rule" and do not fall within an exception under 45 CFR §164.512 or applicable state law and constitute protected health information absent appropriate written authorization by an individual representing the deceased.
- § 708 (b)(20) specifically exempts "an autopsy record of a coroner or medical examiner" other than the "name of the individual and the cause and manner of death". This latter information - although not requested - is publicly disclosed by the Coroner's Office on an annual basis and filed of record with Chester County Prothonotary's Office or can be obtained by "next of kin" by specific request.
- § 708 (b) (16)(i) (ii)(iii) and (vi) exempt records of an agency relating to or resulting in a criminal investigation - (potential criminal conduct) (investigative materials)(identity of source or suspect)(disclosed records that should not be disclosed which could (A) reveal information regarding a criminal investigation (B) deprive a person of a fair trial ; (C) impair the ability to locate a defendant or (D) hinder an arrest prosecution or conviction.
- Section 708 (b)(17) exempts "a record of an agency relating to a noncriminal investigation" including the following subcategories.
 - Section 708 (b)(17)(ii) "investigative materials, notes, correspondence and reports"
 - Section 708 (b)(17) (iii) "a record that includes a confidential source"
 - Section 708 (b)(17)(iv) "a record made confidential by law". Pennsylvania State Law in the context of managed care plans, including HMOs and utilization review entities must protect against the release of individually identifiable information. Such information also constitutes

privileged communications by statutory and common law and the release of substance abuse information (toxicology) is specifically prohibited with respect to deceased patients without consent by a personal representative. See, 82 FR 6115, Jan. 18, 2017, as amended at 83 FR 251, Jan. 3, 2018

- Section 708 (b)(17)(vi) (A) prohibiting the release of the “progress or result of an agency investigation”; B) “deprive a person of an impartial adjudication”; or, (C) “constitute and unwarranted invasion of privacy”

Further, to the extent that this request would involve an investigation by the Chester County District Attorney’s Office or other law enforcement agency or agencies said parties would have a third-party right to protect information from such agency’s records pursuant to the authority of Section 707 of the RTKL.

You have the right to appeal this decision. You may file an appeal with the Office of Open Records within 15 business days of the mailing date of this agency’s response or within 15 business days of a deemed denial. The appeal shall state the grounds upon which the requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request.

Please contact me should you have any further questions pertaining to the enclosed documentation.

Sincerely,

A handwritten signature in black ink, appearing to read "Sophia Garcia-Jackson". The signature is fluid and cursive, with the first name "Sophia" being more prominent.

Sophia Garcia-Jackson, M.S., D-ABMDI
Coroner and Right to Know Officer
601 Westtown Road, Suite 090
West Chester, PA 19382
610-344-6165
rtkcoroner@chesco.org



pennsylvania
OFFICE OF OPEN RECORDS

August 3, 2022

Via Email Only:

Mr. Terence Keel
University of California-Los Angeles, Institute for
Society and Genetics, Biostudies Lab
621 Charles E. Young Dr., South
Box 957221, 3360 LSB
Los Angeles, CA 90095-7221
biostudieslab@ucla.edu

Via Email Only:

Sophia Garcia-Jackson
Agency Open Records Officer
Chester County Coroner
601 Westtown Road
Suite 090
West Chester, PA 19382
coronerooffice@chesco.org
rtkcoroner@chesco.org

RE: OFFICIAL NOTICE OF APPEAL - Keel and University of California-Los Angeles, Institute for Society and Genetics, Biostudies Lab v. Chester County Coroner OOR Dkt. AP 2022-1801

Dear Parties:

Review this information and all enclosures carefully as they affect your legal rights.

The Office of Open Records ("OOR") received this appeal under the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101, et seq. on August 2, 2022. A binding Final Determination ("FD") will be issued pursuant to the timeline required by the RTKL, **please see the attached information for more information about deadlines.**

Notes for both parties (more information in the enclosed documents):

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal.

Sincerely,

Elizabeth Wagenseller
Executive Director

Enc.: Description of RTKL appeal process
Assigned Appeals Officer contact information
Entire appeal as filed with OOR



From: no-reply@openrecordspennsylvania.com
To: biostudieslab@ucla.edu
Subject: [External] PA Office of Open Records - Appeal Confirmation
Date: Tuesday, August 2, 2022 5:09:31 PM
Attachments: [oor logo_email.png](#)

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).



