

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

**ALLEGHENY COUNTY,**

Petitioner,

v.

**MONICA FUENTES**

and

**BRITTANY HAILER and PITTSBURGH  
CURRENT,**

Respondents.

CIVIL DIVISION

No. SA-21-000108

**BRIEF OF BRITTANY HAILER  
AND PITTSBURGH CURRENT IN  
RESPONSE TO PETITION FOR  
JUDICIAL REVIEW**

Filed on behalf of: Respondents  
BRITTANY HAILER and  
PITTSBURGH CURRENT

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**BRIEF OF RESPONDENTS BRITTANY HAILER AND PITTSBURGH CURRENT IN  
RESPONSE TO PETITION FOR JUDICIAL REVIEW**

And now come Respondents Brittany Hailer and Pittsburgh Current, by and through their counsel, stating the following in support thereof:

**INTRODUCTION**

This case concerns a request submitted by investigative journalist Brittany Hailer and the Pittsburgh Current (the “Current”) (collectively, the “News Media Respondents”) to the Allegheny County Medical Examiner (the “Petitioner” or the “County”) pursuant to the Pennsylvania Right to Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking autopsy and toxicology reports concerning the death of a 63-year-old inmate of the Allegheny County Jail. The RTKL request was submitted against a backdrop of renewed calls for increased accountability for public institutions—including prisons and other correctional institutions—across the country and in Pennsylvania. The request, and the instant case, is motivated by the central tenet that the RTKL “is 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.” *Pa. State Educ. Ass’n v. Commonwealth*, 148 A.3d 142, 155 (Pa. 2016).

Petitioner denied the RTKL request, contending that the requested records fall within an exception to the RTKL for autopsy records of a coroner or medical examiner. However, the RTKL contains a conflicts clause which provides that should “the provisions of this act . . . conflict with any other Federal or State law, the provisions of this act shall not apply.” 65 P.S. § 67.3101.1. And, as the Pennsylvania Supreme Court has consistently recognized, autopsy and other coroner’s reports are available for public access under Section XII-B (formerly Section

XII) of the County Code,<sup>1</sup> colloquially known as the Coroner's Act (the "Coroner's Act" or the "Act"). See *Hearst Television, Inc. v. Norris*, 54 A.3d 23, 33 (Pa. 2012) ("*Hearst Television*") (finding that "the Coroner's Act provides two methods of public access" to a coroner's "official records and papers"); *Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632, 637 (Pa. 2009) ("*Penn Jersey*") (finding that autopsy reports are "official records and papers" subject to disclosure under the Coroner's Act). Thus, the autopsy records exception in the RTKL does not apply and the requested records must be made available to Ms. Hailer and the Current.

Ms. Hailer appealed the County's response to the Pennsylvania Office of Open Records ("OOR") which correctly held that "any Coroner's records responsive to" the request submitted by Ms. Hailer and the Current "are available through the RTKL for the fees set forth in [Section 1252-B of] the Coroner's Act." Certified Record, OOR Ex. 6 at 6. Petitioner filed a Petition for Review of the OOR's decision with this Court.

In its Brief in Support of Petition for Review ("Petitioner's Br."), Petitioner proffers a series of arguments attempting to exempt itself from compliance with the Coroner's Act due to its status as a county of the second class. See *Counties by Class, County Commissioners Association of Pennsylvania*, <https://perma.cc/US7T-5G8Z> (last visited July 17, 2021) (defining Allegheny County as a county of the second class). In doing so, Petitioner misstates and mischaracterizes its current and prior obligations under the Coroner's Act and the Second Class County Code ("SCCC").<sup>2</sup> As detailed herein, under the Coroner's Act, counties of the second class are required to provide public access to requested autopsy and toxicology reports in exchange for a fee pursuant to Section 1252-B of the Coroner's Act, despite the fact that, unlike

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<sup>1</sup> 16 P.S. §§ 101 *et seq.*

<sup>2</sup> 16 P.S. §§ 3101 to 6302.

other counties, they are not required to deposit those records annually with the Office of the Prothonotary. This is also consistent with the obligations applicable to Petitioner under the SCCC prior to the 2018 update to the Coroner’s Act. Moreover, contrary to Petitioner’s assertions, the language of Section 1252-B of the Coroner’s Act expressly applies to the records requested by the News Media Respondents and to the type of request at issue in this case.

