

Law Offices of John S. Carnes, Jr.

101 W. Main Street
Parkesburg, PA 19365
Phone: (610) 857-5500 Fax: (610) 857-5501
jcarnes@jcatty.com

December 9, 2022

Via Hand Delivery

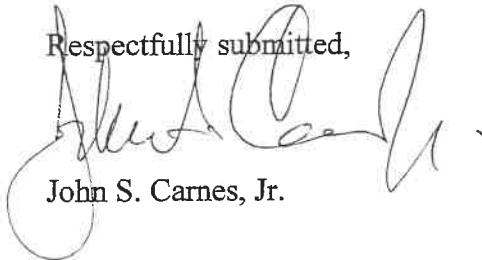
Debbie Bookman, Prothonotary
Chester County Justice Center
201 West Market Street, Suite 1425
West Chester, PA 19380

Re: Chester County Coroner v. Terence Keel and the University of California-
Los Angeles, Institute for Society & Genetics, Biostudies Lab #2020-08026-CS

Dear Ms. Bookman:

In accordance with the Administrative Scheduling Order of the Honorable Jeffrey R. Sommer, dated November 14, 2022 in the above-captioned matter, I supply to the Court and all other parties with the certified copy of the record as provided to me by the Office of Open Records.

Respectfully submitted,


John S. Carnes, Jr.

JSCJr/cms

Enclosure

cc: Dr. Terence Keel w/Enclosures via email & regular mail
Office of Open Records w/Enclosures via email & regular mail
Honorable Jeffrey R. Sommer via Hand Delivery

RECEIVED

DEC 12 2022

OFFICE OF OPEN RECORDS



pennsylvania
OFFICE OF OPEN RECORDS

November 29, 2022

Sent via First Class Mail

Debbie Bookman
Office of the Prothonotary
Chester County Courthouse
201 W. Market Street, Suite 1425
West Chester, PA 19380-0989

RE: Submission of Record in: *Chester County Coroner v. Terence Keel and The University of California-Los Angeles, Institute for Society & Genetics, Biostudies Lab*, Chester County CCP No. 2020-08026-CS

Dear Prothonotary Bookman:

We hereby submit the record in the above-referenced matter. Section 1303 of the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq.*, (“RTKL”), defines the Record on Appeal as “the record before a court shall consist of the request, the agency’s response, the appeal filed under section 1101, the hearing transcript, if any, and the final written determination of the appeals officer.” Pursuant to *Department of Transportation v. Office of Open Records*, 7 A.3d 329 (Pa. Commw. Ct. 2010), this record includes all “evidence and documents admitted into evidence by the appeals officer pursuant to Section 1102(a)(2).” The record in this matter consists of the following:

Office of Open Records Docket No. AP 2022-1801:

1. The appeal filed by Dr. Terence Keel and the University of California- Los Angeles, Institute for Society and Genetics, Biostudies Lab (collectively the “Requester”) to the Office of Open Records (“OOR”), received August 2, 2022.
2. Official Notice of Appeal dated August 3, 2022, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
3. Email chain dated August 5, 2022, wherein the OOR grants the Chester County Office of Coroner (“Office”) and Requester additional time to make submissions.
4. Requester submission dated August 26, 2022.
5. Office submission dated August 26, 2022.

Prothonotary
Chester County Court of Common Pleas

November 29, 2022
Page Two

6. Office corrected submission dated September 9, 2022, noting revisions using track changes in red.
7. The Final Determination issued by the OOR, dated September 30, 2022.

The OOR has discretion to hold a hearing on appeals filed but chose not to do so in this matter. Therefore, there is no transcript to transmit. Certification of the record in this case is attached to this letter. Please feel free to contact us for any reason in connection with this matter.

Sincerely,

A handwritten signature in cursive script, reading "Kyle Applegate".

