

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

COVER SHEET

Plaintiff(s) ALLEGHENY COUNTY	CIVIL DIVISION
	Case Number : SA - 21 - 000166
	Type of pleading : Certified Record
	Code and Classification :
	Filed on behalf of Commonwealth of Pennsylvania Office of Open Records
	(Name of the filing party)
	<input checked="" type="checkbox"/> Counsel of Record <input type="checkbox"/> Individual, If Pro Se
Defendant(s) Vs BRITTNEY HAILER AND PITTSBURGH CURRENT	Required Information: Name: Kyle Applegate Address: 333 Market Street, 16th Floor Harrisburg, PA 17101-2234 Phone Number: (717) 346-9903 Email Address: kyapplegat@pa.gov
	Attorney's State ID : 309309
	Attorney's Firm ID :

SA-21-000166

IN THE COURT OF COMMON PLEAS ALLEGHENY COUNTY, PENNSYLVANIA

ALLEGHENY COUNTY,

Petitioner,

v.

**BRITTANY HAILER AND
PITTSBURGH CURRENT
Respondent.**

CIVIL DIVISION

No. SA-21-000166

**STATUTORY APPEAL -
RIGHT-TO-KNOW LAW**

**CERTIFIED RECORD
IN OFFICE OF OPEN RECORDS
DOCKET AP 2021-0117**

Filed on behalf of:

Kyle Applegate, Esq.
Chief Counsel

COMMONWEALTH OF PA
OFFICE OF OPEN RECORDS
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Fax: (717) 425-5343
E-mail: kyapplegat@pa.gov

May 17, 2021

Filed Electronically:

Department of Court Records – Civil Division
City-County Building
414 Grant Street
Pittsburgh, PA 15219

RE: Submission of Record in:
Allegheny County v. Brittney Hailer and Pittsburgh Current,
No: SA-21-000166

Dear Prothonotary:

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. 2021-0117:

1. The appeal filed by Brittany Hailer and Pittsburgh Current (collectively “Requester”) to the Office of Open Records (“OOR”), received January 19, 2021.
2. Official Notice of Appeal dated January 21, 2021, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
3. Requester submission dated February 2, 2021.
4. Allegheny County (“County”) submission dated February 10, 2021.
5. Email chain dated March 21, 2021 through March 22, 2021 wherein the OOR clarifies the final determination issue date.
6. Final Determination issued by the OOR on March 31, 2021.

Prothonotary
Allegheny County Court of Common Pleas

May 17, 2021
Page Two

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 black ink that reads "Kyle Applegate". The signature is written in a cursive, slightly slanted style.

Kyle Applegate
Chief Counsel

Attachments

cc: see certificate of service

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL ACTION**

ALLEGHENY COUNTY	:	
Petitioner,	:	
v.	:	
	:	No: SA-21-000166
BRITTNEY HAILER AND	:	
PITTSBURGH CURRENT	:	
Respondent.	:	

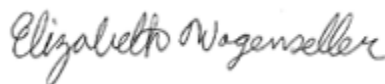
CERTIFICATION OF RECORD

I hereby certify the contents of the record transmitted with this Certification of Record pursuant to Pa.R.A.P. 1952 in *Brittney Hailer and Pittsburgh Current v. Allegheny County Medical Examiner*, OOR Dkt. AP 2021-0117, 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 certify 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: May 17, 2021

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL ACTION**

ALLEGHENY COUNTY Petitioner, v. BRITTNEY HAILER AND PITTSBURGH CURRENT Respondent.	: : : : : : : :	No: SA-21-000166
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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the Certified Record upon the following persons via email only at the email below:

Andrew F. Szeli, Esq.
Maggie Shiels, Esq.
Allegheny County Solicitors Office
300 Fort Pitt Commons Building
445 Fort Pitt Blvd. 3rd Floor
Pittsburgh, PA 15219
Andrew.szeli@alleghenycounty.us
Maggie.shiels@alleghenycounty.us

Brittany Hailer
Pittsburgh Current
2006 Locust Street
Swissvale, PA 15218
bhailer08@gmail.com

Paula Knudsen Burke, Esq.
Reporters Committee For Freedom
of the Press
PO Box 1328
Lancaster, PA 17608
pkudsen@rcfp.org



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

May 17, 2021

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL ACTION**

ALLEGHENY COUNTY	:	
Petitioner,	:	
v.	:	
	:	No: SA-21-000166
BRITTNEY HAILER AND	:	
PITTSBURGH CURRENT	:	
Respondent.	:	

CERTIFIED RECORD

Kyle Applegate
Chief Counsel
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Fax: (717) 425-5343
Email: kyapplegat@pa.gov

Dated: May 17, 2021

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL ACTION**

ALLEGHENY COUNTY	:	
Petitioner,	:	
v.	:	
	:	No: SA-21-000166
BRITTNEY HAILER AND	:	
PITTSBURGH CURRENT	:	
Respondent.	:	

**TABLE OF CONTENTS
RECORD**

Brittany Hailer and Pittsburgh Current v. Allegheny County Medical Examiner,
OOR Dkt. No. AP 2021-0117

Office of Open Records Docket No. 2021-0117:

1. The appeal filed by Brittany Hailer and Pittsburgh Current (collectively “Requester”) to the Office of Open Records (“OOR”), received January 19, 2021.
2. Official Notice of Appeal dated January 21, 2021, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
3. Requester submission dated February 2, 2021.
4. Allegheny County (“County”) submission dated February 10, 2021.
5. Email chain dated March 21, 2021 through March 22, 2021 wherein the OOR clarifies the final determination issue date.
6. Final Determination issued by the OOR on March 31, 2021.