For the reasons set forth below, Ms. Hailer and the Current respectfully request that the Court affirm the determination of the OOR and order that the requested records be disclosed.

### **FACTUAL BACKGROUND**

The Current is an alternative weekly newspaper focused on community-based journalism serving the Pittsburgh metropolitan area. Brittany Hailer, an investigative journalist and editor, is currently a Senior Contributing Writer and Managing Editor at Large at the Current. Her reporting on the opioid epidemic earned a Golden Quill Award from the Press Club of Western Pennsylvania in both 2019 and 2020. In 2018, she was named a Justice Reporting Fellow as part of the John Jay/Langeloth Foundation Fellowship on “Reinventing Solitary Confinement.” Ms. Hailer regularly reports on incidents and conditions at the Allegheny County Jail for the Current. *See, e.g.*, Brittany Hailer, *County Officials Release Few Details on a Holiday Weekend Death at the Allegheny County Jail*, Pittsburgh Current (July 8, 2021), <https://perma.cc/MD9C-SHTL>; Brittany Hailer, *Letter from Solitary Confinement at the Allegheny County Jail*, Pittsburgh Current (May 19, 2021), <https://perma.cc/FUS4-RJV9>; Brittany Hailer, *Crews on Scene of Fires at Allegheny County Jail; Men Inside Facility Say Fires Ignited in Protest*, Pittsburgh Current (Apr. 23, 2021), <https://perma.cc/8386-TCJE>; Brittany Hailer, *COVID-19 Outbreak at the Allegheny County Jail: 75 New Cases in Just 10 Days. What Does This Say About the County’s Testing Practices?*, Pittsburgh Current (Feb. 23, 2021), <https://perma.cc/KQ39-C8KZ>.



On December 23, 2020, Ms. Hailer, in her capacity as a journalist for the Current, submitted a RTKL request to Petitioner seeking “the Autopsy/External Examination and Toxicology Report for Daniel A. Pastorek, 63, who died November 26 at the Allegheny County Jail” (the “Request”). *See* Certified Record, OOR Ex. 1. On January 5, 2021, Petitioner denied the Request, citing Section 67.708(b)(20) of the RTKL which exempts from disclosure the autopsy records of a coroner or medical examiner. *Id.* Ms. Hailer filed an appeal of Petitioner’s response with the OOR on January 19, 2021. *Id.* The procedural history of the OOR appeal is set forth in the Stipulated Statement of Facts filed by the parties with this Court on July 1, 2021.

### **SUMMARY OF APPLICABLE LAW**

#### **A. The Right to Know Law**

In 2009, the Pennsylvania General Assembly enacted the Right to Know Law, replacing its predecessor, the Right to Know Act, “with an alternative paradigm that more strongly tilted in favor of maximizing transparency.” *ACLU of Pa. v. Pa. State Police*, 232 A.3d 654, 656 (Pa. 2020). The RTKL is remedial legislation 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.” *Pa. State Educ. Ass’n*, 148 A.3d at 155. “By opening government records to public inspection, we give citizens the ability to thoroughly review governmental actions, which is their right.” Commonwealth of Pa. Legis. J., Senate Report on SB 1, Pr. No. 1721 at 1557 (Jan. 30, 2008), <https://perma.cc/4YUJ-8QL7> (statement of Senate Majority Leader Dominic Pileggi).

Under the RTKL, a record “in the possession of a Commonwealth agency or local agency shall be presumed to be a public record” unless the record is protected by privilege, judicial

order, or decree, or if it falls within specific, enumerated exceptions under the RTKL or other law. 65 P.S. § 67.305(a).

