

COMMONWEALTH COURT OF PENNSYLVANIA

No. 1469 C.D. 2021

BRITTANY HAILER and PITTSBURGH CURRENT,
Appellants

v.

ALLEGHENY COUNTY,
Appellee

BRIEF OF APPELLEE

*Appeal from the December 1, 2021, Order of the Honorable Judge W. Terrence
O'Brien, Court of Common Pleas of Allegheny County, Pennsylvania, Civil
Division, Case No. SA 21-000108*

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii-iv
COUNTER-STATEMENT OF THE QUESTION INVOLVED	1
COUNTER-STATEMENT OF THE CASE	2
SUMMARY OF THE ARGUMENT	4-5
ARGUMENT	5-24
A. Autopsy Reports from Allegheny County are Exempt from Disclosure Under the RTKL	5-11
1. The Evolution of the Coroner’s Act	6-10
a. The Original Coroner’s Act and the <i>Penn Jersey</i> case	7-8
b. The New Coroner’s Act	8-10
2. The Coroner’s Act and The RTKL	10-11
B. The Trial Court Correctly Held that <i>Hearst Television</i> Does Not Apply to Allegheny County	11-17
1. The <i>Hearst Television</i> Case and the RTKL	11-13
2. <i>Hearst Television’s</i> Holding that Coroners Must Produce Autopsy Reports to RTKL Requesters Does Not Apply to Allegheny County	13-15
3. The Trial Court’s Interpretation of <i>Hearst Television</i> Was Correct.....	15-17
C. The Trial Court Correctly Ruled That Appellant Hailer is Not Entitled to Autopsy and Toxicology Reports Under the Coroner’s Act	17-24
1. The Principles of Statutory Interpretation Support the Trial Court’s Decision	18-21

a. The Statute is Not Ambiguous so the Plain Language Must Control..... 18-19

b. Significance and Meaning of the Word “Liability” 19-21

2. The Record Demonstrates that Appellant Hailer is Not Seeking to Determine
Legal Liability for a Death..... 21-23

3. Appellant Hailer’s Arguments About Transparency are Misdirected 23-24

CONCLUSION25

TABLE OF AUTHORITIES

Cases	<u>Pages</u>
<i>Com. v. Brown</i> , 981 A.2d 893, 897 (Pa. 2009)	18
<i>Hearst Television, Inc. v. Norris</i> , 54 A.3d 23 (Pa. 2012)	4, 11-17, 19
<i>Hutchinson ex rel. Hutchinson v. Luddy</i> , 946 A.2d 744 (Pa. 2008)	18
<i>Nationwide Mut. Ins. Co. v. Wickett</i> , 763 A.2d 813 (Pa. 2000)	18
<i>Pa. State Police v. McGill</i> , 83 A.3d 476 (Pa.Cmwlth. 2014)	24
<i>Penn Jersey Advance, Inc. v. Grim</i> , 962 A.2d 632 (Pa. 2009)	4, 7, 8, 11, 16

<u>Office of Open Records Final Determinations</u>	<u>Pages</u>
<i>Lloyd v. Lackawanna County</i> , OOR Dkt. No.: AP 2019-0748.	11

Statutes

Pages

Admin. Code § 5-201-055

1 Pa.C.S.A. § 190119

1 Pa.C.S.A. § 190320

1 Pa.C.S.A. § 192118

16 P.S. § 101 (1955) (repealed 1997)6

16 P.S. § 102 (2005)8

16 P.S. § 210(2) (2018).....5

16 P.S. § 1201-B (2018)6, 9

16 P.S. §1202-B5

16 P.S. § 1236.1(c) (1955) (repealed 2018) 7, 9, 12,19

16 P.S. § 1236-B (2018) 4, 6, 7

16 P.S. § 1251 (2005) (repealed 2018)7

16 P.S. §1252-B (2018)2-4, 6, 9, 15, 17, 19, 23, 25

65 P.S. § 67.708(b)(20)..... 2, 10, 14

65 P.S. § 67.3101.1 10, 14

I. COUNTER-STATEMENT OF THE QUESTION INVOLVED

1. Did the Trial Court correctly find that neither the Right to Know Law or the Pennsylvania Coroner’s Act require Allegheny County to make autopsy and toxicology reports available to Appellant?

