

pennsylvania
OFFICE OF OPEN RECORDS

**DETERMINATION UPON
PETITION FOR RECONSIDERATION**

IN THE MATTER OF	:
	:
REBECCA HOCKLEY	:
Complainant	:
	:
v.	: Docket No.: AP 2009-0337
	:
CUMBERLAND COUNTY CORONER	:
Respondent	:

INTRODUCTION

Rebecca Hockley (the “**Citizen**”), on behalf of herself and of her employer, WGAL-TV, a Hearst Television, Inc. station, filed a right-to-know request (the “**Request**”) with Michael Norris, the Cumberland County Coroner (the “**Coroner**”), pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §67.101, *et. seq.*. She sought the manner of death for Thomas Rainey, who was found dead on April 16, 2009.

The Coroner denied the Citizen’s Request on April 23, 2009 (the “**Denial**”), stating that any information the Coroner’s office may have regarding the death of an individual who died in 2009 is not public record and would not become public until 30

days after the end of the year. The Citizen filed a timely appeal with the OOR on April 27, 2009 (the “**Appeal**”). The OOR issued a final determination on May 27, 2009 affirming the Coroner’s denial of the Request (the “**Final Determination**”), OOR Dkt. AP 2009-0337.

Through her counsel, Kristina Findikyan, the Citizen filed a Petition for Reconsideration on June 24, 2009, asking the OOR to reconsider its Final Determination, alleging that the Final Determination contained an error of law (the “**Petition for Reconsideration**”) and that, under the RTKL, the manner of death is not exempt and that no other statute, including 16 P.S. §1214 *et seq.* (the “**Coroner’s Act**”), prohibits its disclosure. Citizen had been told by the OOR that the statutory timeframe for filing such a petition was 30 days. The OOR granted the Petition for Reconsideration on June 25, 2009 by letter.

The Coroner submitted a response in the nature of answer on July 10, 2009 (the “**Response**”). In his Response, the Coroner points to the Coroner’s Act and case law. He argues that the information sought by the Citizen – the manner of death is available as part of the Coroner’s official records and papers, which he is not required to release to the public until 30 days after the end of the year.

OOR subsequently decided that it would follow a 15-day deadline for petitions for reconsideration. In light of the changed circumstance, the OOR re-issued its grant of the Petition, for Reconsideration on the basis of the common law principle of *nunc pro tunc*, that the Citizen had relied to her detriment upon the erroneous directives given by the OOR.¹

¹ An appeal *nunc pro tunc* may be allowed when "fraud or some breakdown in the court's operation through a default of its officers" or the non-negligent conduct of the appellant's attorney or his staff caused a delay

For the reasons set forth in this Determination upon Petition for Reconsideration, we **affirm** the Final Determination.

LEGAL ANALYSIS

Until such time as its final regulations are promulgated and finally adopted, the OOR has adopted the reconsideration provisions of Pennsylvania's General Rules of Administrative Practice and Procedure, 1 Pa. Code § 35.241. It is by this authority that the OOR entertains the Petition for Reconsideration submitted by the Citizen.

In her Petition for Reconsideration, the Citizen contends that the Final Determination contained an error of law. Specifically, the Citizen states that the only record she sought in her Request was the "manner of death" of Mr. Rainey. She notes that by its express terms, the RTKL provides that this information is not exempt from access by a requester and that no other statute, including the Coroner's Act, 16 P.S. §§ 1214 and 1231-1260, prohibits the disclosure of this information. The Citizen points out that the Final Determination did not consider or address the portion of the RTKL that provides that the "manner of death" of a deceased individual is not exempt from the RTKL.

While the OOR's Final Determination did not address this argument, the Final Determination was nonetheless correct. Here, we address the issues raised by the Citizen and the Coroner in greater depth, in an effort to lay out the current law on access to the official records and papers created, held and filed by this Commonwealth's coroners pursuant to the Coroner's Act. This law has been in flux through recent case law interpreting both the prior version of the RTKL and the Coroner's Act, as well as through

in filing the appeal. *See Nixon v. Nixon*, 329 Pa. 256, 198 A. 154 (1938); see also *Bass v. Commonwealth Bureau of Corrections, et al.*, 485 Pa. 256, 401 A.2d 1133 (1979); see also *West Penn Power Co. v. Goddard*, 460 Pa. 551, 556, 333 A.2d 909, 912 (1975).

the most recent amendment to our state's open records law, which resulted in the RTKL referenced above. There has been some confusion and we hope to clarify this office's interpretation of the law today.