You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Terence Keel
Company:	University of California-Los Angeles, Institute for Society and Genetics, Biostudies Lab
Address 1:	621 Charles E. Young Dr., South
Address 2:	Box 957221, 3360 LSB
City:	Los Angeles
State:	California
Zip:	90095-7221
Phone:	
Email:	biostudieslab@ucla.edu
Email2:	
Agency (typed):	Chester County Office of the Coroner
Agency Address 1:	601 Westtown Rd
Agency Address 2:	Suite 090
Agency City:	West Chester
Agency State:	Pennsylvania

Agency Zip:	19382
Agency Phone:	610-344-6165
Agency Email:	coronerooffice@chesco.org
Records at Issue in this Appeal:	complete autopsy and toxicology reports related to 17 specific decedents. The names and dates-of-deaths corresponding to each of these decedents is included in the attached correspondence with the York County Coroners Office.
Request Submitted to Agency Via:	e-mail
Request Date:	06/27/2022
Response Date:	08/02/2022
Deemed Denied:	No
Agency Open Records Officer:	Sophia Garcia-Jackson, Coroner/Right to Know Officer
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	Yes
Agree to permit the OOR additional time to issue a final determination:	30 Days
Interested in resolving this issue through OOR mediation:	No
Attachments:	<ul style="list-style-type: none">• ChesterCo_denial_email.pdf• RTK Denial Dr. Terence Keel_08.02.2022.pdf

- ChesterCo_email_extension.pdf
- RTK Extension Dr. Terence Keel_07.01.2022.pdf
- ChesterCo_email_request.pdf
- Chester_RecordsRequest.docx (1).pdf
- Chester_RecordsRequest (1).xlsx

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

101 West Main St.
Parkesburg, Pa 19365

ph: (610) 857-5500
fax: (610) 857-5501

jcarnes@jcatty.com

NOTICE OF CONFIDENTIALITY AND PRIVILEGED INFORMATION

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From: John Carnes
Sent: Friday, August 5, 2022 12:21 PM
To: jhartranft@pa.cov
Cc: Garcia-Jackson, Sophia C. <sgarciajackson@chesco.org>; biostudieslab@ucla.edu
Subject: re Keel and University of California-Los Angeles, Institute for Society and Genetics, Biostudies Lab v. Chester County Coroner OOR Dkt. AP 2022-1801

Dear Mr. Hartranft:

I am writing to you to request additional time in which to respond to this appeal. I am asking that the submission deadline of August 12, 2022 be extended by two (2) weeks to August 26, 2022.

I am making this request because I am going on vacation this next week and will be unavailable to provide meaningful assistance in preparing a response. Additionally, as this request appears to seek records regarding prison inmate deaths at the Chester County Prison third party involvement appears appropriate and notice has been supplied to 3rd parties which may be participating.

In making this request I note that the requester has agreed to permit the OOR additional time (30 days) to issue a final determination. Thus, this requested extension of the submission deadline will not affect the final determination date - currently scheduled to be on or before October 3, 2022.

Respectfully submitted:

John Carnes

John S. Carnes, Jr., Esquire
Solicitor for Chester County Coroner

Law Offices of John S. Carnes, Jr.
101 West Main St.
Parkesburg, Pa 19365



John Carnes

From: Hartranft, Lyle <lhartranft@pa.gov>
Sent: Friday, August 5, 2022 12:28 PM
To: John Carnes
Cc: Garcia-Jackson, Sophia C.; biostudieslab@ucla.edu
Subject: RE: [External] RE: re Keel and University of California-Los Angeles, Institute for Society and Genetics, Biostudies Lab v. Chester County Coroner OOR Dkt. AP 2022-1801

Dear Parties:

Extension granted. Either party may submissions on or before August 26, 2022.

Thank-you for your attention in this matter.

Lyle Hartranft, Esq.
Appeals Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
lhartranft@pa.gov
<http://openrecords.pa.gov> | @OpenRecordsPA

From: John Carnes <jcarnes@jcatty.com>
Sent: Friday, August 5, 2022 12:25 PM
To: Hartranft, Lyle <lhartranft@pa.gov>
Cc: Garcia-Jackson, Sophia C. <sgarciajackson@chesco.org>; biostudieslab@ucla.edu
Subject: [External] RE: re Keel and University of California-Los Angeles, Institute for Society and Genetics, Biostudies Lab v. Chester County Coroner OOR Dkt. AP 2022-1801

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Dear Mr. Hartranft:

I am re-sending this because it bounced back due to a mistake in typing your email address. Here is the communication that I had just sent.

Sincerely yours,

John Carnes

John S. Carnes, Jr., Esquire

Law Offices of John S. Carnes, Jr.

ph: (610) 857-5500
fax: (610) 857-5501

jcarnes@jcatty.com

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Keel and University of California -Los Angeles,
Institute for Society and Genetics, Biostudies Lab

v.