OOR Exhibit 1

Devenyi, Dylan

From: no-reply@openrecordspennsylvania.com
Sent: Tuesday, January 19, 2021 3:50 PM
To: bhailer08@gmail.com
Subject: [External] PA Office of Open Records - Appeal Confirmation

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.



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:	Brittney Hailer
Company:	Pittsburgh Current
Address 1:	2006 Locust Street
Address 2:	
City:	Swissvale
State:	Pennsylvania
Zip:	15218
Phone:	703-232-2281
Email:	bhailer08@gmail.com
Agency (typed):	Medical Examiner
Agency Address 1:	1520 Penn Ave
Agency Address 2:	
Agency City:	Pittsburgh
Agency State:	Pennsylvania
Agency Zip:	15222
Agency Phone:	
Agency Email:	

Records at Issue in this Appeal:	My request for Autopsy/External Examination and Toxicology Report for Daniel A Pastorek, 63, who died Nov 26 2020 was denied under Section 708 (b) (20) of the RTKL. However, in Jan 2019, PennLive appealed an RTK and Office of Open Records ruled that autopsy reports and records county coroners must file with county Prothonotary's office each year are open to the public under the PA state law known as "Coroner's Act", which makes documents immediately available to any member of the public willing to pay.
Request Submitted to Agency Via:	e-mail
Request Date:	12/23/2020
Response Date:	01/05/2021
Deemed Denied:	No
Agency Open Records Officer:	Kathy Colosimo
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:	No
Agree to permit the OOR additional time to issue a final determination:	30 Days
Interested in resolving this issue through OOR mediation:	Yes
Attachments:	<ul style="list-style-type: none"> • FINALRESPONSEHAILER#6595.pdf

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.

COUNTY OF



ALLEGHENY

January 5, 2021

Brittney Hailer
2006 Locust Street
Swissvale, PA 15218

Re: RTKL Request – Final Response - #6595

Dear Ms. Hailer:

This is in response to your request for records made pursuant the Pennsylvania Right-to-Know Law (RTKL), which this Office received on December 23, 2020.

In your request you state:

I am requesting the Autopsy/External Examination and Toxicology Report for Daniel A. Pastorek, 63, who died November 26 at the Allegheny County Jail.

Can I have the parts of the report as they become available, as well.

I request the results of the physical autopsy as soon as they become available and I request the results of the toxicology as soon as they become available.

Your request for these records must be respectfully denied. 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. This exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death. In this instance, the pertinent information for Daniel A. Pastorek is as follows:

Decedent: Daniel A. Pastorek

Manner of Death: Natural

Cause of Death: Hypertensive Arteriosclerotic Cardiovascular Disease

Please note: The autopsy report can be released to a next of kin. For additional information, you can contact the Medical Examiner's Office at 412-350-4800.

JERRY TYSKIEWICZ, DIRECTOR

DEPARTMENT OF ADMINISTRATIVE SERVICES

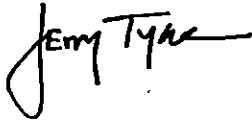
202 COURTHOUSE • 436 GRANT STREET • PITTSBURGH, PA 15219
PHONE (412) 350-6109 • FAX (412) 350-4925 • WWW.ALLEGHENYCOUNTY.US

January 5, 2021
Page Two

Pursuant to Section 1101 of the RTKL, a party denied access to a requested record may file a written appeal of the denial with the Pennsylvania Office of Open Records ("OOR") within fifteen (15) business days of the mailing date of the local agency's response. The OOR's address is:

Pennsylvania Office of Open Records
333 Market Street - 16th Floor
Harrisburg, PA 17126-0333

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Tyskiewicz", with a stylized flourish at the end.

Jerry Tyskiewicz, Director
County of Allegheny Open Records Officer

OOR Exhibit 2

NOTICE RELATED TO THE CORONAVIRUS (COVID-19) EMERGENCY

Pennsylvania is currently under a declared state of emergency related to the coronavirus (COVID-19). Some agencies and requesters may face challenges in regard to their ability to meaningfully participate in Right-to-Know Law (RTKL) appeals. Accordingly, and to ensure due process, the Office of Open Records (OOR) is taking the following temporary steps.

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.

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 **March 31, 2021**.

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 **February 10, 2021**.

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

Every staff member of the OOR is working remotely, and we are only able to receive postal mail on a limited basis at this time. Accordingly, we urge agencies and requesters to use email for all communication with the OOR at this time.