SUGGESTED ANSWER: Yes

2. Did the Trial Court commit an error of law or abuse its discretion by determining the Appellant could not obtain access to autopsy and toxicology reports pursuant to Section 1252-B of the Coroner’s Act because the Appellant did not qualify as a “nongovernmental agenc[y]” seeking to “determine liability for the death of the deceased?”

SUGGESTED ANSWER: No

III. COUNTER-STATEMENT OF THE CASE

This appeal originated from a Right-to-Know-Law (“RTKL”) request that Appellant Brittany Hailer (“Hailer”) submitted to the Allegheny County Office of the Medical Examiner (“ACOME”). (*See* R.R. at 015a.) The request sought records, including an autopsy report and a toxicology report, for a deceased individual named Daniel Pastorek. The County denied the request, claiming that records related to autopsies are exempt from disclosure under the RTKL. (*See* R.R. at 065a) (*citing* 65 P.S. § 708(b)(20)). Hailer appealed to the Office of Open Records (“OOR”), which ruled that the County was required to disclose autopsy and toxicology reports to Hailer for the fees specified in the Pennsylvania Coroner’s Act, 16 P.S. §1252-B (2018). (*See* R.R. at 001a.)

The County filed a Petition for Review with the Court of Common Pleas of Allegheny County. (*See* R.R. at 008a.) The parties submitted a Stipulated Statement of Facts to the trial court. (*See* R.R. at 105a.) The parties filed briefs to the trial court based on those stipulated facts.

After the initial briefing, during an off-the-record conference call with counsel, the trial court requested further information about whether Hailer would use the autopsy and toxicology reports that she sought to “determine liability for the death of the deceased” as required by the Coroner’s Act.

Hailer filed an Affidavit stating that she was “an investigative reporter and a

Visiting Lecturer at the University of Pittsburgh...employed by a nonprofit news outlet, the Pittsburgh Institute for Nonprofit Journalism.” (R.R. at 165a.) Hailer described her reporting on the Allegheny County Jail (“ACJ” or “Jail”), including the death of an inmate named Daniel Pastorek. (*Id.* at 166a-167a.) She stated:

“I am seeking access to [Mr. Pastorek’s autopsy and toxicology reports] to help determine whether conditions at the [ACJ] contributed to Mr. Pastorek’s death. As an investigative journalist, my reporting sheds light on government agencies, like the [ACJ] and the challenges they face, which enables the public to evaluate the need for potential changes or reforms.”

(*Id.* at 167a.)

The County filed a Brief in response to Hailer’s Affidavit in which it argued that Hailer’s position as a journalist and desire to publicize the circumstances surrounding Mr. Pastorek’s death did not entitle her to access to autopsy and toxicology reports from the ACOME under the Coroner’s Act, 16 P.S. §1252-B (2018). (*See* R.R. at 169a.) The Trial Court agreed with the County and reversed the OOR’s decision that the County must provide autopsy and toxicology reports to Hailer. The trial court determined that Hailer was not seeking to determine liability for Mr. Pastorek’s death, and that the Coroner’s Act must be “read more narrowly than argued by [Hailer] to have any real meaning.” (R.R. at 186a.) The present case is Hailer’s appeal from that decision.

II. SUMMARY OF THE ARGUMENT

The RTKL specifically exempts records related to autopsies from disclosure to the public. Although one provision of the Coroner's Act, Section 1236-B, conflicts with the autopsy records exemption to the RTKL, that provision is not applicable to Allegheny County. Therefore, the ACOME can rely on the autopsy record exemption when responding to RTKL requests.

The only provision of the Coroner's Act at issue in this case is Section 1252-B, establishing that coroners can charge fees for autopsy and toxicology reports. That provision states that only certain requesters – those who are investigating a claim asserted under a policy of insurance or attempting to determine liability for the death of the deceased – can pay for autopsy and toxicology reports. The ACOME correctly determined that Hailer was not investigating a claim asserted under a policy of insurance or seeking to determine liability for a death, so it properly denied her request to pay for autopsy and toxicology reports.