Chester County Coroner

OOR Dckt. AP 2022-1801

MEMORANDUM IN SUPPORT OF DENIAL OF RIGHT TO KNOW REQUEST

I. Background and procedural history:

On June 27, 2022, the County and this Office received a request for information from Terence Keel and the University of California – Los Angeles, Institute for Society and Genetics, Biostudies Lab (hereinafter “Appellant”) pursuant to the Pennsylvania Right to Know Law, 65 P.S. §§67.101 et seq. (hereinafter “RTKL”) requesting:

“the complete autopsy and toxicology reports for all decedents listed below:

- Melvin James Anderson, date of death 12/6/2021
- Kenneth John Petitt, date of death 10/6/21
- Dimitrios Moscharis, date of death 6/18/2021
- John Patrick Deamics, date of death 4/24/2021
- Charles Raymond Troupe, date of death 5/9/2020
- Michael McCarraher, date of death 9/18/2017
- Kevin Johnson, date of death 12/26/2016
- Corey Lange, date of death 5/12/2016
- Michael Ferko, date of death 1/1/2016
- Jason Walling, date of death 12/22/2015
- Samuel Downs, date of death 6/18/2014
- Raemone Carter, date of death 3/16/2012
- Terry Saunders, date of death 9/14/2009
- Roderick Lloyd, date of death 9/17/2008
- Rebecca Haslip, date of death 8/4/2008
- Theodore Burley, date of death 6/3/2008
- Linda Vaughn, date of death 4/18/2008”

On July 1, 2022, County Coroner, Sophia Garcia-Jackson, identified that the Coroner would require an additional thirty (30) days to respond due to bona fide staffing limitations

and because the extent or nature of the request precluded a response within the required time period - with a response expected on or before August 5, 2022. Then on August 2, 2022, the County Coroner issued a detailed denial of the request.

The Appellant filed an immediate appeal on August 3, 2022, with briefing thereon due on or by August 12, 2022. The Coroner's Office through its attorney sought additional time for briefing and this was granted by the Hearing Officer, extending the deadline until August 26, 2022. This Memorandum of Law is filed in compliance with that briefing schedule and is supported by an Affidavit of the First Deputy Coroner which is attached hereto.

II. Question presented:

Question: *Whether unrelated third parties without the use of a subpoena are entitled to the highly confidential and privileged information contained in Autopsy Reports and Toxicology Reports held by the Coroner when same appear to be specifically exempted from disclosure under the Right to Know Law and the release of such information is prohibited by statutory law?*

Suggested answer: *No.*

III. Discussion:

As noted in the Affidavit of First Deputy Coroner, Jesse Poole-Gulick, the Autopsy Reports for the County Coroner are prepared by a forensic pathologist (a medical doctor) under contract with the County and subject to HIPAA. These reports contain protected health information and constitute detailed private records which are highly sensitive and private. These same characterizations also apply to the Toxicology Reports except that they are prepared by a laboratory. See, Affidavit attached hereto and incorporated herein by reference.

First Deputy Coroner Jesse Poole-Gulick also notes that the Right to Know Law at Section 708 (b)(20) explicitly excludes the release of “an autopsy record of a coroner or medical examiner” . In her affidavit she identifies the procedures under the Coroner’s Act, 16 P.S. § 1201-B et seq., which apply. Thus, under the Coroner’s Act, the Coroner provides a “verification of death form” setting forth the “cause and manner of death” which is filed with the Prothonotary on an annual basis in compliance with the Coroner’s Act. A copy of this “verification of death form” is also retained by the Coroner. See, 16 P.S. § 1236-B

In addition to this annually filed report, the Coroner 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 her discretion. See, Affidavit at ¶’s 8-16; See, also, 16 P.S. § 1217-B “Requests for Examinations and Reports” and Coroner’s Act, generally.

Common sense and the many applicable exceptions under the Right to Know Law all come together to protect the records of the Coroner. The Right to Know Law recognizes that investigative materials (criminal and non-criminal) are not subject to the Right to Know Law as are medical records and information under HIPAA. This, of course, makes sense given the very private and confidential medical records involved. See, §§ 708 (b)(16) and (17) (criminal and civil investigations identified in denial) and § 708 (b)(5) (“privacy rule” also identified in denial). Thus, the denial at issue does not rely solely upon § 708 (b)(20) of the Right to Know Law.

It is believed that a decision of the Pennsylvania Supreme Court, Penn Jersey Advance, Inc. v. Grim, 962 A.2d 632 (Pa. 2009), issued at the same time that the Right to Know Law was enacted, has been misinterpreted (under different fact circumstances), as allegedly providing

authority to remove the exemption under Section 708(b)(20) of the Right to Know Law from any applicability in the context of the Coroner's Act. However, it is asserted that any reliance upon this authority is misplaced as this case is inapposite. Further, a careful and thorough reading of the Coroner's Act and its current statutory language establishes that discretion is granted to the Coroner to protect the privacy rights clearly identified as exceptions under the Right to Know Law and as protected under state law.

As previously noted, and in accordance with the Coroner's Act, the County Coroner has been supplying a "verification of death form" annually to the Prothonotary in compliance with 16 P.S. 1236-B. See, Affidavit of First Deputy Coroner attached. This verification of death form has been supplied based upon the Coroner's exercise of her discretion and interpretation of the Coroner's Act. This information is also maintained at the Coroner's Office. See, Affidavit of First Deputy Coroner.

