



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

**DEREK SHERWOOD,
Requester**

v.

**CENTRE COUNTY,
Respondent**

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Docket No: AP 2026-0333

FACTUAL BACKGROUND

On January 8, 2026, Derek Sherwood (“Requester”) submitted a request (“Request”) to Centre County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, stating, in part, as follows: “I am seeking the full autopsy report on decedent Dana J[.] Bailey, date of death 3/5/1987. Based on recent legal precedents and the Coroner’s Act of 2024, [16 Pa.C.S. §§ 13901 *et seq.*] this document should be able to be legally reproduced and released to me.”

On January 22, 2026, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the County issued a Final Response and the sworn affidavit of Jorge De La Cruz, Jr., (“De La Cruz Affidavit”), County Communications Coordinator,¹ asserting that the Request was

¹ Mr. De La Cruz also serves as the County’s temporary Agency Open Records Officer (“AORO”) when John Franek, Jr. is unavailable. *See* De La Cruz Affidavit.

denied in accordance with the Centre County Court of Common Pleas' prior decision in *Keel v. Centre Cnty. Off. of the Coroner* (“*Keel I*”).²

On January 26, 2026, the Requester appealed to the Office of Open Records (“OOR”),³ challenging the denial and stating grounds for disclosure. Specifically the Requester argued that subsequent to the County Court of Common Pleas' holding in *Keel I*, the Pennsylvania Commonwealth Court held that autopsy reports are publicly accessible pursuant to the Coroner's Act. He further asserted that any reliance on the federal Health Information Portability and Accountability Act of 1996 (“HIPAA”), *see* 42 U.S.C.S. §§ 1320d *et seq.*, and its implementing regulations, 45 C.F.R. § 164.500 *et seq.*, to withhold the requested autopsy report would be misplaced because coroners are not “covered entities.” Additionally, the Requester stated, in part, that “to the extent that the County relies on any other generalized privacy claims, deceased persons do not hold privacy rights.” The OOR invited both parties to supplement the record and directed the County to notify the OOR if any third parties have a direct interest in the appeal. 65 P.S. § 67.1101(c).

On February 13, 2026, the County submitted a position statement, reiterating its grounds for denial and further asserting that the autopsy report is exempt under 65 P.S. § 67.708(b)(16) and HIPAA. In support of its position, the County submitted the sworn affidavit of Scott Sayers, County Coroner (“Sayers Affidavit”).

On February 20, 2026, after being provided additional time by the OOR, the Requester filed multiple submissions and exhibits, reiterating his previous HIPAA and Coroner's Act arguments and further asserting that there is a significant public interest in the cause and manner

² *See Keel I*, OOR Dkt. AP 2022-1911, 2022 PA O.O.R.D. LEXIS 2516, *rev'd*, No. 2022-2585 (Centre Cnty. C.C.P., Apr. 18, 2023).

³ Although the appeal was submitted electronically on Saturday, January 24, 2026, it was not received by the OOR until the next business day, or Monday, January 26, 2026.

of Ms. Bailey's death and in who may have been responsible for it. He also asserted that the 65 P.S. § 67.708(b)(16) exemption is not applicable and/or that any criminal investigation into Ms. Bailey's death is not likely active at this time. Additionally, the Requester stated, among other things, that the County has disclosed autopsy reports for other decedents in the past.

The OOR extended the deadline for the issuance of the Final Determination in this matter on two occasions, ultimately to April 20, 2026, upon agreement of the Requester.⁴

LEGAL ANALYSIS

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

On appeal, the County argues that the responsive autopsy report is either exempt in its entirety under HIPAA or the criminal investigative records exemption of the RTKL. *See* 65 P.S. § 67.708(b)(16). In support of its arguments, the County submitted the affidavit of Mr. Sayers, who attests, in part, as follows:

2. The Request seeks records that are not entirely produced by [the County Coroner's] office; these records are provided to us by third parties for further investigation of deaths in [the] County[.]

⁴ *See* 65 P.S. § 67.1101(b)(1) ("Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a)").

3. Autopsies and related pathological reports (toxicology, etc.) for decedents in [the] County are generally conducted by the pathologists at the Mount Nittany Medical Center [(“MNMC”)] and provided to my office.
4. In the case of the autopsy for Dana J. Bailey (“Bailey Autopsy”) requested pursuant to the Request, the investigatory work would have been completed by the pathologists at MNMC, at the time it was the Centre County Community Hospital.
5. As part of my agreements with MNMC as well as the Pennsylvania Department of Health, I am restricted from releasing this medical information to persons not otherwise authorized by law or Court order.
6. MNMC is also a covered entity under ...HIPAA ... and any release of information and records produced by them is governed by HIPAA.
7. I have been further advised by the Centre County District Attorney’s Office [(“DA’s Office”)] that the Bailey Autopsy is part of an open, ongoing investigation into her murder by the [DA’s Office] and the Borough State College Police Department (“Department”).

....

Sayers Affidavit, ¶¶ 2-7. Generally, under the RTKL, a sworn affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the County has acted in bad faith, “... the averments in the [affidavit] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Off. of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

Despite Mr. Sayer’s assertions, autopsy reports in the possession, custody or control of fourth class counties, such as the County, are publicly accessible pursuant to the Coroner’s Act. *See* 16 Pa.C.S. §§ 13901, 13935, 13952. Section 13952 of that Act states, in part, that:

The coroner shall charge and collect a fee of \$500 for an autopsy report, \$100 for a toxicology report, \$100 for an inquisition or coroner’s report, \$50 for a cremation or disposition authorization and other fees as may be established for 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.