One provision of the RTKL purports to exempt from disclosure “[a]n autopsy record of a coroner or medical examiner.” 65 P.S. § 67.708(b)(20). However, the RTKL’s conflicts provision—Section 67.3101.1—provides that should “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. Thus, if another Federal or State law provides for the disclosure of autopsy records—such as here, the Coroner’s Act—the exception under Section 67.708(b)(20) of the RTKL does not apply and the autopsy records retain their status as public records subject to disclosure under the RTKL.

#### **B. The Coroner’s Act**

Article XII-B of the County Code, otherwise known as the Coroner’s Act, authorizes county coroners and medical examiners to investigate certain deaths to determine their cause and manner. *See* 16 P.S. §§ 1218-B, 1219-B, 1220-B. The Act was revised in 2018 as part of a larger update to the County Code. *See* Pa. Gen. Assemb., SB 1005 (PN 2026) Executive Summary at 1 (Sept. 25, 2018), <https://perma.cc/X3CR-HAHX> (hereinafter “Executive Summary”). Prior to December 24, 2018—the effective date of the amended Coroner’s Act—the Act applied only to counties of the third, fourth, fifth, sixth, seventh and eighth classes. *See* 16 P.S. § 102(a) (1955), *amended by* 16 P.S. § 102(a) (2018) (“Except incidentally, as in sections 108, 201, 210, 211, 401 and 1401 or as provided in section 1770.12 and Article XXX, this act does not apply to counties of the first, second A, or second classes.”).

Prior to its amendment in 2018, the Coroner’s Act provided two means by which the public could access autopsy and toxicology reports. First, former Section 1251 required every

coroner's office to, "within thirty (30) days after the end of each year," 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. § 1251 (repealed 2018). Second, former Section 1236.1(c) permitted nongovernmental agencies to obtain autopsy reports, toxicology reports, or "other reports and documents requested by nongovernmental agencies" in exchange for payment of a set fee. 16 P.S. § 1236.1(c) (repealed 2018); *Penn Jersey*, 962 A.2d at 637 ("Section 1236.1 . . . provides a rapid means of *procuring* an autopsy report for those who do not wish to wait until after the end of the year, and who are also willing to pay the charges associated with procuring it." (emphasis in original)).

The 2018 amendments to the Coroner's Act expanded the applicability of the Act to include counties of the second class, like Petitioner, unless otherwise expressly provided. *See* 16 P.S. § 1201-B ("Except as otherwise expressly provided under this article, this article shall apply to counties of the second class, second class A and third through eighth class."); 16 P.S. § 102(a) ("Except incidentally . . . or as provided in . . . **Article XII-B** . . . this act does not apply to counties of the first or second classes." (emphasis added)).

Following its amendment, the Coroner's Act continues to include two provisions which allow for public access to autopsy and toxicology reports. The first of these, Section 1236-B, requires coroners in counties of the third, fourth, fifth, sixth, seventh and eighth classes to, "within 30 days after the end of each year," 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. The second applies to all counties subject to the Act, including second class and second class A counties, and provides that the "coroner shall charge and collect a fee of \$500 for an autopsy report" and "\$100 for a toxicology report . . . 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.

### **LEGAL STANDARD**

The Court may exercise plenary review of the findings of the OOR, applying a *de novo* standard of review. *Bowling v. Office of Open Records*, 75 A.3d 453, 459 (Pa. 2013). However, there is “nothing in the RTKL that would prevent a Chapter 13 court from simply adopting the findings of fact and conclusions of law of an appeals officer when appropriate, thus, in the proper case, effectively achieving the result sought by the OOR.” *Id.* at 473. Critically, “courts reviewing OOR[] decisions[] must construe” exceptions to disclosure “strictly, lest they subvert the RTKL’s purpose.” *ACLU of Pa.*, 232 A.3d at 656–57.

