

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

SA-21-000108

(SA-21-000166 Consolidated by Order
of Court to SA-21-000108)

NOTICE OF APPEAL

Filed on behalf of: Respondents
BRITTANY HAILER and
PITTSBURGH CURRENT

Counsel of Record for these Parties:

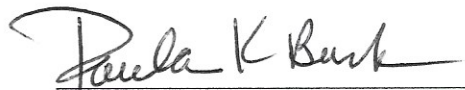
Paula Knudsen Burke
PA Attorney ID: 87607
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
PO Box 1328
Lancaster, PA 17608
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NOTICE OF APPEAL

Notice is hereby given that Respondents, Brittany Hailer and *The Pittsburgh Current* hereby appeal to the Commonwealth Court of Pennsylvania from the order entered in this matter on December 1, 2021. *See* Exhibit A. This order has been entered in the docket as evidenced by the attached copy of the docket entry. *See* Exhibit B.

There was no testimony and therefore no transcript for this matter.

Date: Dec. 15, 2021



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PROOF OF SERVICE

I, Paula Knudsen Burke, in accordance with Pa.R.A.P. 906, hereby certify that this 15th day of December, 2021, I served via electronic mail a true and correct copy of the Notice of Appeal upon the following:

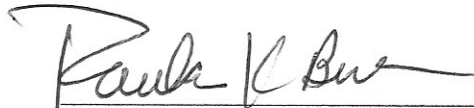
The Honorable W. Terrence O'Brien, S.J.
Fifth Judicial District of Pennsylvania – County of Allegheny
705 City County Building
Pittsburgh, PA 15219
Charlene.Baker@alleghencourts.us

Maggie Shiels, Esq.
Asst. County Solicitor
300 Fort Pitt Commons Building
445 Fort Pitt Boulevard
Pittsburgh, PA 15219
Maggie.shiels@alleghenycounty.us

Erin Burlew, Esq.
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
eburlew@pa.gov

I served via U.S. First Class Mail a true and correct copy of the Notice of Appeal upon the following:

Civil Division – Administrator
Court Administration
300 Frick Building
437 Grant Street
Pittsburgh, PA 15219



Paula Knudsen Burke
PA Attorney ID: 87607
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EXHIBIT A

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

Allegheny County,

No. SA21-000108

Petitioner,

v.

Brittany Hailer and Pittsburgh Current,

Respondents.

OPINION and ORDER UNDER
65 P.S. §67.1302(a)

Filed by:

W. Terrence O'Brien,
Senior Judge

705 City-County Building
414 Grant Street
Pittsburgh, PA 15219

Copies Emailed To:

Maggie Shiels, Esquire
Assistant County Solicitor
maggie.shiels@alleghenycounty.us

Paula Knudsen Burke, Esquire
pknudsen@rcfp.org

FILED

2021 DEC -1 PM 3:28

DEPT OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA

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

Allegheny County,

Petitioner,

v.

Brittany Hailer and Pittsburgh Current,

Respondents.

No. SA21-000108

OPINION and ORDER UNDER 65 P.S. §67.1302(a)

O'Brien, S.J.

I adopt the parties' Stipulated Statement of Facts, docketed May 26, 2021, a copy of which is attached hereto.

Section 708(b)(20) of the Right-to-Know Law (RTKL) exempts from disclosure the following:

[a]n autopsy record of a coroner or medical examiner and any audiotape of a postmortem examination or autopsy, or a copy, reproduction or facsimile of an autopsy report, a photograph, negative or print, including a photograph or videotape of the body or any portion of the body of a deceased person at the scene of death or in the course of a postmortem examination or autopsy taken or made by or caused to be taken or made by the coroner or medical examiner. This exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death.

65 P.S. §67.708(b)(20). Thus, the records being sought are clearly not accessible under the RTKL.

The real issue in this case is whether Brittany Hailer and the Pittsburgh Current (collectively, Requester), are entitled to the records under Section 1252-B of the Coroner's

Act, which applies to records possessed by the Office of the Allegheny County Medical Examiner. Said section provides, in relevant part, as follows:

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 (emphasis added.)