For ease of discussion, we will define our terms. The Coroner's Act does not define the terms "official records and papers of the Coroner", "autopsy report" or "manner and cause of death." The OOR relies on the definitions supplied by the Pennsylvania Supreme Court in the recent case, *Penn Jersey Advance, Inc. D/B/A Easton Publishing Company v. Grim*, 599 Pa. 534 (2009). The Court in that case found that since conducting autopsy reports is a duty of the coroner, "it reasonably follows that the resulting autopsy report is an official record or paper." *Id.* at 540. Before this, the Commonwealth Court determined that if no autopsy was performed, the manner and cause of death may be a stand alone record. *Johnstown Tribune Publishing v. Ross*, 871 A.2d 324, 327 (Pa Cmwlt. 2005).

Therefore, "Official Records and Papers" are those papers created, held and filed by a coroner pursuant to his or her duties under the Coroner's Act. These records may contain an autopsy report and information on the manner and cause of death. "Autopsy Report" is a record consisting of the report resulting from the autopsy performed by a coroner. The "Manner and Cause of Death Record" is a stand alone record that a coroner will produce when no autopsy is performed, or it may be part of the Autopsy Report.

By its terms, the RTKL does not apply when it is in conflict with another law. 65 P.S. 67.3101.1. The Coroner's Act governs the totality of the Official Records and Papers of a coroner and how and when these become public. The RTKL cannot require the immediate disclosure of the Manner and Cause of Death Record, as such disclosure

would be in conflict with the Coroner's Act. The Coroner is bound by the time and filing requirements set forth in the Coroner's Act and is not required to file the record sought by the Citizen – the Manner and Cause of Death Record – until 30 days after the end of the year.

1. The Request is for “official records” of the Coroner.

In the Final Determination, the OOR analyzed the Request as one for an Autopsy Report, similar to the requests made in two prior OOR determinations, *Brubaker v. Lancaster County*, OOR Dkt. AP 2009-0104 and *Yarnall v. Butler County Coroner*, OOR Dkt. AP 2009-0203. However, the Citizen requested only the Manner and Cause of Death Record, which, as we noted, may be a stand alone record or may be information contained in an Autopsy Report.

Under the Coroner's Act, the Coroner is not required to release his Official Records and Papers until 30 days after the end of each year.² The initial issue here, then, is whether the Manner and Cause of Death Record constitutes part of the Coroner's Official Records and Papers. In *Johnstown Tribune*, the Commonwealth Court held:

A coroner's statutory duty is to ascertain the cause and manner of suspicious deaths. It follows that “official” records and papers that a coroner must deposit for public inspection are those that state the cause of death and whether such death was caused by criminal activity or criminal negligence.

Johnstown Tribune, 871 A.2d at 328.

The *Johnstown Tribune* Court went on to hold that “a coroner's ‘official records and papers’ means documentation of the cause and manner of death investigated by the

² 16 P.S. §1251 states:

Every coroner, within thirty (30) days after the end of each year, shall deposit all of his official records and papers for the preceding year in the office of the prothonotary for the inspection of all persons interested therein.

coroner.” The Court found that an Autopsy Report, however, was not part of the Official Records and Papers of a coroner and thereby created a common law exception to access to Autopsy Reports in Pennsylvania.

However, as noted in the OOR’s Final Determination, the Supreme Court subsequently extended the definition of Official Records and Papers, unequivocally holding in *Penn Jersey* that Autopsy Reports are Official Records and Papers of the coroner and all of such records must be filed within 30 days after the end of each year “for the inspection of all persons interested therein.”³ 962 A.2d at 636.

Thus, Official Records and Papers of a coroner include Autopsy Reports as well as Manner and Cause of Death Records. The record sought by Citizen is clearly a public record, but the next question is when such a record becomes a public record.

2. The RTKL does not require immediate access to “official records” of the Coroner.

The record sought by the Citizen is clearly a public record, but we must now resolve whether the RTKL requires the Coroner to provide access to the Manner and Cause of Death Record *prior to* the time set forth in section 1251 of the Coroner’s Act, 16 P.S. § 1251. The Citizen points to the last sentence of section 708(b)(20) of the RTKL, 65 P.S. 67.708(b)(20), which states “[t]his exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death” as the basis for immediate access to the record.

³ *Penn Jersey* was argued before but issued immediately after the enactment of the RTKL. The Court noted that the RTKL had changed significantly but that its decision was based only on the Coroner’s Act.