### **ARGUMENT**

#### **I. The OOR correctly held that the Records are publicly available under Section 1252-B of the Coroner’s Act.**

Petitioner attempts to evade its obligations under the Coroner’s Act by contending that the 2018 amendments to the Act “remove[] the conflict between the RTKL and the New Coroner’s Act as applied to Allegheny County,” because, as a second class county, its official records and papers “do not become available for public access on an annual basis” pursuant to Section 1236-B. Petitioner’s Br. at 8–9. But Petitioner ignores the fact that prior to the 2018 amendments to the Coroner’s Act, Petitioner was required to provide access to autopsy and toxicology reports for a fee pursuant to the SCCC, despite the fact that, like the current Coroner’s Act, the SCCC also did not require the County to deposit copies of its official records and papers with the Office of the Prothonotary. *See* 16 P.S. § 4235.1(c). As the OOR correctly held, the Coroner’s Act, as amended, expressly applies to “counties of the second class . . . unless otherwise expressly provided.” Certified Record, OOR Ex. 6 at 5 (citing 16 P.S. § 1201-B).

There is no language in Section 1252-B which exempts second class counties from their obligations, and Petitioner's attempts to argue to the contrary are meritless.

**A. The OOR did not err in applying the holding of *Hearst Television* when determining that the Records are subject to disclosure under Section 1252-B.**

Petitioner further attempts to undermine the OOR's well-reasoned decision by arguing that, in finding the Coroner's Act provides a means of access to the Records under Section 1252-B, the OOR misinterpreted the Pennsylvania Supreme Court's decision in *Hearst Television*. Petitioner's Br. at 7. But the factual elements distinguishing *Hearst Television* from the present case have no bearing on applicability of the court's holding—specifically, that the Coroner's Act provides a means of public access to autopsy and toxicology reports for a fee—and the OOR appropriately applied *Hearst Television*'s holding to this case.

Petitioner attempts to make much of the fact that the requester in *Hearst Television* sought only records stating the cause and manner of death, which, unlike autopsy reports, are not exempt from disclosure under the RTKL. 65 P.S. § 67.708(b)(20); Petitioner's Br. at 5. Thus, in *Hearst Television*, the Cumberland County coroner's office objected not to the disclosure of the records themselves, but to the timing of the disclosure, arguing that it should not be required to disclose the records until the end of the year, when it would deposit them with the Office of the Prothonotary in accordance with Section 1251 of the former Coroner's Act. *Hearst Television*, 54 A.3d at 27.

The Pennsylvania Supreme Court rejected this argument, citing to its decision in *Penn Jersey* (a case involving access to autopsy reports) for the proposition that “by the terms of Section 1236.1(c)[now Section 1252-B]” the records were “rapidly available for a fee ‘for those who do not wish to wait until after the end of the year, and who are also willing to pay the charges associated with procuring it.’” *Id.* at 33 (quoting *Penn Jersey*, 962 A.2d at 637).

From this, Petitioner argues that “*Hearst Television* was a case about the timing of a coroner’s duty to release records. It was not about whether the records were public in the first place,” Petitioner’s Br. at 6, and thus should not have been considered by the OOR here. But the mere fact that the court did not have cause to examine the RTKL’s autopsy records exception in *Hearst Television* does not negate the applicability of its holding to the present case. The conflicts provision of the RTKL, 65 P.S. § 67.3101.1, specifically states that should “the provisions of this act . . . conflict with any other Federal or State law, the provisions of this act shall not apply”—a point which Petitioner concedes. *See* Petitioner’s Br. at 9 (“When the RTKL conflicts with other laws, the other laws shall apply.”). And, in both *Hearst Television* and *Penn Jersey*, the Pennsylvania Supreme Court specifically found that “the Coroner’s Act provides two methods of public access” to the coroner’s “official records and papers.” *Hearst Television*, 54 A.3d at 33; *see also Penn Jersey*, 962 A.2d at 637 (finding two methods of public access to autopsy reports under the Coroner’s Act—the coroner’s year-end archiving of all “official records and papers” with the prothonotary, or rapid access for those who do not wish to wait and are willing to pay a fee) Thus, the holdings in both cases are applicable here and the OOR did not err in looking to *Hearst Television* in rendering its decision.