The Affidavit of Brittany Hailer avers, in relevant part, as follows:

1. I am an investigative reporter and a Visiting Lecturer at the University of Pittsburgh.

2. In my capacity as an investigative journalist, I am employed by a nonprofit news outlet, The Pittsburgh Institute for Nonprofit Journalism (PINJ). PINJ is the successor to The Pittsburgh Current, a news outlet that was shuttered after the creation of the PINJ. PINJ is a nongovernmental agency. Prior to its closure, The Pittsburgh Current was also a nongovernmental agency.

3. Through long-form enterprise and investigative reporting, PINJ seeks to uncover systemic inequities by shining a light on private industry, public officials and government institutions that are currently opaque and lacking public accountability.

• • •

6. As part of my continuing investigative work about the Allegheny County Jail, I have worked to identify indigent persons who died at the facility by utilizing the jail's death registry and release lists. Details about those who die without next of kin, or whose families lack the support and ability to request records or information surrounding their loved one's death, are presently unknown to the public. For example, Daniel Pastorek was homeless before his incarceration and lacks a family member with capacity to investigate and search for information about his death.

7. As an investigative reporter, I frequently file public records request with both the state and federal governments.

8. On December 23, 2020, I filed a Right to Know Law request with Allegheny County seeking the Autopsy/External Examination and Toxicology Report for Daniel A. Pastorek, 63, who died November 26, 2020,

at the Allegheny County Jail. I have been covering Mr. Pastorek's death and previously reported that 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. []

9. I am seeking access to these records to help determine whether conditions at the Allegheny County Jail contributed to Mr. Pastorek's death. As an investigative journalist, my reporting sheds light on government agencies, like the Allegheny County Jail, and the challenges they face, which enables the public to evaluate the need for potential changes or reforms.

10. The records requested in this case will allow me, and by extension the public, to determine whether conditions at the prison contributed to Mr. Pastorek's death and whether the county may be liable as a result. Further the records also allow me, and the public, to determine whether liability is the result of systemic deficiencies at the prison and whether those deficiencies put other inmates at risk. The public has a right to know how inmates are treated at the prison, especially those who have died in custody. The public also has a right to know whether that treatment creates risk of harm to other inmates and potential liability for taxpayers who are morally, legally, and financially responsible for inmate treatment. The records I am seeking in this case enable public oversight and government accountability for the jail system and the medical examiner, both of whom act on behalf of the public they serve through taxpayer dollars.

11. I am aware that the coroner/medical examiner charges fees of \$500 for an autopsy report, \$100 for a toxicology report, \$100 for an inquisition or coroner's report and \$50 for a cremation or disposition authorization. I am prepared and able to pay the fees for the reports I have requested.

Date 10/1/2021

Signature: /s/ Brittany Hailer
Brittany Hailer

In order to be entitled to the records at issue, Requester must qualify as a "nongovernmental agenc[y]" seeking "to determine liability for the death of the deceased," Mr. Pastorek.¹ 16 P.S. §1252-B. As the Coroner's Act does not define the phrase "to determine liability," it is appropriate to consult Black's Law Dictionary. As Petitioner points out, Black's

¹ Ms. Hailer does not maintain that she is investigating a claim asserted under an insurance policy.

defines "liability" as "1. the quality, state, or condition of being legally obligated or accountable; legal responsibility to another or to society, enforceable by civil remedy or criminal punishment... 2. A financial or pecuniary obligation in a specified amount." Liability, *Black's Law Dictionary* (11th ed. 2019). The term "legal" mean "1. Of, relating to, or involving law generally; falling within the province of law... 2. Established, required, or permitted by law... 3. Of, relating to, or involving law as opposed to equity." Legal, *Black's Law Dictionary* (11th ed. 2019). Therefore, the Coroner's Act phrase "liability for the death of the deceased," means liability in a criminal, civil, or financial sense.

Petitioner's Response to Affidavit of Brittany Hailer, p.4.

