



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF

:

**WALTER YARNALL,
Complainant**

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:

:

v.

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Docket No.: AP 2009-0203

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**BUTLER COUNTY
Respondent**

:

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INTRODUCTION

Walter Yarnall (“Mr. Yarnall”) filed a right-to-know request with the Butler County Coroner (“the Coroner”), pursuant to the Right to Know Law (“RTKL”), 65 P.S. §67.101, *et. seq.*. He sought copies of an autopsy report. The Coroner denied Mr. Yarnall’s request. Mr. Yarnall filed a timely appeal with the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, the appeal is **granted** and the Coroner is required to provide the records sought.

FACTUAL BACKGROUND

Mr. Yarnall filed a right to know request with the Coroner on March 4, 2009. Specifically, he sought copies of an August 5, 2008 autopsy performed on a Joseph Rezak. Wm. F. Young, III, Butler County Coroner, denied the request in a March 10, 2009 pursuant to § 708(b)(20) of the RTKL. Mr. Yarnall timely appealed the denial to the OOR on March 20, 2009.

LEGAL ANALYSIS

The Office of Open Records is authorized to hear appeals for all Commonwealth and local agencies. See 65 P.S. §67.503(a). The Coroner is a local agency subject to the RTKL. See 65 P.S. § 67.302. The RTKL defines a “public record” as:

“A record, including a financial record, of a Commonwealth or local agency that: (1) is not exempt under section 708; (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or (3) is not protected by a privilege.”

65 P.S. §67.102.

A record **in the possession** of a local agency is presumed to be a public record unless: (1) the record is exempt under Section 708; (2) the record is protected by a privilege; or (3) the record is exempt from disclosure under any other federal or State law or regulation or judicial order or decree. See 65 P.S. 67.305.

The issue before the OOR is whether the autopsy report is a public record. The Coroner questions whether the OOR has jurisdiction and authority to review accessibility to records under any statute other than the RTKL. This jurisdictional argument fails and is in direct conflict with the plain language of § 102 of the RTKL. A public record includes one that is not exempt from being disclosed under any other Federal or State law. The Legislature unambiguously granted the OOR authority to review the

accessibility to public records in accordance with other State and Federal laws. As such, the OOR rejects this jurisdictional argument.

The Coroner also argues that the plain language of § 708(b)(20) exempts the report and that the case of Penn Jersey Advance, Inc. v. Grim, 962 A.2d 632 (PA 2009) pre-dates the RTKL and is not controlling. This same issue was addressed by the OOR in Brubaker v. County of Lancaster, AP# 2009-104 issued April 17, 2009 and is binding on this case. In Brubaker, the OOR addressed the issue as follows:

Autopsy reports have a long and split history in Pennsylvania courts. In 1996, the Superior Court ruled determined that autopsy reports are “official records of the coroner’s office” and thus should be released under the Coroner’s Act. See In re Dillon, 674 A.2d 735, 739 (Pa. Super. Ct. 1996) later cited favorably by the Supreme Court. See In re Buchanan, 880 A.2d 568, 576-77 (Pa. 2005). The Commonwealth Court took the opposite position, holding that autopsy reports are not “official records” covered by the Act and that the statute only requires coroners to disclose documentation of the cause of death and whether the death resulted from foul play. See Johnstown Tribune Publ’g Co. v. Ross, 871 A.2d 324, 330-31 (Pa. Commw. Ct. 2005).

In Penn Jersey, the Supreme Court reversed the Commonwealth Court’s ruling holding that an autopsy is an official duty of a coroner. The Court stated that “[i]t follows logically that a coroner’s resulting autopsy reports constitute ‘official records and papers’ within the meaning of [the Act].” Recognizing the increased access the public would have to potentially privileged information, the Court explained that trial courts would be able to address these types of “legitimate” concerns to limit access to autopsy reports based on privacy or privilege grounds where warranted.

In a footnote, the Supreme Court noted the RTK law took effect on January 1, 2009 and therefore had no application to the underlying events of the Penn Jersey Case.

The Court stated:

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)(2)). The Right-to-Know Law further provides that “if the provisions of this 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. The Right-to-Know Law became effective on January 1, 2009 and thus has no application to the events underlying this case. Accordingly, we express no opinion at this time on the relationship between the Coroner’s Act and the Right-to-Know Law.

The Supreme Court unequivocally held in Penn Jersey that autopsy reports are official records of the Coroner to be filed within 30 days after the end of each year “for the inspection of all persons interested therein.” It is the view of the OOR that the mandate of the Coroner’s Act continues to govern public access to autopsy reports, which the Court has deemed to be an “official record” of the Coroner’s Office. Thus, as official records of the coroner’s office autopsy reports are public record, as defined under the RTKL, as of the date of required filing - 30 days after the end of each year. If a citizen requests an autopsy report, and it has been filed with the prothonotary in accordance with the Coroner’s Act, the record is a public record and available under the RTKL. If the autopsy report has not yet been filed under the Coroner’s Act, the autopsy report may be protected under Section 708(b)(20) of the RTKL until made public as governed by the provisions of Coroner’s Act.

In this case, the requested record is a public record under the RTKL if/when it was deposited with the prothonotary’s office as required by the Coroner’s Act. Therefore, the appeal is granted.

CONCLUSION

For the foregoing reasons, Mr. Yarnall's appeal is **granted**. The Office of Open Records finds the Coroner is required to provide the report sought. This Final Determination is binding on the parties. Within thirty (30) days of the mailing date of this Determination, either party may appeal to the Common Pleas Court of Butler County. All parties must be served with notice of the appeal. The Office of Open Records also shall be served notice and have an opportunity to respond according to court rules. 65 P.S §67.1301. The parties are further advised that a copy of this Final Determination will appear on the Office of Open Records website, <http://openrecords.state.pa.us>

FINAL DETERMINATION ISSUED April 20, 2009



**APPEALS OFFICER
NATHANAEL J. BYERLY, ESQUIRE**