The trial court correctly found that the ACOME was not required to provide autopsy and toxicology reports to Hailer, regardless of whether she was willing to pay the fees set forth in the Coroner's Act. The trial court did not err or abuse its discretion when it held that the case law the OOR and Hailer relied upon, *Penn Jersey Advance, Inc. v. Grim* and *Hearst Television, Inc. v. Norris*, was not applicable to Allegheny County. Those cases involved coroners who were required

to make their reports available for public access, which the ACOME is not required to do. The case law was also decided before the Coroner's Act was amended to define the categories of requesters who could pay for reports, thus affording the ACOME with discretion about which requesters were entitled to reports under the Act.

IV. ARGUMENT

A. Autopsy Reports from Allegheny County are Exempt from Disclosure Under the RTKL.

Allegheny County is a county of the second class by population. *See* 16 P.S. § 210(2) (2018). It became a home rule county on January 1, 2000, when its Home Rule Charter went into effect. The general operations of Allegheny County government are governed by an Administrative Code enacted by the County's Council. To the extent that the Administrative Code does not address a specific matter, the Second Class County Code or other state laws applicable to counties of the second class will control.

The ACOME performs the duties that have been traditionally performed by coroners in Pennsylvania. *See* Admin. Code § 5-201-05 (abolishing the Office of County Coroner and establishing the ACOME) and 16 P.S. §1202-B (defining the term "coroner" as "an elected or appointed coroner or an elected or appointed medical examiner"). The Pennsylvania Coroner's Act generally governs coroners in

counties of the second through eighth classes. *See* 16 P.S. § 1201-B. However, some provisions of the Coroner's Act do not apply to coroners in counties of the second class, and therefore do not apply to the ACOME. *See id.* Case law interpreting the provisions of the Coroner's Act that do not apply to the ACOME is not applicable to the ACOME.

The County's Administrative Code does not address access to autopsy and toxicology reports. Therefore, if a Coroner's Act provision regarding access to autopsy and toxicology reports applies to counties of the second class, it will govern the ACOME. The Coroner's Act contains two provisions regarding access to reports. *See* 16 P.S. § 1236-B and § 1252-B. One provision applies to Allegheny County, and one does not. Because the case law about these provisions concerns coroners who must abide by both provisions, and because the Coroner's Act has been recently amended, the case law interpreting it is not applicable to the ACOME.

1. The Evolution of the Coroner's Act.

The Coroner's Act is part of the Pennsylvania County Code. When it was enacted in 1935, the County Code did not apply to counties of the second class. *See* 16 P.S. § 101 (1955) (repealed 1997). The Coroner's Act, therefore, did not apply to counties of the second class when it was enacted. The Original Coroner's Act, however, is important to the outcome of this case because Hailer relies on case law interpreting it when she argues that the ACOME is required to produce autopsy and

toxicology reports pursuant to the RTKL.

a. The Original Coroner’s Act and the *Penn Jersey* case.

The Original Coroner’s Act, which did not apply to Allegheny County, included Article XII, entitled “Sheriff and Coroner.” This article included a provision titled “[o]fficial records of coroner,” which stated: “[e]very 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.” 16 P.S. § 1251 (2005) (repealed 2018).¹ In *Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632, 637 (Pa. 2009), our Supreme Court ruled that the Lehigh County coroner’s autopsy reports were “official records and papers” under Section 1251 and therefore must be deposited with the prothonotary within the prescribed time period.

The original Coroner’s Act also included a provision titled “[r]equests for examination and reports,” which authorized coroners to charge and collect fees for autopsy reports, toxicology reports, and inquisition reports “requested by nongovernmental agencies.” 16 P.S. § 1236.1(c) (1955) (repealed 2018). *Penn Jersey* held:

¹ This provision was repealed in 2018 and replaced with a section titled “Records.” See 16 P.S. § 1236-B (2018). This provision specifies that only coroners in counties of the third through eighth classes “shall deposit all official records and papers for the preceding year in the Office of the Prothonotary for the inspection of all persons interested therein.” *Id.* Therefore, the requirement that certain coroners make their official records available for public inspection is still valid law and it still does not apply to the ACOME.

By the terms of Section 1251, the records that a coroner must deposit with the prothonotary are not available until thirty days after the end of each year, at which time interested persons may ‘inspect’ such records. Section 1236.1...authorizes a coroner to charge up to \$100 for each autopsy report, without mention of any time requirement. Thus, Section 1236.1 merely 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.

Id. at 637.