**B. The Coroner’s Act, as amended, maintains Petitioner’s longstanding obligation to provide public access to autopsy and toxicology reports in exchange for a fee, as contemplated in Section 1252-B.**

Petitioner next argues that, unlike the third class county coroner in *Hearst Television*, Petitioner is not required to deposit copies of its records with the Office of the Prothonotary, and therefore, that Section 1252-B does not apply to it. Petitioner contends that, in revising the former Coroner’s Act, “the General Assembly exempted Allegheny County from the requirement that coroners deposit their official records and papers with the prothonotary,” and that “[t]his

deliberate act of the General Assembly removes the conflict between the RTKL and the New Coroner’s Act as applied to Allegheny County,” because the County’s official records and papers “do not become available for public access on an annual basis.” Petitioner’s Br. at 8–9. This argument assumes, without any support whatsoever, that the two means of access are not mutually exclusive. Moreover, it runs contrary to the history and practice of Petitioner under the County Code and the SCCC.

As a preliminary matter, Petitioner incorrectly states that Section 1251 of the former Coroner’s Act—which required coroners to deposit official records and papers with the Office of the Prothonotary—“applied to all counties except counties of the first class.” Petitioner’s Br. at 3. That is wrong. The Coroner’s Act has always been part of the larger County Code; the current Coroner’s Act is Article XII-B of the County Code; the former Coroner’s Act was Article XII of the County Code. Prior to the 2018 amendments, the Applicability section of the County Code read: “Except incidentally, as in sections 108, 201, 210, 211, 401 and 1401 or as provided in section 1770.12 and Article XXX, this act does not apply to counties of the first, second A, or second classes.” *See* 16 P.S. § 102(a) (1955), *amended by* 16 P.S. § 102(a) (2018). Thus, none of the provisions of Article XII of the County Code—including the former Coroner’s Act—applied to counties of the second class, such as Allegheny County. *See, e.g., Day v. Allegheny County*, No. AP 2016-1208, 2016 WL 4975856, at \*3 (Pa. Off. Open Recs. Aug. 15, 2016) (finding Sections 1251 and 1236.1(c) of the former Coroner’s Act not applicable to petitioner Allegheny County because, “the County is a county of second class which is not subject to the Coroner’s Act” (citing 16 P.S. § 102(a) (1955), *amended by* 16 P.S. § 102(a) (2018))).

Only as part of the 2018 amendments to the County Code was the applicability of the Coroner’s Act (now Article XII-B) expanded to include counties of the second class. *See* 16 P.S.

§ 102(a) (“Except incidentally, as in sections 108, 201, 210, 211, 401 and 1401 or as provided in section 1770.12, **Article XII-B** and Article XXX, this act does not apply to counties of the first or second classes.” (emphasis added)); *see also* Pa. Gen. Assemb., Act 154 of 2018 (SB 1005, PN 2026) Section-by-Section Commentary at 1, 12 (Oct. 24, 2018), <https://perma.cc/N9BM-B6FZ> (hereinafter, “Commentary”) (explaining that the “Coroners Association requested that Allegheny County be included within the scope of new Article XII-B”).

Thus, prior to the 2018 amendments to the County Code, coroners in counties of the second class, including Allegheny County, were not subject to the Coroner’s Act, but rather, to Article XII(b) (Coroners) of the SCCC.<sup>3</sup> There is no provision in Article XII(b) of the Second Class County Code that requires coroners to deposit copies of their official records and papers with the Office of the Prothonotary. Despite that, however, the SCCC contains a provision identical to that of Section 1236.1(c) of the former Coroner’s Act (and analogous to Section 1252-B of the new Coroner’s Act), which allows for the public to obtain autopsy and toxicology reports from the coroner’s office by paying a fee. *See* 16 P.S. § 4235.1(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 . . . and such other fees as may be established from time to time for other reports and documents requested by nongovernmental agencies.”). Thus, even though the SCCC did not require coroners to deposit records annually with the Office of the Prothonotary, it provided a means by which the public could request and obtain access to autopsy and toxicology reports for the payment of a fee. The County’s unsupported claim that it is somehow exempt from complying with Section 1252-B because it is not subject to the deposit

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<sup>3</sup> The SCCC “applies to all counties of the second class and second class A.” 16 P.S. § 3102.



provisions of Section 1236-B is in direct conflict with the County's longstanding obligations under the SCCC.