This information is not co-extensive with the requested "Autopsy Reports" and "Toxicology Reports". These latter reports constitute information that the Coroner has deemed inappropriate to release without violating privacy concerns or HIPAA and in accordance with the Coroner's interpretation of the Coroner's Act and the Coroner's duty to determine the "cause and manner of death". It is asserted that this exercise of discretion and interpretation of the controlling legislation is not subject to challenge.

The case, Penn Jersey Advance, Inc. v. Grim, 962 A.2d 632 (Pa. 2009), as referenced previously, is not controlling with respect to the case at bar. In Penn Jersey, *supra*, the Pennsylvania Supreme Court held that a "coroner's autopsy report" was an "official" record within the meaning of Section 1251 of the Coroner's Act. This ruling came in the context of a

mandamus action. It did not address the Right to Know Law and was a very different case from this case before the OOR.

The Supreme Court in Penn Jersey, reversed the Commonwealth Court, noting, without diminishing the Commonwealth Court's concerns, that the release of an autopsy report would permit access to "potentially privileged information, related to the decedent's medical history and graphic photographs taken during the autopsy". Id. at 635 (citing the Commonwealth Court's prior decision in Penn Jersey Advance, Inc. v. Grim, 910 A.2d 120, 123 (Pa. Cmwlth. 2006) and the Commonwealth Court's decision in Johnstown Tribune Publishing Company v. Ross, 871 A.2d 324 (Pa. Cmwlth. 2005)). To allay the fears identified by the Commonwealth Court, the Supreme Court stated in footnote #2 (placed to correspond with the Supreme Court's statement that it had reversed the Commonwealth Court) as follows:

"We note that section 708(b)(20) of the recently-effective Act 3 of 2008, the "Right-to-Know Law" provides an exception from public access for certain records relating to autopsies. See 65 P.S. § 67.708(b)(20). The Right-to-Know-Law further provides that [i]f the provisions of the act regarding access to records conflict with any other Federal or State law, the provisions of this act shall not apply." See, 65 P.S. § 67.3101.1. The Right-to-Know Law became effective on January 1, 2009, see, 65 P.S. § 67.3104(3), and thus has no application to the events underlying this case. **Accordingly, we express not opinion at this time on the relationship between the Coroner's Act and the Right-to-Know Law."**

Id. (emphasis supplied).

Thus, based upon this footnote, PennJersey, is only applicable to the construction of the Coroner's Act as it existed in 2008-2009 and a determination that in a mandamus action - as was being pursued at that time in Lehigh County - the Coroner could be compelled to file an autopsy report with the Prothonotary as an "official record". This holding was further based upon the Supreme Court's interpreting Section 1251-B (now Section 1236-B) (relating to the "official

records and papers” to be filed annually with the Prothonotary) and reconciling this provision with Section 1236.1(c) (now Section 1252-B)(which allowed the Coroner to charge and collect a fee for an autopsy report).

The Supreme Court in reconciling these two provisions, rejected the interpretation of the Commonwealth Court. The Commonwealth Court had found that the records that were filed with the Prothonotary and were “free of charge” were “official records” under Section 1251-B. Thus, these records were distinguished from those available and subject to a charge under Section 1236.1(c) (which would include autopsy reports). In rejecting this position, the Pennsylvania Supreme Court treated Section 1236.1(c) as providing a “rapid means of procuring an autopsy report for those who did not wish to wait until after the end of the year, and who are also willing to pay the charges associated with procuring it¹.” *Id.* at 637.

As noted at the outset, it is a mistake to read PennJersey, as controlling with respect to the case at bar for several reasons. First, the Supreme Court in PennJersey, as noted in footnote #2 specifically stated that it did not express any opinion as to applicability to the Right to Know Law. In point of fact, it is not applicable to the Right to Know Law.

Second, the Supreme Court in PennJersey, recognized the concerns of the Commonwealth Court regarding the release of “potentially privileged information” but asserted that the courts utilizing “judicial discretion and necessity” would protect autopsy reports from

¹ Another reason why the ruling in PennJersey is inapplicable to the case at bar and in the Right to Know context is the fact that documents provided by the Coroner to the Prothonotary are not subject to a Right to Know Law Request. Although this information can be obtained at the Prothonotary’s Office pursuant to procedures of the Prothonotary, this information is not subject to a Right to Know Law request. See, Edison Frazier v. Philadelphia County Office of the Prothonotary, 58 A.3d 858 (Pa. Cmwlth. 2012) (request for autopsy report from Philadelphia County Office of the Prothonotary denied as Prothonotary is a judicial agency not subject to the OOR).

disclosure. Id. at .637 (citations omitted). However, such “judicial discretion and necessity” is not available in the Right to Know Law context as there is no practical procedure for notifying the next of kin and getting them involved.