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 during this time to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.



pennsylvania
OFFICE OF OPEN RECORDS

January 21, 2021

Via Email Only:

Ms. Brittney Hailer
Pittsburgh Current
2006 Locust Street
Swissvale, PA 15218
bhailer08@gmail.com

Via Email Only:

Jerry Tyskiewicz
Agency Open Records Officer
Allegheny County Medical Examiner
1520 Penn Ave
Pittsburgh, PA 15222
OpenRecords@alleghenycounty.us

RE: OFFICIAL NOTICE OF APPEAL - Hailer and Pittsburgh Current v. Allegheny County Medical Examiner OOR Dkt. AP 2021-0117

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 January 19, 2021. A binding Final Determination ("FD") will be issued pursuant to the timeline required by the RTKL, **subject to the enclosed information regarding the coronavirus (COVID-19).**

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 enclosed information regarding the coronavirus (COVID-19). 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.



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OFFICE OF OPEN RECORDS

MEDIATION NOTICE

Appeals before the Office of Open Records (OOR) are stayed for seven business days pending the parties' decision to participate in the OOR's Informal Mediation Program.

The Parties may agree to mediation. To participate in mediation, the Parties must submit a completed copy of the attached Mediation Agreement. If both Parties agree to mediation, the appeal will be further stayed, and the Parties will be contacted by an OOR Mediator to begin the mediation process.

The Parties may decline mediation. If either Party declines to participate in mediation or fails to submit a signed Mediation Agreement within seven business days:

- The record will remain open for seven additional business days for the parties to submit evidence and argument in support of their positions; and
- The OOR will decide the appeal and issue a Final Determination by the date set forth in the attached Official Notice of Appeal.

Even if mediation is declined at this time, the Parties may agree to mediate the dispute at any time prior to a Final Determination being issued, and the appeal will be stayed pending mediation.

Questions. If the Parties have questions about mediation or what to expect during the mediation process, please email the assigned Appeals Officer or visit the OOR's website at <https://www.openrecords.pa.gov/Appeals/Mediation.cfm>.



pennsylvania

OFFICE OF OPEN RECORDS

OOR MEDIATION AGREEMENT

OOR Dkt. No. _____

Requester Name: _____

Agency Name: _____

The Requester and Agency (collectively, the "Parties") agree to participate in the OOR's Informal Mediation Program to resolve the matters at issue in this appeal.

The Parties agree to participate in the mediation process in good faith. If the Parties agree, there may be more than one session if the Mediator determines that the appeal could be resolved. The Parties acknowledge that mediation sessions are not open to the public and the content of discussions during mediation is confidential and not admissible as evidence in this appeal.

The Parties agree to extend the Final Determination deadline in this appeal for 30 calendar days beyond the conclusion of the mediation process or, if the Requester agreed to grant the OOR a 30-day extension on the appeal form initiating this appeal, the Final Determination deadline will include that extension. If the Requester does not withdraw the appeal, the Mediator will indicate the conclusion of the mediation process in writing if further mediation sessions are not likely to result in a resolution of the dispute. The Parties acknowledge that this Mediation Agreement, the Requester's withdrawal, and the OOR's withdrawal acknowledgement will be included in the OOR's administrative appeal file and subject to public access.

Upon receipt of this completed Mediation Agreement, a Mediator will contact the Parties to establish a mutually convenient date, time and location to conduct a joint mediation session.

Requester Signature: _____ Date: _____

Agency Representative Signature: _____ Date: _____



pennsylvania

OFFICE OF OPEN RECORDS

APPEALS OFFICER:

Erin Burlew, Esq.

CONTACT INFORMATION:

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

FACSIMILE:

(717) 425-5343

EMAIL:

eburlew@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

BRITTNEY HAILER,
Requester

v.

ALLEGHENY COUNTY MEDICAL
EXAMINER,
Respondent

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Docket No.: AP 2021-0117

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 March 31, 2021.

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.

Henry, Faith

From: Brittany Hailer <bhailer08@gmail.com>
Sent: Friday, January 22, 2021 12:06 PM
To: DC, OpenRecords
Cc: OpenRecords@alleghenycounty.us; Burlew, Erin
Subject: [External] Re: Hailer v. Allegheny Co Medical Examiner: AP 2021-0117

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.

Thank you.

Brittany

On Thu, Jan 21, 2021 at 5:37 PM DC, OpenRecords <RA-OpenRecords@pa.gov> wrote:

Dear Parties,

Attached, find an appeal that has been filed with the Office of Open Records. The above mentioned matter has been assigned to Appeals Officer Erin Burlew (refer to the attachment for contact information). Please forward all future correspondence directly to the Appeals Officer (cc'd on this email) and all other parties.

Sincerely,



Dylan Devenyi
Administrative Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | Fax (717) 425-5343
<https://openrecords.pa.gov>
[@OpenRecordsPA](#)

--
Brittany Hailer
Journalist and Educator
703-232-2281
<https://www.brittanyhailer.com/>

Animal You'll Surely Become (Tolsun Books), October 2018
<https://www.amazon.com/Animal-Surely-Become-Brittany-Hailer/dp/1948800128>

OOR Exhibit 3

Henry, Faith

From: Brittany Hailer <bhailer08@gmail.com>
Sent: Tuesday, February 2, 2021 3:17 PM
To: DC, OpenRecords
Cc: OpenRecords@allegHENYcounty.us; Burlew, Erin
Subject: [External] Re: Hailer v. Allegheny Co Medical Examiner: AP 2021-0117

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.