In sum, the General Assembly, whether previously through the SCCC, or presently through the Coroner's Act, as amended, has long provided for an immediate means of access to autopsy and toxicology reports in second class counties, like Petitioner, despite the fact that these reports have never been subject to annual deposit in the Office of the Prothonotary.

**C. Section 1252-B applies fully to counties of the second class, including Petitioner.**

In any event, whether the County is required to deposit copies of its official records and papers in the Office of the Prothonotary is neither here nor there. As the OOR correctly determined, Section 1201-B of the Coroner's Act *specifically* states that "this article shall apply to counties of the second class" except "as otherwise expressly provided under this article." 16 P.S. § 1201-B; Certified Record, OOR Ex. 6 at 5. And, unlike Section 1236-B, which expressly states that it applies only to "counties of the third, fourth, fifth, sixth, seventh and eighth classes," Section 1252-B contains no such express limitation. To the contrary, the full text reads:

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. The fees collected under this section shall be accounted for and paid to the county treasurer in accordance with section 1760 and shall be used to defray the expenses involved in the county complying with the training of coroners or coroner office personnel, as may be required or authorized by this or any other act.

16 P.S. § 1252-B.

The General Assembly, in amending the Coroner’s Act to include counties of the second class, including Petitioner, had the opportunity to expressly provide that certain sections of the Act would not apply to second class counties—which it did with respect to the obligation to deposit official records and papers with the Office of the Prothonotary in Section 1236-B. But it made no such provision—express or implied—in Section 1252-B. Far from a “deliberate act of the General Assembly” to “remove[] the conflict between the RTKL and the New Coroner’s Act as applied to Allegheny County,” Petitioner’s Br. at 9, the General Assembly’s decision not to exempt counties of the second class from the requirements of Section 1252-B makes clear its intent to continue to provide a means of public access to coroner’s records in counties of the second class. As the plain text makes clear, Section 1252-B applies fully to Petitioner, regardless of whether it is required to deposit official records with the Office of the Prothonotary.

**II. Section 1252-B applies to the Records and to the Request submitted by Ms. Hailer and the Pittsburgh Current.**

Petitioner further argues that the language of Section 1252-B, as amended, adds an element of discretion to the coroner’s obligation to release autopsy and toxicology reports that was not present in the former Coroner’s Act and, thus, that Section 1252-B is not applicable to the Records in this case. Petitioner’s Br. at 9. Again, Petitioner assumes an intent on the part of the General Assembly that is not reflected in the legislative history or any analysis of the Act. Moreover, Petitioner’s arguments are contrary to public policy and the RTKL’s goal of promoting government transparency.

Section 1236.1(c) of the former Coroner’s Act provided that:

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.

16 P.S. § 1236.1(c) (repealed 2018).

Similarly, Section 1252-B of the Coroner's Act, as amended, provides that:

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

Petitioner contends that the addition of the language “in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased” reflects an intention on the part of the General Assembly to “limit the types of requesters that coroners could charge for autopsy, toxicology, and coroner’s reports.” Petitioner’s Br. at 8. But no such intention is reflected in the General Assembly’s comments on Section 1252-B. Indeed, in the Section-by-Section Commentary to the Act, Section 1252-B is described as being “analogous to [former Coroner’s Act] Section 1236.1(c) and SCCC Section 1235.1(c), except that the fees for reports have been increased.” Commentary at 14. No mention is made of an intent to limit the types of requesters who may seek access to such records. Similarly, the Executive Summary describes the “new Section 1252-B (Fees for Reports)” as “contain[ing] the fee schedule previously in Section 1236.1 (Requests for Examinations and Reports)” but notes that “[t]he fees for reports as set forth in this section have been increased per House Bill 1931 to permit a greater recovery of the actual costs of the services.” Executive Summary at 7. Again, no mention is made of any intent to limit the types of requesters to whom Section 1252-B may apply.