In other words, *Penn Jersey* held that because the Lehigh County coroner was eventually required to deposit autopsy reports with the prothonotary for free public inspection, and because the Coroner’s Act also authorized the Lehigh County coroner to charge fees for autopsy reports, a requester who was willing to pay for reports could obtain them before the coroner was required to deposit the reports with the prothonotary. This holding could sensibly be applied to any coroner in a county that was subject to both provisions of the Coroner’s Act, but it is not reasonable to apply this holding to the ACOME, which is only governed by one of the two Coroner’s Act provisions at issue in *Penn Jersey*.

b. The New Coroner’s Act.

In October 2018, the General Assembly passed Act 154 of 2018, which extensively revised the County Code. By the time of this revision, the County Code had been amended to state that, when specified, certain articles and provisions of the County Code would apply to counties of the second class. *See* 16 P.S. § 102 (2005). Act 154 of 2018 repealed Article XII in its entirety and replaced it with two separate

new articles governing sheriffs and coroners. The Article that now governs coroners, Article XII-B, applies to counties of the second class and second class-A as well as the third through eighth classes. *See* 16 P.S. § 1201-B (2018).

The New Coroner's Act amended the language of the provision allowing coroners to charge and collect fees for certain reports. As stated above, the Original Coroner's Act authorized coroners to charge and collect fees for autopsy reports, toxicology reports, and inquisition reports "*requested by nongovernmental agencies.*" 16 P.S. § 1236.1(c) (1955) (repealed 2018) (emphasis added). The New Coroner's Act both raised the amount of the permissible fees and restricted the purposes for which requesters can request and receive reports.

The New Coroner's Act states:

The coroner shall charge and collect a fee of \$500 for an autopsy report, \$100 for a toxicology report, \$100 for an inquisition or coroner's report, \$50 for a cremation or disposition authorization and other fees as may be established from time to time for other reports or documents requested by nongovernmental agencies *in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased.*

16 P.S. §1252-B (emphasis added).

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" fundamentally alters the implications of this section. While the Original Coroner's Act stated that coroners could charge fees for reports, it did not describe or limit the types of requesters to whom coroners could give reports for a fee. In other words,

the Original Coroner's Act indicated that anyone could request and obtain reports for the fees set forth in the Act; but the New Coroner's Act restricts those who can request and obtain reports to nongovernmental entities investigating an insurance claim or attempting to determine liability for a death.

2. The Coroner's Act and The Right to Know Law

Rather than requesting Mr. Pastorek's autopsy and toxicology reports directly from the ACOME under the Coroner's Act, Hailer submitted her request to the County's Open Records Office, implicating the RTKL. (*See* R.R. at 015a.) The County denied Hailer's request, citing to the RTKL exemption for records related to autopsies, Section 708(b)(20), which exempts from disclosure:

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

65 P.S. § 67.708(b)(20). This exemption ("the autopsy record exemption") conflicts with the provision of the Coroner's Act, both original and new, requiring coroners in counties of the third through eighth classes to make their official papers available for public access.

When the RTKL conflicts with a federal or state law, the conflicting law controls. *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.”). Therefore, the OOR has consistently held that the autopsy record exemption does not apply to coroners in counties of the third through eighth classes who must deposit their papers with the prothonotary. *See, e.g., Lloyd v. Lackawanna County*, OOR Dkt. No.: AP 2019-0748. These OOR decisions are based on *Penn Jersey* and a later case, *Hearst Television, Inc. v. Norris*, 54 A.3d 23 (Pa. 2012).

B. The Trial Court Correctly Held that *Hearst Television* Does Not Apply to Allegheny County.

Both the OOR’s decision and Hailer’s arguments to this Court hinge on the application of *Hearst Television*. (See R.R. at 005a-006a and Hailer’s Br. at 25-27.) But *Hearst Television*, like *Penn Jersey*, is factually distinguishable and was decided under the Original Coroner’s Act, which did not apply to Allegheny County.

1. The *Hearst Television* Case and the RTKL.

In 2012, before the New Coroner’s Act was enacted, *Hearst Television* examined the conflict between the RTKL autopsy records exemption and the Original Coroner’s Act provisions regarding access to reports. The case concerned a RTKL request to the Cumberland County coroner for records reflecting an individual’s manner of death. *See* 54 A.3d at 24. The coroner denied the request, asserting that records showing the manner of death did not become public records, subject to disclosure, until they were deposited with the prothonotary, as required by the Original Coroner’s Act. *See id.* at 27.