Hello,

I would like to provide further information that demonstrates precedence in the PA Supreme Court ruling autopsy reports as public information.

As reported by PennLive in Nov 2019:

"The state Supreme Court has held that records pertaining to a coroner's duties, including autopsy reports, are among the "official records and papers" that must be filed annually, the open records office noted.

The Lancaster coroner appealed, sending the case to court. During the court case, Diamantoni argued the full reports contain medical and psychological data that should be kept private.

The Lancaster County Court of Common Pleas disagreed and said the records should be accessed to the public.

"The Coroner's Act does not make the Coroner the guardian of distribution of records he maintains as an elected official," the court said in its ruling. "Instead, the Legislature, rightly or wrongly, has directed the coroner to deposit all official records and papers for the preceding year in the Office of the Prothonotary."

According to state law, full autopsy reports are considered public records. When PennLive initially reached out to counties for autopsy reports, Medical Examiner Diamantoni said he was willing to file with the prothonotary's office the portion of autopsy reports naming causes of death. But he withheld autopsy, toxicology and related reports.

In 2018, the Pennsylvania Office of Open Records ruled that the full autopsy reports were a matter of public record and PennLive had a legal right to those reports.

Thank you for your time and the work you do,
Brittany

On Thu, Jan 21, 2021 at 5:37 PM DC, OpenRecords <RA-OpenRecords@pa.gov> wrote:
Dear Parties,

Attached, find an appeal that has been filed with the Office of Open Records. The above mentioned matter has been assigned to Appeals Officer Erin Burlew (refer to the attachment for contact information). Please forward all future correspondence directly to the Appeals Officer (cc'd on this email) and all other parties.

Sincerely,



Dylan Devenyi

Administrative Officer

Office of Open Records

333 Market Street, 16th Floor

Harrisburg, PA 17101-2234

(717) 346-9903 | Fax (717) 425-5343

<https://openrecords.pa.gov>

@OpenRecordsPA

--
Brittany Hailer

Journalist and Educator

703-232-2281

<https://www.brittanyhailer.com/>

Animal You'll Surely Become (Tolsun Books), October 2018

<https://www.amazon.com/Animal-Surely-Become-Brittany-Hailer/dp/1948800128>

OOR Exhibit 4

IN THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:

BRITTNEY HAILER,

Requestor,

vs.

Docket No.: AP 2021-0117

ALLEGHENY COUNTY,

Respondent.

STATEMENT OF INFORMATION AND LEGAL ARGUMENT

AND NOW comes the Respondent, Allegheny County, by and through its undersigned attorneys, and files this Statement of Information and Legal Argument in compliance with Pennsylvania Office of Open Records' Official Notice of Appeal dated January 6, 2021, setting forth the following:

I. FACTUAL BACKGROUND

The Requestor, Brittney Hailer, submitted a Right-to-Know Law (RTKL) request for records to Allegheny County. (*See Exhibit A.*) The County's Department of Administrative Services, which acts as the County's Right to Know Office, received the request on December 13, 2020. The request stated:

I am requesting the Autopsy/External Examination and Toxicology Report for Daniel A. Pastorek, 63, who died November 26 at the Allegheny County Jail. Can I have the parts of the report as they become available, as well. I request the results of the physical autopsy as soon as they become available and I request the results of the toxicology as soon as they become available.

On January 5, 2021, the County sent Ms. Hailer a letter explaining that her request was denied because the RTKL includes an exemption for autopsy reports from a coroner or medical

examiner. (*See* Exhibit B.) The letter included the name, manner of death, and cause of death of the decedent, Mr. Pastorek. (*See id.*)

Ms. Hailer appealed the County's denial of her request to the Pennsylvania Office of Open Records ("OOR") on January 19, 2021.

II. ARGUMENT

The County submits the Affidavit of Mandy Tinkey, the Laboratory Director of the ACOME to support its denial of these reports. (*See* Exhibit C.)

A. The Autopsy Report Is Exempt from Disclosure.

Autopsy reports are explicitly covered by RTKL Section 708(b)(20), which exempts from disclosure:

[a]n 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. This exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death.

The County's letter to Ms. Hailer provides the name of the deceased individual and the cause and manner of death, as provided by the last sentence of Section 708(b)(20).

The OOR has routinely held that, despite Section 708(b)(20), agencies in many Pennsylvania counties must produce autopsy reports because they are publicly available under the Coroner's Act. *See e.g. Miller v. Lancaster County*, OOR Dkt: 2018-0187. Indeed, the Pennsylvania Coroner's Act formerly included a section, 16 P.S. §1251, that required all coroners and medical examiners to deposit autopsy reports with the Office of the Prothonotary, at which point the public could access them. However, in October 2018, the General Assembly repealed and replaced the Coroner's Act. Former §1251 now states: "[i]n 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 (emphasis added).

Allegheny County is a county of the second class. *See* 16 P.S. §210(2). Therefore, since December 24, 2018, when the new Coroner’s Act went into effect, the ACOME has not been required to deposit its autopsy reports with the Office of the Prothonotary for public inspection. Prior OOR decisions ordering agencies to disclose autopsy reports therefore do not apply to Allegheny County. *See Silas v. City of Philadelphia Medical Examiner’s Office*, OOR Dkt. AP 2018-1558; *Day v. Allegheny County*, OOR Dkt. AP 2016-2108.