Lastly, the Pennsylvania Supreme Court was interpreting a Coroner’s Act that has since been amended and the “fee for reports” provision now found at Section 1252-B is entirely different. It now identifies fees for an autopsy report or toxicology report “ ...and other fees as may be established from time to time for other reports or other documents 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.....” Id. This change in language renders the Supreme Court’s decision in PennJersey, unreliable authority and inapposite.

Judge Eakin’s concurrence with the majority’s reconciliation of sections 1251 and 1236.1(c) in PennJersey, is now without any support. As noted, the legislature has since changed the relevant language found at 1252-B. It now reads entirely differently and does not reach the same results or purposes recognized by Judge Eakin and the majority in its decision.

Further, Judge Eakins’ dissent now has even greater significance. In PennJersey, Judge Eakin disagreed that the family of a deceased should have the burden of running to court to try to avoid a routine disclosure of an autopsy report. Id. at 639. Judge Eakin was entirely correct. Moreover, in the Right to Know context, the family would have no such ability to seek judicial intervention.

As noted in the Affidavit attached, the Coroner protects the information outside of the “cause and manner of death” such as an “Autopsy Report” or “Toxicology Report” to avoid disclosure of privileged, HIPAA protected medical information and information that may be involved in a criminal or non-criminal investigation. The Coroner only makes the information

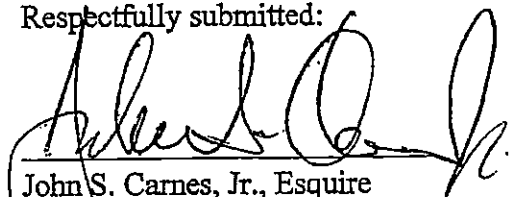
available to next of kin and in response to a valid subpoena or in the exercise of discretion when determined appropriate.

In circumstances such as are present in this case, there is no family member available that will have been notified and have any ability to go to the court to protect the autopsy and toxicology reports being sought. The information at issue in many instances dealt with deaths many years in the past and there would be no such ability to get families involved – even if the death were more recent. Because of this, Coroner has limited who gets this information and thus protects this sensitive, privileged information from disclosure in a request such as this. This exercise by the Coroner is absolutely necessary and should not be undermined.

IV. Conclusion:

Based upon the reasoning as set forth in the Denial and the argument as set forth herein it is respectfully requested that the OOR affirm the Decision of the Coroner of Chester County.

Respectfully submitted:



John S. Carnes, Jr., Esquire
Solicitor for the Coroner of Chester County
Law Offices of John S. Carnes, Jr.
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Parkesburg, PA 19365
(610) 857-5500
jcarnes@jcatty.com

Commonwealth of Pennsylvania :
: S/S
County of Chester :

**AFFIDAVIT OF FIRST DEPUTY CORONER JESSE POOLE-GULICK
REGARDING RIGHT TO KNOW REQUEST DATED JUNE 27, 2022 BY
TERENCE KEEL**

I, Jesse Poole-Gulick the First Deputy Coroner for the Chester County Coroner's Office, being duly deposed according to law state as follows:

1. I am the First Deputy Coroner for the Chester County Coroner's Office with offices located at 601 Westtown Road, Suite 090 West Chester, PA 19382.
2. I work with and assist the Coroner, Sophia Garcia-Jackson who has reviewed with me the policies of the Coroner's Office and the issues raised relative to the Right to Know Law Request at issue as identified hereafter.
3. On June 27, 2022, the County and this Office received a request for information pursuant to the Pennsylvania Right to Know Law, 65 P.S. §§67.101 et seq. (hereinafter "RTKL") from Mr. Terence Keel from the University of California-Los Angeles, Institute for Society and Genetics, Biostudies Lab which stated that the requester was seeking: "the complete autopsy and toxicology reports for all decedents listed below:
 - Melvin James Anderson, date of death 12/6/2021
 - Kenneth John Petitt, date of death 10/6/21
 - Dimitrios Moscharis, date of death 6/18/2021
 - John Patrick Deamics, date of death 4/24/2021
 - Charles Raymond Troupe, date of death 5/9/2020
 - Michael McCarraher, date of death 9/18/2017
 - Kevin Johnson, date of death 12/26/2016
 - Corey Lange, date of death 5/12/2016
 - Michael Ferko, date of death 1/1/2016
 - Jason Walling, date of death 12/22/2015
 - Samuel Downs, date of death 6/18/2014
 - Raemone Carter, date of death 3/16/2012
 - Terry Saunders, date of death 9/14/2009
 - Roderick Lloyd, date of death 9/17/2008
 - Rebecca Haslip, date of death 8/4/2008
 - Theodore Burley, date of death 6/3/2008
 - Linda Vaughn, date of death 4/18/2008"