The parties in *Hearst Television* “agree[d] that cause and manner of death records are public records that must be disclosed to the public; they disagree[d] about the timing of this obligation.” *Id.* at 29. The case ultimately concerned whether a requester could use the RTKL process to request Cumberland County coroner records that were not yet deposited with the prothonotary. Our Supreme Court held that the types of records specified in the fees section of the Original Coroner’s Act must be immediately released to anyone who paid the required fees, and that “the RTKL provides the procedure of accessing those records that are available for immediate release for a fee pursuant to Section 1236.1(c).” *Id.* at 33.

The outcome of *Hearst Television* was based on a critical holding: that Section 1236.1(c) of the Original Coroner’s Act did not vest coroners with any discretion to decide when and for whom they could charge fees for reports. *See id.* at 32. The court held that “[t]here is no mention in Section 1236.1(c) of discretion. By its plain terms, therefore, ... Section 1236.1(c) allows the coroner to charge fees for records, but does not afford the coroner any discretion with regard to releasing such records.” *Id.* In essence, *Hearst Television* held that since the Original Coroner’s Act did not provide the coroner with discretion about when and to whom autopsy and toxicology reports could be provided, and since the coroner had to make reports available for public access anyway, any citizen can use the RTKL process for immediate access to those reports at any time, for the fees set forth in the Act.

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. The Cumberland County coroner acknowledged that "an autopsy report is either available at the end of the year upon deposit with the prothonotary ... or may be procured sooner, for a fee." *Id.* at 31. In his argument to the court, the Cumberland County coroner did not even address the autopsy records exemption to the RTKL, presumably because he understood that the Original Coroner's Act superseded it. *See id.*

In contrast, the ACOME is not required to make an annual deposit of its records because it is not subject to that requirement, and the ACOME is not required to provide reports to anyone who will pay because the New Coroner's Act affords discretion. Therefore, the RTKL autopsy records exemption is *not* superseded by the Coroner's Act as applied to Allegheny County, and so the autopsy record exemption to the RTKL applies and the ACOME is only required to provide the name, manner, and cause of death to an RTKL requester.

2. *Hearst Television's* Holding that Coroners Must Produce Autopsy Reports to RTKL Requesters Does Not Apply to Allegheny County.

Hailer's argument that *Hearst Television* applies to this case is incorrect. *Hearst Television* is immediately distinguishable from this case for two reasons. First, the requester in *Hearst Television* did not use the RTKL to request autopsy reports. The requester only sought the manner of death, which is explicitly excluded

from the autopsy records exemption, which states “[t]his 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). Essentially, the requester in *Hearst Television* sought information that is *not* exempt from disclosure under the RTKL.

Second, the Cumberland County Coroner was, and remains, subject to the Coroner’s Act provision requiring coroners in certain counties to deposit their official papers with the prothonotary for public access. Therefore, the Cumberland County Coroner’s records, including autopsy reports, were legally required to become public eventually. Because of this fact, *Hearst Television* was essentially a case about the timing of a request and whether the RTKL was an appropriate vehicle for access.

When the RTKL conflicts with other laws, the other laws shall apply. *See* 65 P.S. §3101.1. Therefore, even though the RTKL exempts autopsy reports from disclosure, those coroners who are subject to the requirement about depositing papers with the prothonotary must still do so and cannot rely on the RTKL to withhold autopsy reports. But Allegheny County is *not* subject to that requirement. The ACOME’s official papers, therefore, do not become available for public access on an annual basis. This deliberate act of the General Assembly removes the primary source of conflict between the RTKL and the Coroner’s Act as applied to Allegheny County.

The fact that *Hearst Television* was decided under the Original Coroner’s Act is also critical and should not be disregarded. When the New Coroner’s Act was enacted, the General Assembly added new language to Section 1252-B to limit the types of requesters that coroners could charge for autopsy, toxicology, and coroner’s reports. *See* 16 P.S. §1252-B (adding the language “in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased”). This language negates *Hearst Television*’s holding that coroners have no discretion regarding whether they can release records. *Hearst Television* found that “there is no mention of discretion” in the Original Coroner’s Act provision about fees. 54 A.3d at 32. But the New Coroner’s Act inserts the very discretion that the Original Coroner’s Act was lacking. The ACOME need only provide reports for a fee if the requester is investigating an insurance claim or determining liability for the death of the deceased. *See* 16 P.S. §1252-B. If the ACOME determines that a requester is not seeking reports for either of those purposes, the Coroner’s Act does not provide access to reports, and neither does the RTKL.