Kyle Applegate
Chief Counsel

Attachments

cc: Dr. Terence Keel (Requester)
John S. Carnes, Esq. (Office)

IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

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

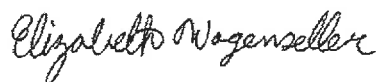
CERTIFICATION OF RECORD

I hereby certify the contents of the record transmitted with this Certification of Record pursuant to Pa.R.A.P. 1952 in *Terence Keel and The University of California – Los Angeles, Institute for Society and Genetics, Biostudies Lab v. Chester County Office of the Coroner*, OOR Dkt. AP 2022-1801, which is the subject of this appeal.

The record transmitted with this certification is generated entirely from the Office of Open Records database. It is our practice to scan in each and every document submitted in an appeal. Thus, no originals are being transmitted to this Court.

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

Also, my signature on this Certification of Record and on all other correspondence directed to the Court in connection with this matter may be electronic and not original. I hereby certified that this is my true and correct signature and that I have approved the use thereof for these purposes.



Elizabeth Wagenseller, Executive Director
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: 717) 346-9903
Fax: (717) 425-5343
Email: OpenRecords@pa.gov

Dated: November 29, 2022

**IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA**

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

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the Certified Record upon the following persons via e-mail addressed to their e-mail address as follows:

Dr. Terence Keel
The University of California –
Los Angeles
621 Charles E. Young Dr., South
Box 957221, 3360 LSB
Los Angeles, CA 90095-7221
Biostudieslaw@ucla.edu

John S. Carnes, Jr., Esq.
Law Offices of John S. Carnes, Jr.
101 W. Main Street
Parkesburg, PA 19365
jcarnes@jcatty.com



Faith Henry, Administrative Officer
Office of Open Records
333 Market St. 16th floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Fax: (717) 425-5343
Email: faithhenry@pa.gov

Dated: November 29, 2022

**IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA**

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

CERTIFIED RECORD

Kyle Applegate
Chief Counsel
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-224
Phone: (717) 346-9903
Fax: (717) 425-5343
Email: Kyapplegat@pa.gov

Dated: November 29, 2022

**IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA**

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

**TABLE OF CONTENTS
RECORD**

*Terence Keel and The University of California – Los Angeles, Institute for Society and
Genetics, Biostudies Lab v. Chester County Office of the Coroner,
OOR Dkt. AP 2022-1801,*

1. The appeal filed by Dr. Terence Keel and the University of California- Los Angeles, Institute for Society and Genetics, Biostudies Lab (collectively the “Requester”) to the Office of Open Records (“OOR”), received August 2, 2022.
2. Official Notice of Appeal dated August 3, 2022, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
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6. Office corrected submission dated September 9, 2022, noting revisions using track changes in red.
7. The Final Determination issued by the OOR, dated September 30, 2022.

OOR Exhibit 1

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](#).



pennsylvania
OFFICE OF OPEN RECORDS

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.



DEPT BIOSTUDIESLAB <biostudieslab@g.ucla.edu>

Keel Right to Know Request

2 messages

RTK Coroner <rtkcoroner@chesco.org>
To: "biostudieslab@ucla.edu" <biostudieslab@ucla.edu>

Tue, Aug 2, 2022 at 2:53 PM

Hello,

Please see the attached document.

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

Coroner/Right to Know Officer

Coroner and Right to Know Officer

601 Westtown Road, Suite 090

West Chester, PA 19382

610-344-6165

rtkcoroner@chesco.org



This County of Chester e-mail message, including any attachments, is intended for the sole use of the individual(s) and entity(ies) to whom it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended addressee, nor authorized to receive for the intended addressee, you are hereby notified that you may not use, copy, disclose or distribute to anyone this e-mail message including any attachments, or any information contained in this e-mail message including any attachments. If you have received this e-mail message in error, please immediately notify the sender by reply e-mail and delete the message. Thank you very much.



