



pennsylvania
OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
JAMES HALPIN AND THE CITIZEN’S VOICE,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2023-0530
	:	
MONROE COUNTY CORONER’S OFFICE,	:	
Respondent	:	

FACTUAL BACKGROUND

On March 3, 2023, James Halpin, a reporter with The Citizen’s Voice (collectively “Requester”), submitted a request (“Request”) to the Monroe County Coroner’s Office (“Office”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “the name, cause and manner of death of the juvenile killed in the vehicle crash that took place on state Route 33 in Hamilton Twp. on March 1, 2023.” When the Office did not issue a written response to the Request by March 10, 2023, it was deemed denied on that date.¹ *See* 65 P.S. § 67.901.

¹ The Office informed the Requester via telephone it would not be honoring the Request because its policy is not to identify juveniles. However, Section 903 of the RTKL requires that an agency’s denial of a request be in writing, and must include, in part: “[a] description of the record requested[,]” ... “[t]he specific reasons for the denial, including a citation of supporting legal authority,” and “[t]he procedure to appeal the denial of access...” 65 P.S. § 67.903. Because the Office’s statement was not in writing and there is no evidence that it contained any of the requirements of Section 903, it did not constitute an effective denial.

On March 13, 2023, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial. 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. 65 P.S. § 67.1101(c).

When the record closed without a submission, an OOR administrative officer called the Office and discovered that it had not received the Notice of Appeal, as it had been sent to an address that is no longer valid. On March 28, 2023, the OOR re-issued the Notice of Appeal, directing it to an email address that had been provided by the Office. In order to ensure due process, the reissued Notice contained an extended submission deadline to permit the Office to respond. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute”); *see also* *Wishnefsky v. Pa. Dep’t of Corr.*, 144 A.3d 290 (Pa. Commw. Ct. 2016) (holding that due process requires notice of an appeal and a right to be heard). However, to date, the Office has not made a submission.

LEGAL ANALYSIS

The Office is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the Office is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

Here, the Request seeks “the name, cause and manner of death of the juvenile killed” in the identified crash. The Office does not raise any exemptions, instead merely stating that it is not its policy to release information about minors. The OOR notes that information “identifying the name, home address or date of birth of a child 17 years of age or younger” is generally exempt under Section 708(b)(30) of the RTKL. 65 P.S. § 67.708(b)(30).

In this case, however, the Request seeks the “name, cause and manner of death” of the deceased minor. Section 708(b)(20) of the RTKL exempts from disclosure:

An autopsy record of a coroner or medical examiner and any audiotape of a postmortem examination or autopsy, or a copy, reproduction or facsimile of an autopsy report, a photograph, negative or print, including a photograph or videotape of the body or any portion of the body of a deceased person at the scene of death or in the course of a postmortem examination or autopsy taken or made by or caused to be taken or made by the coroner or medical examiner.

65 P.S. § 67.708(b)(20). However, the exemption “shall not limit the reporting of the *name of the deceased individual and the cause and manner of death.*” *Id.* (emphasis added). There is no language requiring consideration of age. As the Pennsylvania Supreme Court has noted, Section 708(b)(20)’s proviso concerning name and cause and manner of death “indicate[s] [the General Assembly’s] intent not to limit the coroner’s reporting obligation with regard to the name of the deceased and the cause and manner of death.” *Hearst TV, Inc. v. Norris*, 54 A.3d 23, 33 (Pa. 2012). Additionally, Section 1252-B of the County Code provides “immediate access to cause and manner of death records,” *Norris*, 54 A.3d at 33, and the RTKL’s exemptions do not apply when another law makes records public. *See* 65 P.S. § 67.306, 16 P.S. § 1252-B. Therefore, Section 708(b)(30) of the RTKL does not apply when dealing with information identifying deceased minors in coroner records. Accordingly, the name, manner and cause of death of the deceased minor is subject to public disclosure in this instance. *See* OOR Advisory Opinion on Autopsy Records, Nov. 1, 2022, available at: <https://www.openrecords.pa.gov/Documents/2022->

[11-01_Dennis_AdvisoryOpinion.pdf](#); see also *Jones v. Fayette Cnty.*, OOR Dkt. AP 2023-0021, 2023 PA O.O.R.D. LEXIS 397.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the Office is required to provide the requested information within thirty days. 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 Monroe 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.² This Final Determination shall be placed on the OOR website at: <https://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: April 25, 2023

/s/ Blake Eilers
Blake Eilers, Esq.
Appeals Officer

Sent via email to: James Halpin and Thomas Yanac

² *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).