The plain language of Section 1252-B must be read as vesting discretion in the Medical Examiner to determine whether a requester is a "nongovernmental agenc[y]"² ... "investigat[ing] a claim asserted under a policy of insurance or [seeking] to determine liability for the death of the deceased." Coverage under an insurance policy and responsibility under law for a death are issues which are typically decided by a court. Seeking "to uncover systemic inequities by shining a light on ... public officials and government institutions" is a laudable activity, as is seeking to determine "whether conditions at the Allegheny County Jail contributed to Mr. Pastorek's death." Hailer Affidavit, paragraphs 3, 9. Nevertheless, the legal process is not directly implicated in such inquiries. Section 1252-B must be read more narrowly than argued by Requester to have any real meaning. Otherwise, anybody with a good cause seeking information about a death would be entitled to access under it.

Requester cites *Hearst Television, Inc. v. Norris*, 617 Pa. 602, 54 A.3d 23 (2012) and *C.F. Penn Jersey Advance, Inc. v. Gram*, 599 Pa. 534, 962 A.2d 632 (2009), for the proposition that the records can be obtained simply by payment of specified fees. In both cases the applicable version of Coroner's Act required that the coroner deposit all official

² I assume, without deciding, that Requester is a "nongovernmental agency" within the meaning of the statute.

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

Allegheny County,

No. SA21-000108

Petitioner,

v.

Brittany Hailer and Pittsburgh Current,

Respondents.

ORDER OF COURT

And now, this 1st day of December, 2021, it is hereby Ordered that the Final Determination of the Office of Open Records is reversed, and the Petition for Judicial Review filed by Allegheny County on April 28, 2021, is granted.

BY THE COURT:

W. Terrence O'Brien
_____, S.J.
W. Terrence O'Brien

records and papers for the preceding year in the prothonotary's office within 30 days after the year's end, to be available for inspection to anyone interested therein. The Supreme Court held that those who wanted the official records sooner could obtain them for a fee.

The Coroner's Act was revised subsequent to these cases. The current version does not require the Medical Examiner of Allegheny County, a county of the second class, to file any papers at any time for public inspection. (See 16 P.S. § 1236-B). The reasoning applied in *Hearst* was premised on the fact that the records would become available to all requesters on a certain date and the issue was whether they should be available for a fee before that date, or whether the coroner had discretion to deny a request for rapid access. The revised Coroner's Act provides a means of public access to records for a fee when a requester meets the criteria in Section 1252-B. Therefore, *Hearst* and *Penn Jersey* do not apply to the instant matter.³

I therefore enter the following:

³ Because of this disposition, I need not consider the County's argument that the responsive records relate to a noncriminal investigation and are therefore exempt under Section 708(b)(17) of the RTKL.

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

ALLEGHENY COUNTY,)
)
 Petitioner,)
)
 vs.)
)
BRITTANY HAILER and)
PITTSBURGH CURRENT,)
)
 Respondents.)

Docket No: SA-21-000108

**STIPULATED STATEMENT OF
FACTS**

Filed on Behalf of: Petitioner Allegheny
County and Respondent Brittney Hailer

Filed by counsel for Allegheny County:

ANDREW F. SZEFI
County Solicitor
Pa. I.D. # 83747

MAGGIE SHIELS
Assistant County Solicitor
Pa. I.D. No. 321614

ALLEGHENY COUNTY LAW
DEPARTMENT
Firm No. 057
300 Fort Pitt Commons Building
445 Fort Pitt Boulevard
Pittsburgh, PA 15219
(412) 350-1120

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

ALLEGHENY COUNTY,)

Petitioner,)

vs.)

BRITTANY HAILER and)
PITTSBURGH CURRENT,)

Respondents.)

Docket No: SA-21-000108

STIPULATED STATEMENT OF FACTS

The undersigned attorneys hereby stipulate to the below:

1. The Respondent, Brittany Hailer, submitted a Right-To-Know-Law ("RTKL") request to the Petitioner, Allegheny County ("County"), on December 23, 2020. The request sought "the Autopsy/External Examination and Toxicology Report for Daniel A. Pastorek, 63, who died November 26 at the Allegheny County Jail." (See R. at OOR Exhibit 1.)

2. The County Department of Administrative Services serves as the County's Open Records Office, and its Director, Jerry Tyskiewicz, serves as the County's Open Records Officer.