3. The Trial Court’s Interpretation of *Hearst Television* Was Correct.

The Trial Court ultimately concurred with the County’s argument regarding *Hearst Television*, holding that

Requester cites *Hearst Television, Inc. v. Norris* and *Penn Jersey Advance, Inc. v. Grim* 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 records and papers for the

preceding year in the prothonotary's office ... The Coroner's Act was revised subsequent to these cases. The current version does not require the [ACOME] to file any papers at any time for public inspection. 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.

(R.R. at 186-188a.) This was the correct construction of the applicable law. Since the ACOME's reports are not destined to become public, and since the New Coroner's Act significantly changed the meaning of the provision regarding fees, the reasoning behind *Hearst Television* is not applicable to this case.

Hailer argues that the trial court "ignored the OOR's well-reasoned decision that appropriately applied *Hearst Television's* holding to this case." (Hailer's Br. at 26.) But the OOR's decision completely overlooked the fact that *Hearst Television* concerned a coroner who was required to make his papers available for public view and was decided before the New Coroner's Act included language limiting the class of requesters who could pay for reports. These points are crucial, and the failure to engage with them rendered the OOR's decision poorly reasoned and ultimately legally erroneous.

The rationale behind *Hearst Television* does not make sense in the context of this case. The ACOME is not required to deposit reports with the prothonotary for public inspection, and ACOME reports are also not available to anyone who is

willing to pay for them. Therefore, the RTKL is not a proper venue for obtaining reports from the ACOME as it was in *Hearst Television*. Quite the contrary, the autopsy exemption to the RTKL controls, and Allegheny County correctly denied Hailer’s RTKL request.

C. The Trial Court Correctly Ruled that Appellant Hailer is Not Entitled to Autopsy and Toxicology Reports Under the Coroner’s Act.

As explained above, the New Coroner’s Act vests the ACOME with discretion to provide autopsy reports to certain categories of requesters but does not require the ACOME to do so. The Act states:

The coroner shall charge and collect a fee of \$500 for an autopsy report, \$100 for a toxicology report, \$100 for an inquisition or coroner's report, \$50 for a cremation or disposition authorization and other fees as may be established from time to time for other reports or documents *requested by nongovernmental agencies in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased.*

16 P.S. §1252-B (emphasis added.)

Hailer claims that she and her organization, the Pittsburgh Institute for Nonprofit Journalism (“PINJ”), are attempting to determine liability for Mr. Pastorek’s death. (*See* R.R. at 167a.) The Trial Court concluded otherwise, holding that “Section 1252-B must be read more narrowly than argued by [Hailer] to have any real meaning. Otherwise, anybody with a good cause seeking information about a death would be entitled to access under it.” (R.R. at 186a.) The Trial Court’s

decision is supported by both the principles of statutory construction and the record in this case.

1. The Principles of Statutory Interpretation Support the Trial Court's Decision.

- a. The Statute is Not Ambiguous, so the Plain Language Must Control.

“When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S.A. § 1921. Legislative intent is best expressed through the plain language of a statute, so “only when the words of a statute are ambiguous should a court seek to ascertain the intent of the General Assembly through statutory construction factors.” *Com. v. Brown*, 981 A.2d 893, 897 (Pa. 2009). When the words of a statute are not ambiguous, “the rules of statutory construction do not permit courts to ignore the plain meaning of the words ‘in a supposed pursuit of either its spirit or an unstated legislative intent.’” *Hutchinson ex rel. Hutchinson v. Luddy*, 946 A.2d 744, 752 (Pa. 2008) (citing *Nationwide Mut. Ins. Co. v. Wickett*, 763 A.2d 813, 818 (Pa. 2000)).

In this case, the New Coroner's Act includes language limiting the types of requesters that can obtain autopsy and toxicology reports for a fee. This Court should not set aside the plain meaning of that language because of Hailer's misdirected arguments about journalistic integrity. Indeed, Hailer's entire argument about why she is entitled to autopsy and toxicology reports from the ACOME amounts to exactly the type of pursuit of unstated legislative intent that the Statutory

Construction Act warns against.