RTK Denial Dr. Terence Keel_08.02.2022.pdf
183K

8/2/22, 4:44 PM

Google Apps for UCLA Mail - Keel Right to Know Request

DEPT BIOSTUDIESLAB <biostudieslab@ucla.edu>
To: RTK Coroner <rtkcoroner@chesco.org>

Tue, Aug 2, 2022 at 4:44 PM

Dear Sophia Garcia-Jackson,

Thank you for your email notifying Dr. Keel of your decision to deny his request.

This email is to inform you that Dr. Keel has appealed your decision to the Pennsylvania Office of Open Records. We look forward to the OOR's determination.

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

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 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 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 cursive script, reading "Sophia Garcia-Jackson".

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



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.

8/2/22, 4:47 PM

Google Apps for UCLA Mail - RE: Request for Autopsy and Toxicology Records

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

This County of Chester e-mail message, including any attachments, is intended for the sole use of the individual(s) and entity(ies) to whom it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended addressee, nor authorized to receive for the intended addressee, you are hereby notified that you may not use, copy, disclose or distribute to anyone this e-mail message including any attachments, or any information contained in this e-mail message including any attachments. If you have received this e-mail message in error, please immediately notify the sender by reply e-mail and delete the message. Thank you very much.

 **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]



“Committed Service and
Responsiveness”

OFFICE OF THE CORONER COUNTY OF CHESTER

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

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
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- 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



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
Deamics	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

OOR Exhibit 2

NOTICE OF DEADLINES

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **October 3, 2022**.

The timeline for this RTKL appeal may be extended by the OOR during the appeal. This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **August 12, 2022**.

If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.

Due to delays in U.S. mail, we urge agencies and requesters to use email for all communications with the OOR to the extent possible.

Presently, the OOR is receiving postal mail on a limited basis. Accordingly, we urge agencies and requesters to use email for all communication with the OOR to the extent possible.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.



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

The Right-to-Know Law Appeal Process

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOR pursuant to the statutory timeline, subject to the notice of deadlines enclosed herein. If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents.

Submissions to the OOR

Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer. Please contact the Appeals Officer as soon as possible.

Any information provided to the OOR must be provided to all parties involved in this appeal. Information submitted to the OOR will not be considered unless it is also shared with all parties.

Include the docket number on all submissions.

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Generally, submissions to the OOR — other than *in camera* records — will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

Agency Must Notify Third Parties

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; **or** are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.**

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer assigned to this case (see 65 P.S. Â§ 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

A third party's failure to participate in a RTKL appeal before the OOR may be construed as a waiver of objections regarding release of requested records.

NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.

Statements of Fact & Burden of Proof

Statements of fact **must** be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, openrecords.pa.gov.

Any evidence or legal arguments not submitted or made to the OOR may be waived.

Preserving Responsive Records

The agency must preserve all potentially responsive records during the RTKL appeal process, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

Mediation

The OOR offers a mediation program as an alternative to the standard appeal process. To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.



APPEALS OFFICER:

Lyle Hartranft, Esq.

CONTACT INFORMATION:

Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

FACSIMILE:

(717) 425-5343

EMAIL:

lhartranft@pa.gov

**Preferred method of contact and
submission of information:**

EMAIL

Please direct submissions and correspondence related to this appeal to the above Appeals Officer.
Please include the case name and docket number on all submissions.

You must copy the other party on **everything** you submit to the OOR. The Appeals Officer cannot speak to parties individually without the participation of the other party.

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff are also available to provide general information about the appeals process by calling (717) 346-9903.



pennsylvania
OFFICE OF OPEN RECORDS

IN THE MATTER OF

Requester

v.

Agency

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:

OOOR Dkt. AP _____

Please accept my appearance for the _____ in the above captioned case.
(Requester/Agency)

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Attorney: _____

Firm: _____

Address: _____

Email: _____

Phone #: _____

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.



pennsylvania
OFFICE OF OPEN RECORDS

IN THE MATTER OF

TERENCE KEEL,
Requester

v.