3. On January 5, 2021, Mr. Tyskiewicz sent Ms. Hailer a letter informing her that her request was denied. (See R. at OOR Exhibit 1, p. 3.) The basis for the County's denial was the autopsy records exemption to the RTKL, which exempts from disclosure:

[a]n autopsy record of a coroner or medical examiner and any audiotape of a postmortem examination or autopsy, or a copy, reproduction or facsimile of an autopsy report, a photograph, negative or print, including a photograph or videotape of the body or any portion of the body of a deceased person at the scene of death or in the course of a postmortem examination or autopsy taken or made by or caused to be taken or made by the coroner or medical examiner. This exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death.

65 P.S. §67.708(b)(20). (*See id.*)

4. As permitted by the autopsy records exemption, the County provided Ms. Hailer with the decedent's name, cause, and manner of death. (*See id.*)

5. On January 19, 2021, Ms. Hailer appealed the County's response to the Pennsylvania Office of Open Records ("OOR"). (*See R. at OOR Exhibit 1.*) The County submitted a brief in support of its position that the records Ms. Hailer requested are exempt from disclosure under the RTKL. (*See R. at OOR Exhibit 4.*) The County also submitted an affidavit from Mandy Tinkey, Laboratory Director of the Allegheny County Office of the Medical Examiner ("ACOME"). (*See id.*)

6. In its brief, the County argued that the autopsy report is exempt from disclosure pursuant to the autopsy exemption and the toxicology report is also exempt pursuant to the noncriminal investigation exemption, which exempts "[a] record of an agency relating to a noncriminal investigation, including: (i) Complaints submitted to an agency, (ii) Investigative materials, notes, correspondence and reports." 65 P.S. §67.708(b)(17). (*See id.*)

7. On March 31, 2021, the OOR issued a Final Determination granting Ms. Hailer's appeal. (*See R. at OOR Exhibit 6.*)

8. The OOR held that the autopsy and toxicology reports that Ms. Hailer requested are not exempt from disclosure under the autopsy records exemption. (*See id. at p. 6.*) The OOR determined that the ACOME must provide "any Coroner's records responsive to the request identified in Section 1252-B of the Coroner's Act...for the fees set forth in the Coroner's Act." (*Id. at p. 6.*)

9. The County appealed the OOR's decision to this Court on April 28, 2021.

Respectfully submitted,

/s/ Maggie Shiels

Assistant County Solicitor
Counsel for the Petitioner

/s/ Paula Knudsen Burke

Counsel for Respondents

EXHIBIT B

Allegheny County Department Of Court Records

Civil/Family Division Docket Report

Run Date and Time: 12/15/2021 - 12:9:48

SA-21-000108

Allegheny County vs Fuentes

Filing Date:
3/25/2021

Related Cases:

Consolidated Cases:
SA-21-000166,

Judge:
O'Brien W. Terrence

Amount In Dispute:
\$0

Case Type:
Office of Open Records Appeal

Court Type:
Arbitration

Current Status:
Opinion and Order of Court

Jury Requested:
N

--Parties--

LName	FName	MI	Type	Address	Initial Service Completion	Attorney
Allegheny County			Petitioner	301 39th Street Building 7 c/o Allegheny County Health Pittsburgh PA 15201	--	Margaret Collins Shields
Hailer	Brittney		Respondent	2006 Locust Street Pittsburgh PA 15218	--	W. Terrence O'Brien
Pittsburgh Current			Respondent	2006 Locust Street Pittsburgh PA 15218	--	W. Terrence O'Brien
Fuentes	Monica		Respondent	311 North Aberdeen Street Chicago IL 60607	--	--
Office of Open Records			Interested Party		--	--

LName	FName	MI	Type	Address	Initial Service Completion	Attorney
Commonwealth of Pennsylvania Office of Open Records			Interested Party	333 Market Street Harrisburg PA 17101	--	--