In a recent OOR decision, *Bowen v. Indiana County*, the OOR held that autopsy reports were public records despite the language to the contrary in the RTKL, because the Indiana County coroner was required to deposit autopsy reports with the Office of the Prothonotary for public inspection. *See* OOR Dkt. 2019-2064. The OOR also held that Indiana County could charge the requester for a copy, as provided by 16 P.S. §1252-B. The OOR’s rationale was based on the Coroner’s Act and on two Pennsylvania Supreme Court decisions that were handed down before the Coroner’s Act was repealed and replaced. *See Bowen* at pp. 5-7, discussing *Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632 (Pa. 2009) and *Hearst Television, Inc. v. Norris*, 54 A.3d 23 (Pa. 2012)). The OOR correctly noted that both cases “dealt with the former Coroner’s Act, 16 P.S. §§ 1201 et seq. However, that Act was repealed and replaced by 16 P.S. §§ 1201-B et seq. on October 24, 2018 and became effective on December 24, 2018. The Sections of the new Act and the former Act are used interchangeably in this Determination.” *Bowen* at p. 6 fn. 3. The relevant sections of the new Coroner’s Act and the former Coroner’s Act are not interchangeable, however, as applied to Allegheny County.

When the General Assembly exempted Allegheny County from the requirement that

coroners deposit records and papers with the Office of the Prothonotary, it eliminated the rationale that our Supreme Court used in *Hearst Television*, which held that the RTKL provides a procedure for a citizen to request and pay for a soon-to-be-public report which has not yet been filed with the Prothonotary. *See* 54 A.3d at 32. Reports from the ACOME, in contrast, *are not required to become public at any point*. Although Allegheny County is subject to the provision of the Coroner's Act regarding fees for reports, that section does not, by itself, compel Allegheny County to release reports.

Since Allegheny County is not required to file any reports with the Prothonotary, the RTKL's exemption for autopsy reports does not conflict with any state law. Section 708(b)(20), therefore, is the controlling law in this case, and it provides that autopsy reports are exempt from disclosure under the RTKL. *See Day v. Allegheny County*, OOR Dkt. AP 2016-2108.

B. The Toxicology Report is Exempt from Disclosure.

Ms. Hailer also requested a toxicology report regarding Mr. Pastorek's death. Ms. Tinkey's Affidavit states that the ACOME generated a toxicology report for Mr. Pastorek, and that it is attached to the autopsy report. (*See Exhibit C.*) The County asserts that since the toxicology report is attached to the autopsy report, it is also exempt under Section 708(b)(20).

Ms. Tinkey's affidavit also explains that "a toxicology report reflects testing for possible agents contributing to an individual's death. Complete testing for possible agents is an integral part of the death investigation process at ACOME and is performed on all decedents who fall into its jurisdiction." (*See Exhibit C.*) This justifies the County withholding the toxicology report under Section 708(b)(17) of the RTKL, the noncriminal investigation exemption, which exempts "[a] record of an agency relating to a noncriminal investigation, including: (i) Complaints submitted to an agency. (ii) Investigative materials, notes, correspondence and reports."

To successfully assert the noncriminal investigative records exemption, an agency must demonstrate that “a systematic or searching inquiry, a detailed examination, or an official probe” was conducted regarding a noncriminal matter. *Cohn v. Pennsylvania State Police*, OOR Dkt. AP 2020-2050 *quoting Pa. Dep’t of Health v. Office of Open Records*, 4 A.3d 803, 810-11 (Pa. Commw. Ct. 2010). Further, the inquiry, examination or probe must be “conducted as part of an agency’s official duties.” *Id.* at 814. The ACOME’s investigation into Mr. Pastorek’s death meets those requirements, since conducting investigations into deaths in Allegheny County is the central mission of the ACOME.

The Allegheny County Code provision establishing the ACOME states that the Medical Examiner “shall have all of the powers, functions, and duties previously vested in the elected office of Coroner as set forth in [The Coroner’s Act], including without limitation the power of inquest and the power of subpoena.” Allegheny County Code §5-201.05(G). The Coroner’s Act empowers coroners to investigate the facts and circumstances concerning a death and to determine the cause and manner of death and whether the death may have resulted from a criminal act. *See* 16 P.S. §1218-B. The toxicology report at issue in this case was created as part of a noncriminal investigation and is therefore exempt from disclosure.

III. CONCLUSION

Since Allegheny County is a county of the second class, and since counties of the second class are not subject to the requirement that autopsy reports be made public, and since the RTKL specifically exempts autopsy reports from disclosure, and since the toxicology report is part of the autopsy report and is related to a noncriminal investigation, Allegheny County argues that the OOR should dismiss Ms. Hailer’s appeal.

Respectfully submitted:

/s/Maggie Shiels

Assistant County Solicitor
Pa Bar ID: 321614
Allegheny County Law Dept.
445 Fort Pitt Blvd., Suite 300
(412) 350-1120
Attorneys for Respondent –
Allegheny County

IN THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:

BRITTNEY HAILER,

Requestor,

vs.