16 Pa.C.S. § 13952. In *Hearst Television, Inc. v. Norris* (“*Hearst*”), when analyzing a similar section of the prior Coroner’s Act, the Pennsylvania Supreme Court found that “[t]he RTKL provides the procedure for accessing the aforementioned types of records that are available for immediate release for a fee pursuant to Section [13952].” 54 A.3d 23, 28 (Pa. 2012). The Court further noted that there was no mention of discretion when charging or collecting these fees; as a result, Section 13952 “allows the coroner to charge fees for records but does not afford the coroner any discretion with regard to releasing such records.” *Id.* at 24. Although the General Assembly has since updated the Coroner’s Act, there were no substantial changes to the operative language governing said releases, and therefore, *Hearst* controls in Coroner’s Act cases. *See e.g., Silva v. Butler Cnty.*, OOR Dkt. AP 2024-2136, 2024 PA O.O.R.D, LEXIS 2158, *6; *Keel v. Dauphin Cnty.* (“*Keel II*”), OOR Dkt. AP 2022-2385, 2022 PA O.O.R.D. LEXIS 2535.

Most recently, in *Allegheny Cnty. v. Hailer*, the Commonwealth Court confirmed that Section 13952 of the Coroner’s Act “is, essentially, a fee schedule that establishes the costs to be collected for coroner reports[,]” and ordered the production of the responsive autopsy and toxicology records upon payment of the fees set forth therein. 298 A.3d 476, 481 (Pa. Commw. Ct. 2023) (*en banc*). Following *Hailer*, the Court held in *Chester Cnty. Off. of the Coroner v. Keel* (“*Keel III*”), that the Pennsylvania Supreme Court precedent that was established in *Hearst* continues to control under the revised language of the Coroner’s Act, and that the fee schedule continues to apply to all of a coroner’s official documents. *See Keel III*, No. 242 C.D. 2023, 2023 Pa. Commw. Unpub. 659 (Pa. Commw. Ct., Dec. 7, 2023), *allowance of appeal denied*, No. 13 MAL 2024, 2024 Pa. LEXIS 815 (Pa. 2024).

While Section 708(b)(16) of the RTKL may apply to the full autopsy report when it is

being sought from the Department or the DA's Office, in the instant matter, the responsive autopsy report is possessed by and is being sought from the County directly, and the RTKL yields to any contrary legislation. *See* 65 P.S. § 67.306; 65 P.S. § 67.3101.1; *see also Soffrant v. Lancaster Cnty.*, No. 401 C.D. 2018, 2020 Pa. Commw. Unpub. LEXIS 199 (Pa. Commw. Ct., Apr. 24, 2020) (explaining that although the local district attorney's office "may have had a copy of the [c]oroner's records for use in [the] [r]equester's criminal prosecution," it was not a record of the district attorney's office that could "be obtained pursuant to the provisions of the RTKL[;]" rather, the requester should have proceeded under the provisions of the Coroner's Act) (citation omitted).

As a result, the applicability of any RTKL exemption is irrelevant as it pertains to any of the documents made public by the Coroner's Act in the possession of the County. *See Silva*, 2024 PA O.O.R.D, LEXIS 2158, *7; *see also* 65 P.S. § 67.306 (explaining that the RTKL's exemptions do not apply to records made public under another law). For similar reasons, the County's argument that the autopsy report is exempt under HIPAA has no merit. While pathologists at the Centre County Community Hospital may have conducted the autopsy of Ms. Bailey, the evidence reflects that the responsive report is currently in the possession of the County Coroner's office, which is not a covered-entity under HIPAA.⁵ Sayers Affidavit, ¶¶ 2-6. Moreover, as noted above, the Pennsylvania courts have repeatedly found that autopsy reports are subject to public access, and the County has not presented any credible argument or controlling case law showing how the Coroner's Act is superseded by HIPAA, a federal law. *See e.g., Heart, supra; Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632 (Pa. 2009); *Keel III*, 2023 Pa. Commw. Unpub. 659, *20-21; *Hailer, supra.; Ciavaglia v. Bucks Cnty.*, OOR Dkt. AP 2023-2050, 2023 PA O.O.R.D. LEXIS 2125 (finding that although the county denied a request seeking two autopsy reports under 65 P.S.

⁵ The Coroner and his office are not a health plan, a health care clearinghouse or a health care provider. *See* 45 C.F.R. § 160.103.

§ 67.708(b)(20) and HIPAA, it is well-settled that autopsy reports are available for a fee under the Coroner's Act).

Therefore, under the Coroner's Act, the County is required to provide the responsive autopsy report, which is made expressly public by 16 Pa.C.S. § 13952, to the Requester upon payment of the fees set forth therein.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is required to provide the responsive autopsy report to the Requester within thirty days upon payment of the fees authorized under the Coroner's Act. 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 Centre 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 according to court rules as per 65 P.S. § 67.1303, but 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.⁶ All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: April 14, 2026

/s/ Megan Burns

MEGAN BURNS
APPEALS OFFICER

Sent via OOR Portal to: Derek Sherwood; Jorge De La Cruz; and Elizabeth Dupuis, Esq.

⁶ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).