At first blush, the provision appears to be “an exception to the exception” and to evidence an intent by the General Assembly to make the Manner and Cause of Death Record immediately available. But this is not the case, as the immediate disclosure of such records would conflict with both the timing requirements for filing the Official Records and Papers as well as the procedure for obtaining the information under the Coroner’s Act. *See* 16 P.S. §§ 1251 and 1236.1.⁴

Specifically, the Coroner’s Act provides that access to the coroner’s records may be requested at any time under 16 P.S. § 1236.1. The release of the records under this provision is subject to the discretion of the coroner. However, 30 days after the end of each year, the coroner is required to file his/her official records with the prothonotary pursuant to 16 P.S. § 1251.

Therefore, in this matter, even if the Coroner elects to withhold the records under 16 P.S. § 1236.1, which he may do, he is required to file them with the prothonotary pursuant to 16 P.S. § 1251. The RTKL, as always, does not apply when it is in conflict with another statute. 65 P.S. § 67.3101.1. Thus the Coroner’s Act provisions regarding

⁴ § 1236.1. Requests for examinations and reports

(a) Requests for examinations or other professional services by other counties or persons may be complied with at the discretion of the coroner pursuant to guidelines established by the county commissioners.

(b) A set of fees and charges for such examinations or professional services shall be established by the coroner, subject to approval by the county commissioners, and shall be accounted for and paid to the county treasurer pursuant to section 1760. Payment for examinations or professional services shall be the responsibility of the county or person requesting such services.

(c) The coroner may charge and collect a fee of up to one hundred dollars (\$ 100) for each autopsy report, up to fifty dollars (\$ 50) for each toxicology report, up to fifty dollars (\$ 50) for each inquisition or coroner’s report and such other fees as may be established from time to time for other reports and documents requested by nongovernmental agencies. The fees collected shall be accounted for and paid to the county treasurer pursuant to section 1760 and shall be used to defray the expenses involved in the county complying with the provisions of the act of March 2, 1988 (P.L. 108, No. 22), referred to as the Coroners’ Education Board Law.

which records of the coroner are public and when govern. The RTKL as a vehicle to obtain such records may be used only after the Official Records and Papers are filed with the prothonotary.

Read like this, the would-be “exception to the exception” in the RTKL, section 708(b)(20) makes perfect sense when read together with the Coroner’s Act and the cases interpreting it. The General Assembly attempted to codify the Commonwealth Court’s holding in *Johnstown Tribune*, exempting Autopsy Reports from public disclosure, but making it clear that the coroners have a continuing obligation to file the Manner and Cause of Death Records pursuant to Section 1251 of the Coroner’s Act and that such records would thus become public and accessible through the RTKL within 30 days of the end of each year. The *Penn Jersey* Court, however, interpreting the Coroner’s Act to include Autopsy Reports within the definition of Official Records and Papers of a coroner effectively negated the overall exemption of Autopsy Records in the first clause of section 708(b)(20), but left the coroners’ reporting requirements for Manner and Cause of Death Records unchanged in the second clause.

As a side note, in addressing the disclosure and timing requirements of a coroner’s records, the Supreme Court and Commonwealth Court both reconciled 16 P.S. § 1236.1 with 16 P.S. § 1251. First, the *Johnstown Tribune* Court determined that autopsy reports were not part of the “official record and papers” under 1251 in part because “no one would pay...[the fee set forth in § 1236.1]... to a coroner if the autopsy report was already available at the prothonotary’s office.” 871 A.2d at 329. The Court reasoned that such an interpretation would render 16 P.S. § 1236.1(c) meaningless.

The *Penn Jersey* Court interpreted Autopsy Reports as part of the “official records and papers” that must be filed with the prothonotary under 16 P.S. § 1251, noting, however, that such a result did not conflict with 16 P.S. § 1236.1(c) because § 1236.1 “provides a rapid means of procuring an autopsy report for those who do not wish to wait till after the end of the year, and who are also willing to pay the charges associated with procuring it.”

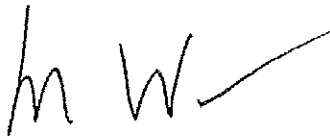
Here, the Citizen, via the RTKL, seeks Manner and Cause of Death Records, information contained within the Official Records and Papers, prior to the expiration of the statutory period set forth in 16 P.S. § 1251. She also seeks such records outside the discretionary release procedures set forth in 16 P.S. § 1236.1(c). While the Coroner has the discretion to release the Manner and Cause of Death Record to Citizen immediately, he is not required to do so. The Manner and Cause of Death Record sought by the Citizen will be available under the RTKL with 30 days after the end of the current year, from the Prothonotary of Cumberland County.