This commentary comports with legislative history of the revisions to the Act. Indeed, language limiting access was proposed at various stages during the legislative process, and all were soundly rejected. For instance, the legislature did not wholesale adopt House Bill 1931 of 2015 (legislation that was introduced but never signed into law), which included revisions to the former Coroner’s Act that were promoted by the Pennsylvania State Coroners Association. Executive Summary at 6. Critically, however, the Act “does not contain all the provisions of the bill”; only those “consistent with the purpose of the Code revision.” *Id.*

One such provision of HB 1931 that was not incorporated into Section 1252-B of the Coroner’s Act would have required that “[a] record produced by the coroner in response” to a request for an autopsy or toxicology report “may not be publicly released except in response to a civil or criminal subpoena, a discovery request, a legally enforceable order from a court, a request from law enforcement or the Commonwealth and its agencies or other governmental agency.” Pa. Gen. Assemb., HB 1931, Pr. No. 3045 at 16–17 (introduced Apr. 1, 2016), <https://perma.cc/5JKA-3U27>. Moreover, prior to the enactment of the new Coroner’s Act, the House Local Government Committee passed an amendment to Section 1252-B removing a former provision of HB 1931 which would have created “a new subsection” specifying “that the section should not be construed as authorizing disclosure of a record exempt from public access under Act 3 of 2008, known as the Right-to-Know Law.” Executive Summary at 7, n.15. The General Assembly’s rejection of these attempts to restrict public access to coroner’s records under the new Coroner’s Act and the RTKL reveals its commitment to retaining and protecting such public access and that this access is “consistent with the purpose of the Code revision.” *Id.* at 6.

Indeed, the language of Section 1252-B itself supports the conclusion that, in amending the Act in 2018, the General Assembly intended to maintain an “analogous” level of access to coroner’s records. Commentary at 14. Members of the news media have long sought access to autopsy reports in order to “determine liability for the death of the deceased.” The public relies on the news media to provide it with information regarding matters of public concern—such as the circumstances surrounding the death of an inmate in the County’s custody. And the news media, in turn, relies on government records in order to gather news and shed light on those circumstances.

While liability for a death may, in many cases, be attributable to one or more identifiable individuals, in other cases, it may extend to a policy or practice which ultimately led to or contributed to that death. Ms. Hailer and the Current sought access to the Records at issue here as part of an investigation into medical conditions at the Allegheny County Jail which may have led or contributed to the death of Mr. Pastorek. *See* Brittany Hailer, *Daniel Pastorek Died in the Allegheny County Jail But He Shouldn’t Have Been There in the First Place*, Pittsburgh Current (Dec. 16, 2020), <https://perma.cc/CV9U-Y7UQ>. Mr. Pastorek, whose criminal record revealed a history of “alcoholism and substance-use disorder,” was found unresponsive in his cell and was later pronounced dead of heart disease. *Id.*

Previous reporting by Ms. Hailer and others has called into question the adequacy of medical care available at the Allegheny County Jail, particularly for those suffering from substance addictions. For example, in March 2021, Ms. Hailer reported that because the “Allegheny County Jail currently does not permit individuals in custody to receive methadone or buprenorphine to treat opioid use disorder, unless the incarcerated person is pregnant,” prisoners who rely on such a prescribed medication-assisted treatment have been denied access to this

medication, including a 71-year-old inmate who suffered severe symptoms of withdrawal. *See* Brittany Hailer, *71-Year-Old Incarcerated Man Denied Methadone in Allegheny County Jail*, Pittsburgh Current (Mar. 26, 2021), <https://perma.cc/5N4T-A62G>. Similarly, in January 2021, PublicSource reported on delays and mistakes in connection with medical care provided at the Allegheny County Jail due to understaffing:

Some people wait months to see a medical professional—or leave the jail before getting treatment. Medications are mixed up, given late or missed altogether. Contrary to state regulations, new arrivals often have to sit in a holding cell for days before receiving a medical screening, sometimes without their medications or while enduring severe detox symptoms. According to employee reports, a woman at risk of killing herself sat in a cell for hours in July, outfitted in a suicide gown, without being checked on by a mental health professional.