Docket No.: AP 2021-0117

ALLEGHENY COUNTY,

Respondent.

PROOF OF SERVICE

I hereby certify that a true and correct copy of the Statement of Information and Legal Argument was served upon the persons and in the manner set forth below:

Service Addressed as Follows:

Erin Burlew
Appeals Officer
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA. 17101
eburlew@pa.gov

Brittney Hailer
Pittsburgh Current
2006 Locust Street
Swissvale, PA 15218
bhailer@gmamil.com

Electronic Mail (E-Mail) Only

Electronic Mail (E-Mail) Only

Date: February 10, 2021

/s/Maggie Shields
Maggie Shields
Assistant County Solicitor

From: Allegheny Open Records <alleghenycountypa@mycusthelp.net>
Sent: Wednesday, December 23, 2020 1:52 PM
To: Colosimo, Kathy A.
Subject: RTK/Open Records Center - Open Records Request Received :: W006595-122320

This is notification the RTK/Open Records Center received an Open Records request.

The request has been routed to the appropriate staff members. Below is the link to the specific request.

<https://ALLEGHENYCOUNTYPA.mycusthelpadmin.com/webapp/zadmin/ServiceRequests/Details.aspx?id=6595>

Overview of the Request

Create Date: 12/23/2020 1:52:12 PM

Reference Number: W006595-122320

Department Requesting Information From:

Type of Information: Autopsy

Description: I am requesting the Autopsy/External Examination and Toxicology Report for Daniel A Pastorek, 63, who died November 26 at the Allegheny County Jail. Can I have the parts of the report as they become available, as well. I request the results of the physical autopsy as soon as they become available and I request the results of the toxicology as soon as they become available. Thank you, Brittany Hailer

Requestor Name: Brittney Hailer

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

January 5, 2021

Brittney Hailer
2006 Locust Street
Swissvale, PA 15218

Re: RTKL Request – Final Response - #6595

Dear Ms. Hailer:

This is in response to your request for records made pursuant the Pennsylvania Right-to-Know Law (RTKL), which this Office received on December 23, 2020.

In your request you state:

I am requesting the Autopsy/External Examination and Toxicology Report for Daniel A. Pastorek, 63, who died November 26 at the Allegheny County Jail.

Can I have the parts of the report as they become available, as well.

I request the results of the physical autopsy as soon as they become available and I request the results of the toxicology as soon as they become available.

Your request for these records must be respectfully denied. 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. This exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death. In this instance, the pertinent information for Daniel A. Pastorek is as follows:

Decedent: Daniel A. Pastorek

Manner of Death: Natural

Cause of Death: Hypertensive Arteriosclerotic Cardiovascular Disease

Please note: The autopsy report can be released to a next of kin. For additional information, you can contact the Medical Examiner's Office at 412-350-4800.

JERRY TYSKIEWICZ, DIRECTOR

DEPARTMENT OF ADMINISTRATIVE SERVICES

202 COURTHOUSE • 436 GRANT STREET • PITTSBURGH, PA 15219
PHONE (412) 350-6109 • FAX (412) 350-4925 • WWW.ALLEGHENYCOUNTY.US

January 5, 2021

Page Two

Pursuant to Section 1101 of the RTKL, a party denied access to a requested record may file a written appeal of the denial with the Pennsylvania Office of Open Records ("OOR") within fifteen (15) business days of the mailing date of the local agency's response. The OOR's address is:

Pennsylvania Office of Open Records
333 Market Street - 16th Floor
Harrisburg, PA 17126-0333

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Tyskiewicz". The signature is fluid and cursive, with the first name "Jerry" and last name "Tyskiewicz" clearly distinguishable.

Jerry Tyskiewicz, Director
County of Allegheny Open Records Officer



IN THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:

BRITTNEY HAILER,

Requestor,

vs.

Docket No.: AP 2021-0117

ALLEGHENY COUNTY,

Respondent.

AFFIDAVIT

I, Mandy Tinkey, hereby declare under the penalty of perjury, pursuant to 18 Pa. C. S. A. § 4904, that the following statements are true and correct based upon my personal knowledge, information and belief:

1. My name is Mandy Tinkey. I am the Laboratory Director of the Allegheny County Office of the Medical Examiner ("ACOME"). One of my job responsibilities is to communicate with the County Department of Administrative Services and the County Law Department about Right To Know Law ("RTKL") requests that the County receives for records in the possession of the ACOME.

2. In December 2020, I received notice of a request from Brittney Hailer for "the Autopsy/External Examination and Toxicology Report for Daniel Pastorek, 63, who died November 26 at the Allegheny County Jail."

3. The ACOME performed an investigation into Mr. Pastorek's death, including an external autopsy examination. The ACOME generated an external examination report.

4. The ACOME also generated a toxicology report for Mr. Pastorek, which is attached to the autopsy report. A toxicology report reflects testing for possible agents contributing to an individual's death. Complete testing for possible agents is an integral part of the death investigation process at ACOME and is performed on all decedents who fall into its jurisdiction. Testing is performed by the Toxicology Section of the Division of Laboratories, with extended testing performed as needed by an outside Forensic Laboratory.