CONCLUSION

For the foregoing reasons, we **affirm** the Final Determination. This Determination upon Petition for Reconsideration is binding on the parties. Within thirty (30) days of the mailing date of this Determination, either party may appeal to the Court of Common Pleas Court of Cumberland 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>

DETERMINATION ISSUED July 24, 2009

A handwritten signature in black ink, appearing to read 'm w' followed by a long horizontal stroke.

APPEALS OFFICER

CORINNA VECSEY WILSON, ESQUIRE

HEARST corporation

Kristina E Findikyan
Counsel

June 24, 2009

VIA FEDERAL EXPRESS AND EMAIL (tmutchler@state.pa.us)

Ms. Terry Mutchler
Executive Director
Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Office of
General Counsel

Eve Burton
Vice President and
General Counsel

Jonathan R Donnellan
Christopher A Praser
Larry M Loeb
Mark C Redman
Calvin Siemer
Debra S Weaver
Senior Counsel

**Re: Petition for Reconsideration of WGAL Open Records
Request, Docket # AP 2009-0337**

Dear Public Records Officer:

Pursuant to 1 Pa. Code § 35.241, Rebecca Hockley and WGAL-TV, a Hearst Television, Inc. station (collectively, "WGAL") hereby request that the Office of Open Records reconsider its Final Determination in *In the Matter of Rebecca Hockley v. Cumberland County Coroner*, Docket No. AP 2009-0337 (a true and correct copy of which is attached hereto as Exhibit A).

WGAL respectfully contends that the Final Determination contained an error of law. Pursuant to 65 P.S. § 67.708, the "manner of death" of a deceased individual – which is all WGAL sought by its Open Records Request – is not exempt from access by a requester under the Right-To-Know Law (65 P.S. §§ 67.101, *et seq.*, as amended) (hereinafter the "RTKL") and no other statute, including the Coroner's Act, prohibits its disclosure.

Procedural Background

On April 17, 2009, on behalf of WGAL, Ms. Hockley sent an Open Records Request (hereinafter, the "Request") to Joanne Burkhart, the Cumberland County Open Records Officer requesting "the manner of death for Thomas Rainey," a true and correct copy of which is attached hereto as Exhibit B.

Lisa Antonini
David Burgess
Carolene S Eaddy
Kristina E Findikyan
Bridgette Fitzpatrick
Carl G Guida
Audra Kujawski Hart
Robert J Hawley
Alan E Lewis
Kevin J McCanley
Aimee Nisbet
Courtenay O'Connor
Kenan J Packman
Peter P Rahbar
Eva M Saketkoo
Maureen Walsh Sheehan
Jonathan Sirota
Ravi V Sitwala
Jack Spizz
Counsel

Catherine A Bostron
Secretary

Harvey L Lipton
Of Counsel

300 West 57th Street
New York, NY 10019-3792
T 212 649 2009
F 646 280 2009
kfindikyan@hearst.com

By letter dated April 23, 2009, Michael L. Norris, the Coroner and Open Records Officer for the Cumberland County Coroner's Office, denied the Request, a true and correct copy of which is attached hereto as Exhibit C. Citing 16 P.S. § 1251 (hereinafter the "Coroner's Act"), Mr. Norris stated in part that "[a]ny information this office may have regarding the manner of death for any person who died in 2009 is not public record and would not become public under current law until 30 days after the end of the year."

WGAL appealed the denial of the Request, which was received by the Pennsylvania Office of Open Records on April 27, 2009 (a true and correct copy of which is attached hereto as Exhibit D).

By Final Determination dated May 27, 2009, the Pennsylvania Office of Open Records affirmed the denial of the Request. The Office of Open Records erroneously interpreted the Request as seeking an autopsy report and found that its previous determinations in *Brubaker v. Lancaster County*, OOR Dkt. 2009-0104, and *Yarnall v. Butler County*, OOR Dkt. 2009-0203 (both of which sought copies of autopsy reports) were binding on WGAL's Request. The Final Determination in this case did not consider or address the portion of 65 P.S. § 67.708(20) providing that the "manner of death" of a deceased individual is not exempt from the RTKL.

LEGAL ANALYSIS

The Final Determination correctly found that the Coroner is a local agency subject to the RTKL. *See* Final Determination at 2 (citing 65 P.S. § 67.302). A record in the possession of a Commonwealth local agency is presumed to be a public record. 65 P.S. § 67.305(a). A "public record" is:

"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."

Final Determination at 2 (citing 65 P.S. § 67.102). "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). That burden here has not been met.