4. The Coroner's Office obtained an extension of time in which to review the circumstances and subsequently denied the request by letter dated August 2, 2022 which has since been appealed.
5. The Coroner's Office has looked at the requests and after careful review is unable to identify three of the persons for whom information was requested. Those three persons are: 1) John Patrick Dearnics DOD 4/24/2021; 2) Corey Lange DOD 5/12/2016; and 3) Roderick Lloyd DOD 8/4/2008.
6. The remaining twelve (12) identified decedents did come under the jurisdiction of the Chester County Coroner and a verification of death form was prepared and is available at the Prothonotary's Office and at the Office of the Coroner.
7. The Coroner's Office, through its attorney, 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.
8. These requests exceed the information that the Coroner's Office makes available to the public or interested parties in accordance with the County Code, Coroner's Act as found at 16 P.S. § 1201-B et seq.
9. Under the Coroner's Act (applicable to the County of Chester a Third Class County), the Coroner within 30 days after the end of the year supplies to the Prothonotary a document previously known as a "view of form" and currently known as a "verification of death form" setting forth the cause and manner of death of all deaths addressed by the Coroner during the year preceding. This information is available at the Office of the Prothonotary of Chester County where it can be reviewed and copied.
10. The Coroner's records including autopsy reports and toxicology reports which are detailed private records of the decedent and highly sensitive and private information.
11. The Coroner's Office does release information to the next of kin and will supply information in response to a lawfully issued subpoena in a legal case in circumstances where it has determined that the interests of the decedent are being represented and there is no basis to file a motion to quash the subpoena.
12. The Coroner's Office often works with law enforcement and with agency investigators in determining the cause and manner of death and such criminal and non-criminal investigations are exempt from disclosure for reasons recognized in the Right to Know Law.

13. The Right to Know Law at Section 708 (b)(20) explicitly excludes the release of "an autopsy record of a coroner or medical examiner" and the autopsy is done by a forensic pathologist (a medical doctor).
14. The medical examiners and toxicologists under contract with the County of Chester to provide services for the Coroner's Office are bound by HIPPA.
15. Autopsy and Toxicology records are protected under the "privacy rule" under HIPPA and do not fall within any exceptions thereto or applicable state law and constitute protected health information absent appropriate written authorization by an individual representing the deceased.
16. Autopsy and toxicology records are "records made confidential by law".
17. The recent amendment of 2018 to the Coroner's Act found in the County Code at § 1252-B "Fees for Reports" establishes procedures for obtaining fees for collecting reports. This amendment does not provide authority requiring the creation of reports as it does not expand duties of the Coroner to release information - other than the customary release of the annual "verification of death" under Section 1236-B and release of information to "next of kin" or in response to a lawful subpoena and as determined appropriate at the discretion of the Coroner. See, generally, 16 P.S. § 1217-B.
18. I depose and state that the facts set forth in the foregoing Affidavit are true and correct.
19. I understand that any false statements made herein are subject to the penalties under 42 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

8/24/2022
Date



Jesse Poole-Gulick, First Deputy Coroner



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Terence D. Keel
Associate Professor
Director, UCLA Lab for Biostudies
Institute for Society and Genetics

Lyle Hartranft,
Appeals Officer
Pennsylvania Office of Open Records
lhartranft@pa.gov
Sent via email only.

August 26, 2022

Re: Keel v. Chester County Office of the Coroner, AP 2022-1801

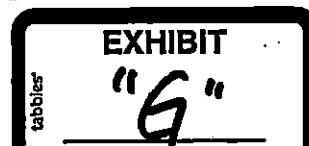
Dear Lyle Hartranft:

This letter is submitted by Dr. Terence Keel and the UCLA Biostudies Lab in support of Appeal No. 2022-1801.

Statement of Facts

On June 27, 2022, Dr. Keel, acting in his capacity as Associate Professor at UCLA's Institute for Society and Genetics and Primary Investigator of the Biostudies Lab, submitted a request to the Chester County Office of the Coroner for the "complete autopsy and toxicology reports" related to a number of decedents. Dr. Keel included names and dates-of-death for each of these decedents within the text of his request letter, as well as in an enclosed spreadsheet. These names and dates are: Melvin James Anderson, (12/6/2021); Kenneth John Pettit (10/6/21); Dimitrios Moscharis (6/18/2021); John Patrick Deamics (4/24/2021); Charles Raymond Troupe (5/9/2020); Michael McCarraher (9/18/2017); Kevin Johnson (12/26/2016); Corey Lange (5/12/2016); Michael Ferko, (1/1/2016); Jason Walling (12/22/2015); Samuel Downs (6/18/2014); Raemone Carter (3/16/2012); Terry Saunders (9/14/2009); Roderick Lloyd (9/17/2008); Rebecca Haslip (8/4/2008); Theodore Burley (6/3/2008); Linda Vaughn (4/18/2008).