5. I recommended that the County Department of Administrative Services deny this request for records pursuant to RTKL Section 708(b)(20).

6. I provided the County Department of Administrative Services with the cause and manner of Mr. Pastorek's death so that this information could be provided to Ms. Hailer.

Mandy Tinkey

Mandy Tinkey

2-10-21

Date

Digitally signed by Mandy Tinkey
DN: cn=Mandy Tinkey, o=Allegheny County Medical Examiner and
Forensic Laboratories, ou=County of Allegheny, email=Mandy.Tinkey@alleghenycounty.us, c=US
Date: 2021.02.10 15:13:53 -0500

Henry, Faith

From: Shiels, Maggie <Maggie.Shiels@AlleghenyCounty.US>
Sent: Wednesday, February 10, 2021 4:54 PM
To: Burlew, Erin; bhailer@gmail.com
Cc: Colosimo, Kathy A.
Subject: AP 2021-0117 Hailer v. ALlegheny County
Attachments: AP 2021-0117 - Allegheny County's brief.pdf

Please see attached. Let me know if I can be of further assistance. Thank you.

Maggie Shiels
Assistant County Solicitor
Allegheny County Law Department
445 Fort Pitt Blvd.
3rd Floor
Pittsburgh, PA 15219
(412) 350-1159

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, forwarding, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Henry, Faith

From: Shiels, Maggie <Maggie.Shiels@AlleghenyCounty.US>
Sent: Wednesday, February 10, 2021 4:56 PM
To: Burlew, Erin; bhailer08@gmail.com
Subject: FW: AP 2021-0117 Hailer v. Allegheny County
Attachments: AP 2021-0117 - Allegheny County's brief.pdf

My apologies, I sent this to the wrong email address for Ms. Hailer.

From: Shiels, Maggie
Sent: Wednesday, February 10, 2021 4:54 PM
To: Burlew, Erin <eburlew@pa.gov>; bhailer@gmail.com
Cc: Colosimo, Kathy A. <Kathy.Colosimo@AlleghenyCounty.US>
Subject: AP 2021-0117 Hailer v. Allegheny County

Please see attached. Let me know if I can be of further assistance. Thank you.

Maggie Shiels
Assistant County Solicitor
Allegheny County Law Department
445 Fort Pitt Blvd.
3rd Floor
Pittsburgh, PA 15219
(412) 350-1159

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OOR Exhibit 5

Henry, Faith

From: Burlew, Erin
Sent: Monday, March 22, 2021 8:58 AM
To: Brittany Hailer; Maggie.Shiels@alleghenycounty.us
Subject: RE: [External] Re: Hailer v. Allegheny Co Medical Examiner: AP 2021-0117

Ma. Hailer-

Thank you for your inquiry. Your appeal is in process and the final determination issuance date is on or before March 31, 2021.

Best,



Erin Burlew
Attorney
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | eburlew@pa.gov
<https://openrecords.pa.gov> | [@OpenRecordsPA](https://twitter.com/OpenRecordsPA)

From: Brittany Hailer <bhailer08@gmail.com>
Sent: Sunday, March 21, 2021 12:56
To: DC, OpenRecords <RA-OpenRecords@pa.gov>; Maggie.Shiels@alleghenycounty.us
Cc: OpenRecords@alleghenycounty.us; Burlew, Erin <eburlew@pa.gov>
Subject: [External] Re: Hailer v. Allegheny Co Medical Examiner: AP 2021-0117

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.

Hello All,

I am inquiring to the status of my appeal.

Thank you,
Brittany Hailer

On Thu, Jan 21, 2021 at 5:37 PM DC, OpenRecords <RA-OpenRecords@pa.gov> wrote:

Dear Parties,

Attached, find an appeal that has been filed with the Office of Open Records. The above mentioned matter has been assigned to Appeals Officer Erin Burlew (refer to the attachment for contact information). Please forward all future correspondence directly to the Appeals Officer (cc'd on this email) and all other parties.

Sincerely,



Dylan Devenyi

Administrative Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | **Fax** (717) 425-5343
<https://openrecords.pa.gov>
[@OpenRecordsPA](#)

--

Brittany Hailer

Journalist and Educator

703-232-2281

<https://www.brittanyhailer.com/>

Animal You'll Surely Become (Tolsun Books), October 2018

<https://www.amazon.com/Animal-Surely-Become-Brittany-Hailer/dp/1948800128>

OOR Exhibit 6



FINAL DETERMINATION

**ALLEGHENY COUNTY MEDICAL
EXAMINER,
Respondent**

[illegible]

INTRODUCTION

FACTUAL BACKGROUND

I am requesting the Autopsy/External Examination and Toxicology Report for Daniel A. Pastorek, 63, who died November 26 at the Allegheny County Jail.

Can I have the parts of the report as they become available, as well.

I request the results of the physical autopsy as soon as they become available and
I request the results of the toxicology as soon as they become available.

On January 5, 2021, the Examiner denied the Request, arguing the records are exempt autopsy records but providing the decedents' name, and cause and manner of death. 65 P.S. § 67.708(b)(20).

On January 19, 2021, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the Examiner to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On February 2, 2021, the Requester provided additional argument in support of her appeal.