The "manner of death" of a deceased individual is specifically not exempted from public access under section 708 of the RTKL. The express statutory language of 65 P.S. § 67.708(b)(20) only exempts:

“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.”

The provision goes on to state:

“However, “[t]his exception *shall not limit the reporting of the name of the deceased individual and the cause and manner of death.*” *Id.* (emphasis added).

Based on the unambiguous statutory language, the Legislature clearly intended that the “manner of death” of a deceased individual be subject to public access under the RTKL and not exempt from disclosure.

Nor is the “manner of death” of a deceased individual “exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree” under 65 P.S. § 67.102(2).¹ While the RTKL does provide that “[i]f 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,” 65 P.S. § 67.3101.1, the Coroner’s Act places no limitation on the disclosure sought here and is not applicable to WGAL’s Request.

According to the Coroner’s Act, the Coroner, within thirty days after the end of each year, is required to deposit “all of his 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. § 1251. In *Penn Jersey Advance, Inc. v. Grim*, 599 Pa. 534, 962 A.2d 632, 636 (2009), the Pennsylvania Supreme Court held that a coroner’s autopsy report is an “official” record or paper within the meaning of Section 1251 of the Coroner’s Act. The Court did not decide, and did not even mention, whether the “manner of death” of an individual is open to public access under the RTKL. In fact, the Court expressly stated that it was not opining on any relationship between the RTKL and the Coroner’s Act:

¹ The “manner of death” of a deceased individual is also not exempt pursuant to 65 P.S. § 67.102(3). The Final Determination does not claim that manner of death is subject to any privilege, we are not aware that it has been so claimed by the Coroner, and the Legislature expressly determined that it was not subject to a “privilege” when it sanctioned the reporting of “the name of the deceased individual and the cause and manner of death” in 65 P.S. § 67.708(b)(20).

“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 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. § 67.3101.1. 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 no opinion at this time on the relationship between the Coroner’s Act and the Right-to-Know Law.”

See *id.* at 633 n.2 (emphasis added).²

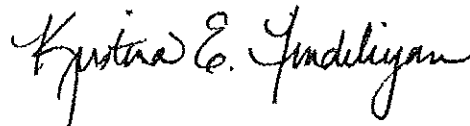
This Office’s finding in this case that “the requested record is a public record under the RTKL when it is deposited with the prothonotary’s office as required by the Coroner’s Act” (Final Determination at p.4) is erroneous and does not address the Request, which was not for an autopsy report but for the “manner of death.” The cited provision of the Coroner’s Act does not exempt the “manner of death” of a deceased individual nor does it conflict with the RTKL. 65 P.S. § 67.102(2); 65 P.S. § 67.3101.1. Simply because the Coroner is required to deposit his “official records” with the prothonotary 30 days after the end of the year does not in any way affect whether the “manner of death” of a deceased individual can be reported under the RTKL. While the Legislature arguably provided this Office with certain flexibility in choosing the form of disclosure, it made absolutely clear the Office’s obligation to provide “the name of the deceased individual and the cause and manner of death” under the RTKL. 65 P.S. § 67.708(b)(20). Whether this Office provides that information by way of a redacted document or otherwise is of no moment. The “manner of death” information by statute must be released.

The RTKL’s clear statutory language mandates that WGAL’s Request, seeking the “manner of death for Thomas Rainey,” be granted. The Coroner has not met his burden of proving that the information is exempt under the RTKL. For all of the reasons set forth herein, WGAL respectfully requests that this Office reconsider its Final Determination in this matter and immediately make available the requested information.

² Indeed, even the Supreme Court acknowledged that Section 708(b)(20) of the RTKL does not exempt *all* information and records relating to autopsies; the Court stated the relevant section only exempted *certain* records, which accurately reflects that, among other things, “manner of death” is not exempt. See 962 A.2d at 633 n.2.

Should this Office need further information on this matter, I can be reached at (212) 649-2009. I look forward to your prompt response.