On July 1, Chester County Coroner Sophia Garcia-Jackson responded to Dr. Keel's request via email requesting an extension of 30 days. On August 2, Coroner Garcia-Jackson again contacted Dr. Keel via email. In a letter attached to this email and incorrectly addressed to "Dr. Teel," Coroner Garcia-Jackson informed Dr. Keel of her decision to deny the request. Dr. Keel appealed this decision to the Pennsylvania Office of Open Records. On August 5, Chester County Solicitor John Carnes requested a two week extension to file supporting materials in this matter. Lyle Hartranft of the OOR granted this request. To Dr. Keel's knowledge, as of the time of this filing,



neither John Carnes nor Sofia Garcia-Jackson have submitted any materials in support of their decision to deny Dr. Keel's request.

Legal Argument in Support of Appeal

In her August 2 letter denying Dr. Keel's request, Chester County Coroner Sophia Garcia-Jackson references nine sections of the Pennsylvania Right-To-Know Law. She asserts that each of these sections exempts autopsy and toxicology reports from release. Coroner Garcia-Jackson's assertions directly contradict the precedent already established by the Pennsylvania Office of Open Records, which has repeatedly affirmed the availability of such reports to inquiring members of the public. The OOR has thrice in the previous four years ruled in favor of appellants requesting autopsy records: first *Barbara Miller and PennLive vs. Lancaster County*, 2018-0187; again in *Brittany Hailer and the Pittsburgh Current vs. Allegheny County Medical Examiner*, 2021-0117; and again in *Richard Cowen vs. Centre County Office of the Coroner*, 2022-0559.

The Pennsylvania Coroners Act clearly establishes the public character of several categories of documents produced by the coroner — autopsy reports, toxicology reports, inquisition or coroners reports, and cremation or disposition authorizations — by establishing a pathway through which members of the public may obtain those records directly from the coroner in exchange for fees (16 P.S. § 1252-B). This section further allows for the release of “other reports or documents 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,” but this provision cannot be interpreted as in any way restricting the release of the specific categories of documents enumerated earlier in the section. Those categories of documents, including autopsy and toxicology reports, are unambiguously established as available for public access, regardless as to the identity of the requestor or the purpose of the request.

Furthermore, the Coroners Act elsewhere mandates that “in counties of the third, fourth, fifth, sixth, seventh and eighth classes, every coroner, within 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). Chester County is a county of the third class. The records under discussion in this appeal were produced prior to the beginning of calendar year 2022, and so are presumed to have been deposited with the Prothonotary in accordance with the coroner's statutory obligation. These records therefore must be made available for inspection. See *Lancaster County v Carter Walker and LNP Media Group* (Lancaster Court of Common Pleas CI-18-09547).

The Pennsylvania Right-To-Know Law states, “If the provisions of this act regarding access to records conflict with any other Federal or State law, the provision of this act shall not apply” (65 P.S. § 67.3101.1). The Pennsylvania Coroners Act clearly establishes the public character of autopsy and toxicology reports and mandates that they be made available to inquiring members of the public. Therefore any section of the RTK Law Coroner Garcia-Jackson referenced in her initial denial is irrelevant in this matter, and so cannot stand as sufficient grounds for denying Dr. Keel's request.

Non-Applicability of Fees in this Matter

As previously noted, the Coroners Act mandates the annual deposit of all coroner records with the Prothonotary, whereupon they are to be made available for "the inspection of all persons interested therein" (16 P.S. § 1236-B). The Coroners Act also establishes a set of standard fees coroners may collect in exchange for the release of certain categories of documents, including autopsy and toxicology reports (16 P.S. § 1252-B). However, the Coroners Act makes no provision empowering the Office of the Prothonotary to collect those fees on behalf of the coroner. Indeed, no statute exists that would empower the Office of the Prothonotary to collect such fees. Therefore, while these fees may be collected in exchange for the release of records that have not yet been deposited with the Prothonotary, they are not applicable to any record already deposited therein for public inspection. See *Penn Jersey Advance, LTD v. Grim*, 599 Pa. 534 (Pa. 2009) and *Hearst Television Inc. v. Norris*, 32 A.3d 1260 (Pa. 2011).

The standard fees enumerated in Section 1252-B of the Coroners Act therefore are not applicable in this matter. That the Coroners Act elsewhere mandates that once deposited all coroners' records be maintained by the Office of the Prothonotary "for the inspection of all persons interested therein" would seem to further affirm the non-applicability of such fees (16 P.S. § 1236-B).

Conclusion

It is evident that the Chester County Office of the Coroner erred in denying Dr. Keel's request. The public character of the requested records is unambiguously established by the Pennsylvania Coroner's Act. Furthermore, the Pennsylvania RTK Act clearly states that its provisions, including exemptions, do not supersede any other relevant statutes. Coroner Sofia Garcia-Jackson's reasoning for denying Dr. Keel's request rests entirely on her interpretation of the exemptions outlined in the RTK Law; she entirely ignores the sections of the Coroners Act that mandate the release of autopsy and toxicology reports to inquiring members of the public. Therefore Chester County's denial cannot be upheld.