On February 10, 2021, the Examiner submitted a position statement reiterating its grounds for denial. The Examiner claims that because Allegheny County is a county of the second class, the Coroner's Act does not require that autopsy reports be deposited with the Prothonotary and therefore, the autopsy report is exempt under Section 708(b)(20). Furthermore, the Examiner argues that the toxicology report is an exempt noncriminal investigative record. 65 P.S. § 67.708(b)(17). In support of its position, the Examiner submitted the affidavit of Mandy Tinkey, the Laboratory Director of the Allegheny County Office of the Medical Examiner.

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

¹ The Requester granted the OOR a 30-day extension to issue a final determination. 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).").

“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 Examiner 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).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its

nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The Examiner argues the autopsy report is exempt under Section 708(b)(20) of the RTKL. Meanwhile, the Requester argues that these records are public pursuant to the Pennsylvania Supreme Court ruling, while the Examiner argues that the Coroner’s Act, 16 P.S. §§ 1231 *et seq.*, does not apply to Allegheny County. *See* 16 P.S. § 102(a) (“[T]his act does not apply to counties of the first, second A, or second classes.”).

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). Thus, Section 708(b)(20) explicitly exempts public access to an autopsy report under the RTKL. *Id.*

Under the Coroner’s Act, there are two ways to access records of a coroner. First, Section 1236-B of the Coroner’s Act requires coroners of the third, fourth, fifth, sixth, seventh and eighth classes to deposit their records with the Prothonotary, 16 P.S. § 1236-B, but Allegheny County is a county of the second class, 16 P.S. § 210(2). Therefore, the Examiner is not obligated to file their “official records and papers” for the preceding year in the County’s Office of the Prothonotary. *See* 16 P.S. § 1236-B.

However, there is a second means of accessing records under the Coroner’s Act directly from the coroner under Section 1252-B which states:

The coroner shall charge and collect a fee of \$ 500 for an autopsy report, \$ 100 for a toxicology report, \$ 100 for an inquisition or coroner's report, \$ 50 for a cremation or disposition authorization and other fees as may be established from time to time for other reports or documents 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 P.S. § 1252-B. The Pennsylvania Supreme Court analyzed this section in *Hearst Television, Inc. v. Norris*, finding that “[t]he RTKL provides the procedure for accessing those records that are available for immediate release for a fee pursuant to Section [1252-B].” 54 A.3d 23, 33 (Pa. 2012). The Court further noted that there was no mention of discretion when charging or collecting these fees; as a result, Section 1252-B “allows the coroner to charge fees for records but does not afford the coroner any discretion with regard to releasing such records.” *Id.* at 32 (emphasis added).

The Examiner argues that when the General Assembly exempted second class counties from the requirement that coroners deposit records and papers with the Prothonotary, it eliminated the rationale that the Court used in *Hearst Television*, which held that the RTKL provides a procedure for a citizen to request and pay for reports that have not yet been filed with the Prothonotary.

The Examiner argues that the reports “*are not required to become public at any point.*” (emphasis in original). This is incorrect. Even though *Norris* was determined under the former version of the Coroner's Act², the rationale regarding the interplay between the former Coroner's Act and the RTKL still applies to the interplay between the current Coroner's Act and the RTKL. Furthermore, Section 1201-B of the Act specifically applies the Act to counties of the second class, second class A and third through eighth class, unless otherwise expressly provided. 16 P.S. § 1201-B

² The former Coroner's Act, 16 P.S. §§ 1201 *et seq.*, was repealed and replaced by 16 P.S. §§ 1201-B *et seq.*, which became effective on December 24, 2018.

Therefore, a requester is not limited to only accessing records that may have been filed with the Prothonotary. Rather, any Coroner's records responsive to the Request identified in Section 1252-B of the Coroner's Act are available through the RTKL for the fees set forth in the Coroner's Act. *See Ciavaglia v. Bucks County*, OOR Dkt. AP 2020-0761, 2020 PA O.O.R.D. LEXIS 1528; *Bowen v. Indiana County*, OOR Dkt. AP 2019-2064, 2019 PA O.O.R.D. LEXIS 2068.

Similarly, although the County argues the toxicology report is exempt under both Sections 708(b)(17) and 708(b)(20) of the RTKL, because the Act provides that toxicology reports are available for a fee, the toxicology report is a public record but subject to disclosure for the fee set forth in the Act.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the Examiner is required to provide the reports in accordance with the 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 Allegheny 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.³ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: March 31, 2021

/s/ Erin Burlew

ERIN BURLEW, ESQ.
APPEALS OFFICER

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

Sent to: Britney Hailer (via email only);
Maggie Shiels, Esq. (via email only);
Jerry Tyskiewicz, AORO (via email only)

Henry, Faith

From: Burlew, Erin
Sent: Wednesday, March 31, 2021 9:43 AM
To: Shiels, Maggie; bhailer08@gmail.com; OpenRecords@alleghenycounty.us
Subject: Hailer v. Allegheny Co. Medical Examiner, OOR Dkt. AP 2021-0117; final determination
Attachments: 2021-0117_Hailer_AlleghenyCoMedExam_FD.pdf

Parties-

Please find attached a copy of the OOR's Final Determination in the above captioned appeal.

Sincerely,



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