In her brief, Hailer examines the legislative history behind the changes to the Coroner’s Act provision allowing coroners to charge fees for reports. Hailer points out that the Commentary to the 2018 revision to the Act states that Section 1252-B is “analogous to [Original Coroner’s Act Section 1236.1(c)] ... except that the fees for reports have been increased.” (Appellant’s Br. at 14.) Despite this language in the Commentary, the Original Coroner’s Act and the New Coroner’s Act provisions about fees *are* different, and that difference is critical.

Entirely new language was added to limit the types of requesters to whom reports can be provided for a fee. This new language provides the ACOME with the very discretion that *Hearst Television* held that coroners of the third through eighth class counties did not have. This Court cannot simply ignore that fact based on the legislative history cited by Hailer. Instead, this Court must look to the plain meaning of the words “determine liability for the death of the deceased.” This language is clear and unambiguous, and it does not apply to Hailer.

b. Significance and Meaning of the Word “Liability”

The Statutory Construction Act provides that “[i]n the construction of the statutes of this Commonwealth, the rules set forth in this chapter shall be observed, unless the application of such rules would result in a construction inconsistent with the manifest intent of the General Assembly.” 1 Pa.C.S.A. § 1901. Furthermore:

words and phrases shall be construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a peculiar and appropriate meaning or are defined in this part, shall be construed according to such peculiar and appropriate meaning or definition.

1 Pa.C.S.A. § 1903.

Based on these rules of construction, the Trial Court looked to the Black's Law Dictionary definition of "liability" and construed Section 1252-B in a manner that was consistent with the manifest intent of the General Assembly as demonstrated by that word's common and approved usage: that the ACOME reports are not public records and are only available to certain requesters for a fee. (*See R.R. at 185a-186a.*) Since Hailer argues that she is seeking to determine liability for a death, and the ACOME asserts that she is not, the meaning of the word "liability" is crucial for the outcome of this case.

Black's Law Dictionary 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) (emphasis added). Hailer argues that the County overlooks the significance of the words "accountable" and "society," in this definition. (*See Appellant's Br. at 23.*) But both of those words are preceded by the word "legal," which is the most important word in the definition.

The term “legal” means “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.” Law, *Black’s Law Dictionary* (11th ed. 2019). Therefore, the accountability imposed after a finding of liability must be a legal, not social, responsibility. The phrase “liability for the death of the deceased,” means legal liability in a civil or criminal sense, not in the sense of social accountability.

The journalistic achievements highlighted in Hailer’s brief are admirable, but they are irrelevant to the outcome of this case. When the General Assembly inserted the language “determine liability for a death” into the Coroner’s Act provision about fees for reports, it clearly intended to limit the requesters who could obtain reports to those who were seeking to establish legal liability. Hailer is simply not included in that group of permissible requesters.

2. The Record Demonstrates that Appellant Hailer is Not Seeking to Determine Legal Liability for a Death.

Hailer submitted an Affidavit to the Trial Court attempting to explain why she was entitled to Mr. Pastorek’s autopsy and toxicology reports. (*See* R.R. at 164a.) In her Affidavit, Hailer described her work as an investigative journalist with PINJ. She stated, “PINJ seeks to uncover systemic inequities by shining a light on private industry, public officials and government institutions that are opaque and lacking public accountability.” (*Id.* at 165a) She further stated that she has been reporting on

Mr. Pastorek's death at the Allegheny County Jail on November 26, 2000, and she sought records from the ACOME "to help determine whether conditions at the Allegheny County Jail contributed to Mr. Pastorek's death." (*Id.* at 167a.)

Rather than explain how she would actually use the reports to determine liability for Mr. Pastorek's death, she stated: "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." (*Id.*) Although journalism is a valuable public service, public evaluation of a news story about a death is not the same as the establishment of liability for a death.

In her Brief before this Court, Ms. Hailer continued to emphasize the public interest in her reporting. (*See* Hailer's Br. at 7 ("Hailer's reporting about deaths within the [Jail] is a topic of significant public interest.") and 17 ("the public relies on the news media to provide information regarding matters of public concern.")). She places her work in a tradition of accountability journalism and explains how autopsy reports in particular have contributed to "life-changing investigative work." (*See id.* at 20-22.) These statements are akin to explaining why Hailer *wants* the autopsy and toxicology reports, but not why she is *legally entitled* to them.