The Office of Open Records should grant the requestor's Appeal and order the immediate release of the requested records.



Dr. Terence Keel
Associate Professor, UCLA
Director, UCLA Lab for Biostudies
Institute for Society and Genetics
3323A Life Sciences Building
Box 95722
Los Angeles, CA 90095

cc: Sofia Garcia-Jackson, Chester County Coroner



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

TERENCE KEEL AND THE UNIVERSITY
OF CALIFORNIA-LOS ANGELES,
INSTITUTE FOR SOCIETY AND
GENETICS, BIOSTUDIES LAB,
Requester

v.

CHESTER COUNTY OFFICE OF THE
CORONER,
Respondent

Docket No: AP 2022-1801

INTRODUCTION

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>.

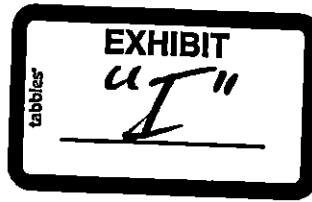
FINAL DETERMINATION ISSUED AND MAILED: September 30, 2022

/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).



John Carnes

From: DEPT BIOSTUDIESLAB <biostudieslab@ucla.edu>
Sent: Wednesday, October 12, 2022 7:08 PM
To: prothyfiledepartment@chesco.org; sgarciajackson@chesco.org; John Carnes
Attachments: 2022-1801_Keel-ChesterCo.Coroner_FD (1).pdf

Dear Debbie Bookman,

We write to make you aware of a recent Final Determination issued by the Pennsylvania Office of Open Records that affects your office (AP 2022-1801). A complete copy of this Final Determination is attached to this email. Coroner Sophia Garcia-Jackson, whose Office is involved directly in the matter, is cc'd.

The Final Determination instructs Chester County to deliver to Dr. Terence Keel all records responsive to his request. As you may already be aware, Dr. Keel has requested complete autopsy and toxicology records related to seventeen decedents. The names and dates of death of each of these decedents are copied below:

Melvin James Anderson, date of death 12/6/2021
Kenneth John Petitt, date of death 10/6/21
Dimitrios Moscharis, date of death 6/18/2021
John Patrick Deamics, date of death 4/24/2021
Charles Raymond Troupe, date of death 5/9/2020
Michael McCarraher, date of death 9/18/2017
Kevin Johnson, date of death 12/26/2016
Corey Lange, date of death 5/12/2016
Michael Ferko, date of death 1/1/2016
Jason Walling, date of death 12/22/2015
Samuel Downs, date of death 6/18/2014
Raemone Carter, date of death 3/16/2012
Terry Saunders, date of death 9/14/2009
Roderick Lloyd, date of death 9/17/2008
Rebecca Haslip, date of death 8/4/2008
Theodore Burley, date of death 6/3/2008
Linda Vaughn, date of death 4/18/2008

Pursuant to this Final Determination, we now request these documents directly from the Office of the Prothonotary. The Final Determination states, "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." The Final Determination further states, "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."

Pursuant to the OOR's Final Determination in this matter, Dr. Keel intends to collect the requested documents directly from the Chester Office of the Prothonotary.

Please confirm that the requested records have been deposited with your Office. If they have not yet been deposited therein, please request that the Coroner deposit them immediately so as to comply with the obligations set forth by the Coroners Act.

Please release all responsive records to Dr. Keel. You may direct digital copies to this email address. If digital copies are unavailable, please advise and we will provide a mailing address.

Please also confirm receipt of this message.

Best regards,
UCLA Biostudies Lab

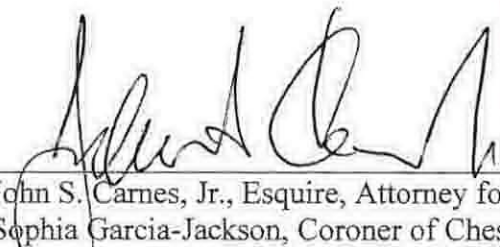
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Petition for Judicial Review Of A Final Determination of the Pennsylvania Office of Open Records has been sent via U.S. First Class Mail, postage pre-paid to the following parties on the date below noted:

Dr. Terence Keel, Assoc. Professor UCLA
Director UCLA Lab for Biostudies
Institute for Society and Genetics
3360 Life Sciences Building
Box 975221
Los Angeles, CA 90095-7221

Lyle Hartranft, Esq., Appeals Officer
Pennsylvania Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

10/28/22
Date


John S. Carnes, Jr., Esquire, Attorney for Petitioner,
Sophia Garcia-Jackson, Coroner of Chester County

FILED
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OFFICE OF THE
PROTHONOTARY
CHESTER CO., PA.