--Attorney--

LName	FName	MI	Type	Address	Phone
Romano	Justin	T	Attorney		--
Applegate	Kyle	E.	Attorney		--
Shiels	Margaret	Collins	Attorney	445 Fort Pitt Boulevard 3rd Floor Pittsburgh PA 15219	4123501159
Knudsen	Paula	Kay	Attorney	8 West King Street Lancaster PA 17608	--
Applegate	Kyle	E.	Attorney		--

--Non Litigants--

LName	FName	MI	Type	Address	Phone
O'Brien	W.	Terrence	Judge		
Ward	Christine	A	Judge		
Ward	Christine	A	Judge	414 Grant St. City County Bldg. 8th fl Pittsburgh PA 15219	

--Docket Entries--

Filing Date	Docket Type	Docket Text	Filing Party
12/1/2021	Opinion and Order of Court	Dated 12/01/21 Ordered that the Final Determination of the Office of Open Records is reversed, and the Petition for Judicial Review filed by Allegheny County on April 28, 2021 is granted. As per Rule 236 Notice, copies sent to all parties 12/01/21	W. O'Brien Terrence
11/1/2021	Brief	RESPONSE TO AFFIDAVIT OF BRITTANY HAILER	Allegheny County
10/1/2021	Affidavit	of Brittany Hailer	Brittney Hailer
8/31/2021	Order of Court	Dated 08/31/21 Ordered that both Requesters shall file a reply brief to the County's reply brief within 20 days. O'Brien, S.J. As per Rule 236 Notice, copies sent to all parties 08/31/21	W. O'Brien Terrence
8/30/2021	Reply Brief		Allegheny County
8/20/2021	Order of Court	Dated 08/20/21 Ordered that Petitioners Motion is granted. Petitioners Reply Brief is due on or before August 30, 2021. O'Brien, J. As per Rule 236 Notice, copies sent to all parties 08/20/21	W. O'Brien Terrence
8/18/2021	Motion for Extension of Time		Allegheny County
8/2/2021	Brief		Monica Fuentes
8/2/2021	Brief		Paula Knudsen Kay
7/14/2021	Motion to Amend		Allegheny County
7/2/2021	Brief in Support		Allegheny County

Filing Date	Docket Type	Docket Text	Filing Party
7/1/2021	Stipulation		Allegheny County
6/9/2021	Order of Court	Dated 06/09/21. Petitioner brief in support of the petitions for review shall be filed on or before July 2 2021. Respondents briefs shall be filed on or before August 2 2021. Petitioner shall file a reply brief on or before August 20 2021. The court shall schedule oral argument and notify the parties. O'Brien J see order for specifics As per Rule 236 Notice, copies sent to all parties 06/09/2021.	W. O'Brien Terrence
6/4/2021	Order of Court	Dated 06/04/21. The motion to consolidate SA-21-000108 and SA-21-000166 is granted. These cases are to be consolidated under SA-21-000108. O'Brien J see order for specifics As per Rule 236 Notice, copies sent to all parties 06/04/2021.	W. O'Brien Terrence
5/26/2021	Stipulation	Statement of Facts	Allegheny County
5/17/2021	Motion to Consolidate		Allegheny County
5/4/2021	Order of Court	Dated 05/04/21. The above captioned matter shall be conciliated by telephone conference with the undersigned on the 13th day of May 2021 at 10:30 a.m. using Microsoft Teams. O'Brien J see order for specifics As per Rule 236 Notice, copies sent to all parties 05/05/2021.	W. O'Brien Terrence
4/14/2021	Record		Commonwealth of Pennsylvania Office of Open Records
4/7/2021	Record		Commonwealth of Pennsylvania Office of Open Records
4/1/2021	Order of Court	Dated 04/01/21. The above captioned matter is assigned to the Honorable W. Terrence O'Brien for further disposition. Ward J see order for specifics As per Rule 236 Notice, copies sent to all parties 04/01/2021.	Christine Ward A
3/26/2021	Writ of Certiorari	mailed 03/26/21	Allegheny County
3/25/2021	Statutory Appeal	Petition for Review	Allegheny County

--Judgments Against--

Name	Amount	Satisfied(Y,N)
No Judgments Found		

--Events Schedule--

Event Scheduled	Event Date & Time	Room Number	Judge/Hearing Officer
No Information Found			