Despite Hailer's best efforts to convince this court otherwise, the importance of investigative journalism is not an issue in this case. As the Trial Court noted,

Hailer’s proposed interpretation of the phrase “determine liability for the death of the deceased” drains it of “any real meaning.” (R.R. at 186a.) If, as Hailer argues, the qualifying language in the New Coroner’s Act applies to journalists seeking to publish or broadcast information about someone’s death, but not to engage in the legal process, then “anybody with a good cause seeking information about a death would be entitled to access under [the Coroner’s Act].” (*Id.*) Put simply, if the General Assembly intended for anyone to be able to obtain autopsy and toxicology reports for a fee, it would not have amended Section 1252-B.

3. Appellant Hailer’s Arguments About Transparency are Misdirected.

Hailer argues that the County should release autopsy and toxicology reports to her in order to achieve “important government transparency goals.” (Appellant’s Br. at 24.) Although transparency in government is vital, the ACOME is bound by governing law, and Hailer does not successfully argue that Section 1252-B of the Coroner’s Act permits her to obtain the reports she is seeking. This Court must review the Trial Court’s decision for error and abuse of discretion, but it cannot create a right of access to records where the General Assembly chose to limit access to those records.

Many of Hailer’s arguments pertain to the goals of the RTKL, which is a remedial statute designed to promote access to official government action in order to prohibit secrets, scrutinize the actions of public officials, and make public officials

accountable for their actions.” *Pa. State Police v. McGill*, 83 A.3d 476, 479 (Pa.Cmwlt. 2014). But, as explained above, access to autopsy reports from the ACOME is governed by the Coroner’s Act, not the RTKL. And although the Coroner’s Act requires that coroners from counties of the third through eighth classes deposit their papers with the prothonotary for public access, Allegheny County was specifically excluded from that Section.

Nonetheless, Allegheny County has demonstrated that it is not attempting to conceal ACOME reports from qualified requesters. Before the Trial Court, Hailer’s case was originally consolidated with that of another RTKL requester, Monica Fuentes, who also sought autopsy and toxicology reports from the ACOME. (*See* R.R. at 130a.) In her brief to the trial court, Fuentes stated that she was a paralegal at a law firm that had been retained by the family of a deceased individual. The County determined that Fuentes was investigating a claim of insurance or seeking to determine liability for a death, and so the ACOME provided her with autopsy and toxicology reports for the fees set forth in the Coroner’s Act. The County’s appeal against her was subsequently dismissed.

The case against Hailer persists because she is not seeking to determine liability for Mr. Pastorek’s death; she is seeking to publicize it. Neither the RTKL nor the Coroner’s Act require the ACOME to provide her with autopsy and toxicology reports for this purpose.

V. CONCLUSION

Hailer is not entitled to access to autopsy and toxicology reports from the ACOME. She is not able to obtain these reports under the RTKL, because although the RTKL autopsy records exemption is pre-empted by the Coroner's Act as applied to coroners in many counties, it is not pre-empted by the Coroner's Act as applied to Allegheny County. Therefore, Allegheny County properly relied on the autopsy records exemption when it denied Hailer's RTKL request.

Hailer also argues that she is entitled to the reports under Section 1252-B of the Coroner's Act, but she does not successfully demonstrate that she is investigat[ing] a claim asserted under a policy of insurance or [seeking] to determine liability for the death of the deceased," as required by that Section. Despite the public service nature of her work, Hailer does not meet the threshold requirements of the Coroner's Act. The Trial Court did not err or abuse its discretion when it reasonably interpreted the law and case law at issue in this case. Therefore, this Court should affirm the Trial Court's Order.

Respectfully submitted,

/s/ Margaret Shiels

Margaret Shiels

Assistant County Solicitor

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Margaret Shiels

Signature: /s/ Margaret Shiels

Attorney No.: 312614

CERTIFICATE OF SERVICE

I, Margaret Shiels, hereby certify that, on this 6th day of September, 2022, I served a true and correct copy of this BRIEF OF APPELLEE via electronic mail on the following, in compliance with Pa. R.A.P. 121:

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/s/ Margaret Shiels
Margaret Shiels
Assistant County Solicitor