CHESTER COUNTY CORONER,
Respondent

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Docket No.: AP 2022-1801

This correspondence confirms the above-referenced Requester's agreement to an additional thirty (30) day extension of time to issue a Final Determination in this matter as indicated in the Requester's appeal form. Accordingly, pursuant to 65 P.S. § 67.1101(b)(1), the Office of Open Records will now issue a Final Determination in the above-captioned matter on or before October 3, 2022.

OOR Exhibit 3

From: Hartranft, Lyle
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
Date: Friday, August 5, 2022 12:27:00 PM

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
lhhartranft@pa.gov
<http://openrecords.pa.gov> | @OpenRecordsPA

From: John Carnes <jcarnes@jcatty.com>
Sent: Friday, August 5, 2022 12:25 PM
To: Hartranft, Lyle <lhhartranft@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.
101 West Main St.
Parkesburg, Pa 19365

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

jcarnes@jcatty.com

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From: John Carnes

Sent: Friday, August 5, 2022 12:21 PM

To: lharranft@pa.gov

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

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

jcarnes@jcatty.com

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OOR Exhibit 4

From: DEPT BIOSTUDIESLAB
To: sgarciajackson@chesco.org; Hartranft, Lyle; icarnes@icattv.com
Subject: [External] Appeal 2022-1801
Date: Friday, August 26, 2022 3:15:26 PM
Attachments: [Keel_ChesterCo_Appeal1801.pdf](#)

***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](#).*

Dear Lyle Hartranft,

Please find attached Dr. Keel's letter in support of Appeal 2022-1801 (Terence Keel v. Chester County Coroner).

Respectfully,
UCLA Biostudies Lab



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

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

John Carnes, Chester County Solicitor

OOR Exhibit 5

From: John Carnes
To: DEPT BIOSTUDIESLAB; sgarciajackson@chesco.org; Hartranft, Lyle
Cc: Garcia-Jackson, Sophia C.; Poole-Gulick, Jesse; Law Office of John Carnes
Subject: [External] RE: Appeal 2022-1801
Date: Friday, August 26, 2022 9:10:42 PM
Attachments: First Deputy Affidavit.pdf
coroner brief.pdf

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Dear Lyle Hartranft:

Enclosed please find the Affidavit and Memorandum of Law in support of the Coroner's Decision.

Sincerely yours,

John Carnes

John S. Carnes, Jr., Esquire
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From: DEPT BIOSTUDIESLAB <biostudieslab@ucla.edu>
Sent: Friday, August 26, 2022 3:15 PM
To: sgarciajackson@chesco.org; Hartranft, Lyle <lhartranft@pa.gov>; John Carnes <jcarnes@jcatty.com>

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

v.

Chester County Coroner

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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
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- Roderick Lloyd, date of death 9/17/2008
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- 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 HIPPA. These reports contain protected health information and constitute detailed private records 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 HIPPA. 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 Act.

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 HIPPA 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, in reversing the Commonwealth Court, noted, 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 present 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 not 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.

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, HIPPA protected medical information and information that may be involved in a criminal or non-criminal investigation. The Coroner only makes the information

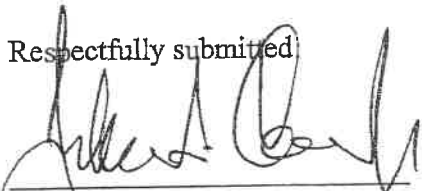
available to next of kin and in response to a valid subpoena or in the exercise of discretion when determined appropriate.

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


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8/26/22

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
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 - Corey Lange, date of death 5/12/2016
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 - 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 Deamics 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.