Respectfully Submitted,



Kristina E. Findikyan

cc:

Mr. Michael Norris
Office of the Coroner, Cumberland County
6375 Basehore Road, Suite 1
Mechanicsburg, PA 17050

VIA FEDERAL EXPRESS AND EMAIL (mmorris@ccpa.net)

Mr. Barry Fox
Open Records Office

VIA EMAIL (bafox@state.pa.us)

Ms. Corinna Wilson
Open Records Office

VIA EMAIL (coriwilson@state.pa.us)

EXHIBIT A



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
REBECCA HOCKLEY	:	
Complainant	:	
	:	
v.	:	Docket No.: AP 2009-0337
	:	
CUMBERLAND COUNTY CORONER	:	
Respondent	:	

INTRODUCTION

Rebecca Hockley (“the Citizen”) filed a right-to-know request (“Request”) with the Cumberland County Coroner (“the Coroner”), pursuant to the Right to Know Law (“RTKL”), 65 P.S. §67.101, *et. seq.*. She sought the manner of death for Thomas Rainey. The Coroner denied the Citizen’s request. The Citizen filed a timely appeal with the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, the appeal is **denied** and the Coroner is not required to take any further action.

FACTUAL BACKGROUND

The Citizen filed the Request with the Coroner on April 17, 2009. Specifically, she sought records revealing the manner of death of Thomas Rainey who was found dead on April 16, 2009. On April 23, 2009 Michael Norris, Cumberland County Coroner, denied the request stating that any information the Coroner's office may have regarding the death of an individual who died in 2009 is not public record and would not become public until 30 days after the end of the year. The Citizen 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 manner of death, information contained within an autopsy report is a public record. As the Coroner notes, the OOR has already addressed this issue in *Brubaker v. Lancaster County*, OOR Dkt. 2009-0104 and *Yarnall*

v. Butler County Coroner Corner, OOR Dkt. 2009-0203. Those determinations are binding on this case.

In those cases, 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.

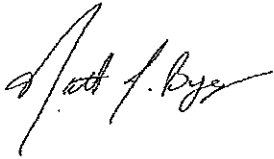
The Supreme Court unequivocally held in Penn Jersey that autopsy reports are official records of the Coroner to be filed within 30 days after the end of each year “for the inspection of all persons interested therein.” It is the view of the OOR that the mandate of the Coroner’s Act continues to govern 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 when it is deposited with the prothonotary’s office as required by the Coroner’s Act. Thomas Rainey died in April, 2009. As such, the autopsy report will be available 30 days after the end of 2009. Therefore, the appeal is denied.

CONCLUSION

For the foregoing reasons, Citizen's appeal is **denied**. The Office of Open Records finds the Coroner is not required to take any further action. 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 Cumberland 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 May 27, 2009



APPEALS OFFICER
NATHANAEL J. BYERLY, ESQUIRE

EXHIBIT B

April 17, 2009

Rebecca Hockley
WGAL-TV News 8
1300 Columbia Avenue
Lancaster, PA 17604

Joanne Burkhart
1 Courthouse Square
Suite 200
Carlisle, PA 17013

Ms. Burkhart:

Please consider this an official written request for information from WGAL-TV. On April 17, 2009, we requested the manner of death for Thomas Rainey from Mike Norris, Cumberland County Coroner. I was told by Mr. Norris that he was not required under the Open Records Law to provide the manner of death.

I understand that cause and manner of death constitute 'public records' pursuant to Pennsylvania's *Right-To-Know Law* (65 P.S. §§ 66.1 *et seq.*, as amended).

You may contact me at any time at the following phone number regarding arrangements for the disclosure of this information.

If you decide to refuse this request, please provide me with a written statement of the reasons for denial. If your denial is based on statute, regulation or court ruling, please cite that law or case, including the specific section or sections in your written response.

I look forward to the Cumberland County Coroner's Office making this information available to me in future requests.

Respectfully,

Rebecca Hockley
Assignment Manager
WGAL News 8
rhockley@hcarst.com
717-735-7305

EXHIBIT C

OFFICE OF THE CORONER

MICHAEL L. NORRIS
CORONER

TODD C. ECKENRODE
CHIEF DEPUTY CORONER



RICHARD C. MIDDLEKAUFF
DEPUTY CORONER

MATTHEW S. STONER
DEPUTY CORONER

MARLIN R. MCCALED
SOLICITOR

CUMBERLAND COUNTY

6375 BASSHORE ROAD, SUITE 1 MECHANICSBURG, PA 17050
PHONE 717-766-6418 FAX 717-766-6419

23 April 2009

Rebecca Hockley
WGAL-TV News 8
1300 Columbia Avenue
Lancaster, Pa 17604

Ms. Hockley:

This letter is in reply to a request for information forwarded to me by The Cumberland County Open Records Officer. To insure proper response in the future please direct inquiries for information from the Cumberland County Coroner's Office to:

AGENCY OPEN RECORDS OFFICER.

The Open Records Officer for the Cumberland County Coroner's Office is Michael L. Norris, Cumberland County Coroner.