Juliette Rihl, *Mixed-up Meds & Long Waits: How Understaffing Hurts Medical Treatment at Allegheny County Jail*, PublicSource (Jan. 7, 2021), <https://perma.cc/CL97-9XCC>.

Public access to Mr. Pastorek’s autopsy and toxicology reports may thus help shed light on factors that may have prompted the heart condition that caused Mr. Pastorek’s death. And, accordingly, not only is the OOR’s interpretation of Section 1252-B consistent with the Act’s plain language and legislative history, but also it is aligned with the policy of government transparency underlying the RTKL. The public has a powerful interest in understanding the operations of county agencies, such as the Allegheny County Jail. Access to government records helps the news media report information necessary to aid the public in determining if government agencies are operating effectively or whether reforms are needed.

In Pittsburgh, investigative journalists like the News Media Respondents and others have relied on government records to provide essential reporting on the operations of state institutions, including the Allegheny County Jail. *See* Rihl, *supra* (noting that PublicSource “reviewed

dozens of jail documents spanning 20 months” in the course of researching its story). Such reporting sheds light on those agencies’ operations and the challenges they face, and assists the public in evaluating the need for potential changes or reforms. Ms. Hailer and the Current seek access to the Records at issue here to help determine whether conditions at the Allegheny County Jail contributed to the death of Mr. Pastorek. The requested Records fit squarely within the types of records available under Section 1252-B of the Coroner’s Act. Petitioner’s unjustified withholding of access to the Records has obstructed access to crucial government records necessary for the News Media Respondents’ reporting.

**III. Section 67.708(b)(17)(ii) of the RTKL does not apply to the Records.**

Though not identified as a reason for denying the Request in Petitioner’s January 5, 2021, letter to Ms. Hailer, Petitioner subsequently argued in its Brief to the OOR (Certified Record, OOR Ex. 4), and in its Petition for Review to this Court that the toxicology report requested by Ms. Hailer falls under Section 67.708(b)(17)(ii) of the RTKL which exempts from disclosure “[a] record of an agency relating to a noncriminal investigation, including . . . [i]nvestigative materials, notes, correspondence and reports.” 65 P.S. § 67.708(b)(17)(ii).

However, it is unclear whether Petitioner maintains this position with respect to the toxicology report requested by Ms. Hailer. Although Petitioner’s Brief states that “the records at issue in these cases are exempt from under the RTKL because they are related to a noncriminal investigation,” Petitioner’s Br. at 2, Section B of the brief—which sets forth Petitioner’s arguments with respect to Section 67.708(b)(17)(ii)—does not address any of the Records requested by Ms. Hailer. Rather, it speaks only to those records requested by Respondent Monica Fuentes relating to the death of Elijah Brewer. *See* Petitioner’s Br. at 10–12.

Petitioner bears the burden of proving by a preponderance of the evidence that any claimed exceptions to disclosure under the RTKL apply. 65 P.S. § 67.708(a). Here, Petitioner has failed to present *any* arguments in its brief to support a claim that the toxicology report requested by Ms. Hailer is exempt from disclosure under Section 67.708(b)(17)(ii), let alone to prove so by a preponderance of the evidence. Moreover, as the OOR correctly held, because the toxicology report is subject to disclosure under Section 1252-B of the Coroner’s Act, Section 67.708(b)(17)(ii) of the RTKL does not apply and the report retains its status as a public record subject to disclosure under the RTKL and the Coroner’s Act. *See* 65 P.S. § 67.3101.1 (“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.”); Certified Record, OOR Ex. 6 at 6.

**CONCLUSION AND REQUEST FOR RELIEF**

For the foregoing reasons, Respondents Brittany Hailer and Pittsburgh Current respectfully request that the Court affirm the determination of the Office of Open Records and order that the Records be disclosed.

Date: August 2, 2021

Respectfully submitted by:  
*/s/Paula Knudsen Burke*

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**CERTIFICATE OF SERVICE**

I, Paula Knudsen Burke, hereby certify that I served a true and correct copy of the foregoing  
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