8/26/2022
Date


Jesse Poole-Gulick, First Deputy Coroner

OOR Exhibit 6

From: [John Carnes](#)
To: [Hartranft, Lyle](#)
Cc: [DEPT BIOSTUDIESLAB](#); [Garcia-Jackson, Sophia C.](#)
Subject: [External] Keel v. Chester County, OOR Appeal 2022-1801
Date: Friday, September 9, 2022 11:04:24 AM
Attachments: [Keel Memo of Law in Support of Denial RTK.pdf](#)
[Memorandum of Law in Support of Denial of Keel RTK Request changes.docx](#)

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Dear Appeals Officer Hartranft:

After submitting the Memorandum of Law in support of the Chester County Coroner's denial of requested information under the Right to Know Law, I observed that there were some typographical errors that I had not picked up in proof reading the Memorandum. Most notably, there were references to HIPPA instead of HIPAA.

I have taken the liberty of correcting those typos and supply a "clean version" and a version showing the corrections that were made. I believe that this may assist in your review of the circumstances.

I realize that there is additional time in which to render a ruling on this appeal. As Solicitor for the Coroner's Office I stand by prepared to address any legal issues that you may wish to have addressed and welcome the opportunity to file a reply brief or provide further record information at a hearing should you wish to receive same.

Respectfully submitted:

John Carnes

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

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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.

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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.

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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

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"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 Eakin’s 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

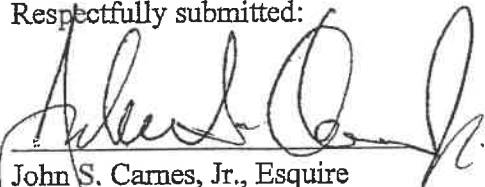
available to next of kin and in response to a valid subpoena or in the exercise of discretion when determined appropriate.

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:



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Keel and University of California -Los Angeles,	:	
Institute for Society and Genetics, Biostudies Lab	:	
	:	
v.	:	OOR Dckt. AP 2022-1801
	:	
Chester County Coroner	:	

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 HIPAPA. 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 Act.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, ~~in-reversing~~ noted the Commonwealth Court, noted, 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 present-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 not 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 Eakin’s 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. However, ~~and~~ there would be no such ability to get families involved – even if the death were more recent. Because of this, the 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 ~~Solicitor~~ of Chester County
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101 W. Main Street
Parkesburg, PA 19365
(610) 857-5500
jcarnes@jcatty.com

OOR Exhibit 7

From: Hartranft, Lyle
To: DEPT BICSTUDIESLAB; Garcia-Jackson, Sophia C.; John Carnes
Subject: Final Determination: Keel-ChesterCo.Coroner (OOR Dkt. AP 2022-1801)
Date: Friday, September 30, 2022 11:13:00 AM
Attachments: 2022-1801_Keel-ChesterCo.Coroner_FD.pdf

Dear Parties:

Attached, please find the final determination for the above-captioned matter.

Sincerely,

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

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).

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 Office of John S. Carves, Jr.
Signature: [Handwritten Signature]
Name: John S. Carves, Jr.
Attorney No. if applicable: #42338

CHESTER COUNTY OFFICE OF
CORONER

Plaintiff

vs.

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

: IN THE COURT OF COMMON PLEAS
: CHESTER COUNTY, PENNSYLVANIA

:
: No. 2022-08612-CS
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Certified Copy of the Record which has been filed with the Prothonotary today, a copy of which has been sent via U.S. First Class mail, postage prepaid and via email to the following on the date below noted:

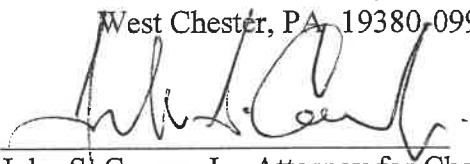
Dr. Terence Keel
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621 Charles E. Young Dr., South
Box 957221, 3360 LSB
Los Angeles, CA 90095-7221

Pa. Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

and via Hand Delivery to:

Honorable Jeffrey R. Sommer
Chester County Justice Center
201 W. Market Street, Courtroom 8
West Chester, PA 19380-0991

Date: 6/9/22


John S. Carnes, Jr., Attorney for Chester
County Office of Coroner