Contact information for the Coroner's office is
6375 Basshore Road, Suite 1
Mechanicsburg, Pennsylvania 17050

717-766-6418 (Phone)
717-766-6419 (Fax)
mnorris@ccpa.net (e-mail)

You requested the manner of death for Thomas Rainey.

Any information this office may have regarding the manner of death for any person who died in 2009 is not public record and would not become public under current law until 30 days after the end of the year. *Purdons Title 16 Section 1251*

Also refer to:

Office of Open Records
Final Determination
Docket No: AP 2009-0104
Docket No: AP 2009-0203

Appeals to denials may be filed within 15 days to the Commonwealth's Open Records Office

Contact information for the Pennsylvania Office of Open Records is

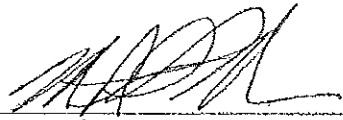
Terry Mutchler, Executive Director
Pennsylvania Office of Open Records
Commonwealth Keystone Building
4th Floor
400 North Street
Harrisburg, Pennsylvania 17120-0225.

<http://openrecords.state.pa.us> (website)

openrecords@state.pa.us (e-mail)

717-346-9903 (Phone)

717-425-5343 (Fax)



Coroner

CC: File

Joanne Burkliart,
Cumberland County Open records Officer

Marlin McCaleb, Solicitor
Cumberland County Coroners Office

Susan Shanaman, Solicitor
Pennsylvania State Coroners Association

EXHIBIT D



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS

April 28, 2009

Rebecca Hockley
WGAL
300 Columbia Avenue
Lancaster, PA 17603

Michael L. Norris
Open Records Officer
Cumberland County Coroner
6375 Basehore Road, Suite 1
Mechanicsburg, PA 17050

RE: DOCKET # AP 2009-0337

Dear Ms. Hockley and Mr. Norris,

Thank you for writing to the Office of Open Records regarding the Right-to-Know law, 65 P.S. §§67.101, ("RTKL"). The OOR has received an appeal on April 27, 2009. This letter will explain our process and provide the Agency a copy of the appeal.

The OOR will assign an Appeals Officer to review the case. If all procedural requirements have been met the Appeals Officer will review the file, consult with agency counsel as appropriate, seek any necessary additional information and issue a Final Determination. The Appeals Officer may conduct a hearing, but that decision is non-appealable. If all procedural requirements have not been met the parties will receive a letter stating why the appeal has not been accepted and that no further action is needed.

If additional information is necessary to reach a Final Determination, the Appeals Officer will ask for it in writing with a deadline for submission. If either party would like to submit unsolicited information they must do so within seven (7) business days from the date of this letter and provide a copy to the opposing party. Agencies are reminded that the burden of proof rests with them in citing the exception, law, regulation, judicial order or privilege to deny a request.

The OOR has 30 calendar days to issue a Final Determination. If you would like more information, please see our Web site, <http://openrecords.state.pa.us>, where all Final Determinations will be posted.

Respectfully,

Terry Mutchler
Executive Director

RECEIVED APR 29 2009



pennsylvania

OFFICE OF OPEN RECORDS

RECEIVED
APR 27 2009
OFFICE OF OPEN RECORDS

Executive Director
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Re: **Right to Know Law Appeal - Denial or Partial Denial by Agency**

Dear Executive Director:

This is an appeal under the Pennsylvania Right to Know Law, 65 P.S. §67.101. I requested documents from Cumberland Co. Coroner. The Agency denied or partially denied my request for information. I am appealing the denial of my request, under section 1101 of the Law and provide the following information in accordance with the Law:

Requester's name: Rebecca Hockley
Address/City/State/Zip: 1300 Columbia Ave., Lancaster PA 17603
Date of Right to Know request: April 17, 2009 Date of Agency Response: April 23, 2009
Telephone and fax number: 717.735.7305 (p) 717.295-7457 (f)
Concise statement of facts (may attach additional pages if necessary)

I requested the manner of death in the autopsy of Thomas Rainey.

Name and address of Agency: WGAL, 1300 Columbia Ave., Lancaster PA 17603

Name and title of the Agency official who denied the request for information:

Cumberland Co. Coroner, 6375 Basehore Road, Suite 1, Mechanicsburg PA 17050

Description of the records requested: Manner of death for Thomas Rainey

List any grounds upon which the requester asserts that the record is a public record:

PA Right-To-Know Law

Address any grounds relied upon by the Agency for denial of the request:
Purdons Title 16 Section 1251

Respectfully Submitted, Rebecca Hockley (must be signed)

Required documents to include with appeal: Copies of original RTK request, Agency denial

Wilson, Corinna

From: Findikyan, Kristina E [KFindikyan@hearst.com]
Sent: Wednesday, June 24, 2009 3:48 PM
To: Mutchler, Terry
Cc: mnorris@ccpa.net; bafax@state.pa.us; Wilson, Corinna
Subject: WGAL Petition for Reconsideration, Docket # AP 2009-0337



WGAL Petition for
Reconsiderat...

Dear Ms. Mutchler and the Office of Open Records,

Attached please find a Petition for Reconsideration respectfully submitted by WGAL in connection with the Final Determination in In the Matter of Rebecca Hockley v. Cumberland County Coroner, Docket No. AP 2009-0337.

I appreciate your prompt attention to this matter and look forward to your response. As indicated in the attached Petition, I can be reached at (212) 649-2009 if further information is needed.

Sincerely,

Kristina E. Findikyan

Kristina E. Findikyan
Hearst Corporation
Office of General Counsel
300 W. 57th Street, 40th Floor
New York, NY 10019
Tel: 212-649-2009
Fax: 646-280-2009
kfindikyan@hearst.com



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS

VIA EMAIL AND FIRST CLASS US MAIL

June 25, 2009

Kristina E. Findikyan
Hearst Corporation
Office of General Counsel
300 W. 57th Street, 40th Floor
New York, NY 10019

RE: Petition for Reconsideration dated June 24 / OOR Dkt. AP 2009-0337

Dear Ms. Findikyan:

We are in receipt of your Petition for Reconsideration dated June 24 in connection with the Office of Open Records Final Determination in *Hockley v. Cumberland County Coroner*, OOR Dkt. AP 2009- 0337. We hereby grant your motion.

Until such time that our formal regulations are submitted and approved by the Independent Regulatory Review Commission in 2010, this office will follow the procedures set forth in Pennsylvania's General Rules of Administrative Practice and Procedure, 1 Pa. Code Section 35.241 with regard to this Motion.

We note that the Cumberland County Coroner may file a response in the nature of an answer within 15 days of the issuance of this order granting reconsideration, or by Friday July 10, 2009.

This office will issue a determination responsive to this Petition for Reconsideration no later than 30 days from the "mailing date" of your petition, or by Friday July 24, 2009.

Please contact me if you have any further questions.

Sincerely,

Corinna V. Wilson
Chief Counsel

cc: Terry Mutchler, Executive Director, Office of Open Records
Cumberland County Coroner Michael Norris



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
REBECCA HOCKLEY	:	
Complainant	:	
	:	
v.	:	Docket No.: AP 2009-0337
	:	
CUMBERLAND COUNTY CORONER	:	
Respondent	:	

INTRODUCTION

Rebecca Hockley (“the Citizen”) filed a right-to-know request (“Request”) with the Cumberland County Coroner (“the Coroner”), pursuant to the Right to Know Law (“RTKL”), 65 P.S. §67.101, *et. seq.*. She sought the manner of death for Thomas Rainey. The Coroner denied the Citizen’s request. The Citizen filed a timely appeal with the Office of Open Records (“OOR”).

For the reasons set forth in this Final Determination, the appeal is **denied** and the Coroner is not required to take any further action.

FACTUAL BACKGROUND

The Citizen filed the Request with the Coroner on April 17, 2009. Specifically, she sought records revealing the manner of death of Thomas Rainey who was found dead on April 16, 2009. On April 23, 2009 Michael Norris, Cumberland County Coroner, denied the request stating that any information the Coroner's office may have regarding the death of an individual who died in 2009 is not public record and would not become public until 30 days after the end of the year. The Citizen 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 manner of death, information contained within an autopsy report is a public record. As the Coroner notes, the OOR has already addressed this issue in *Brubaker v. Lancaster County*, OOR Dkt. 2009-0104 and *Yarnall*

v. Butler County Coroner Corner, OOR Dkt. 2009-0203. Those determinations are binding on this case.

In those cases, 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 when it is deposited with the prothonotary’s office as required by the Coroner’s Act. Thomas Rainey died in April, 2009. As such, the autopsy report will be available 30 days after the end of 2009. Therefore, the appeal is denied.

CONCLUSION

For the foregoing reasons, Citizen's appeal is **denied**. The Office of Open Records finds the Coroner is not required to take any further action. 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 Cumberland 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 May 27, 2009



APPEALS OFFICER
NATHANAEL J. BYERLY, ESQUIRE