

IN THE COMMONWEALTH COURT
OF PENNSYLVANIA

NO. 1469 C.D. 2021

ALLEGHENY COUNTY,

Appellee,

v.

BRITTANY HAILER and PITTSBURGH CURRENT,

Appellants.

REPLY BRIEF OF APPELLANTS

ON APPEAL FROM THE DECEMBER 1, 2021 OPINION AND ORDER OF THE COURT OF
COMMON PLEAS OF ALLEGHENY COUNTY

Paula Knudsen Burke
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
Pa. I.D.: 87607
P.O. Box 1328
Lancaster, PA 17608
pknudsen@rcfp.org

Counsel for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
SUMMARY OF THE ARGUMENT.....	1
ARGUMENT	3
I. Appellants are entitled to access the requested records under the RTKL, consistent with the plain text of Section 1252-B of the Coroner’s Act.....	3
II. In the alternative, Appellants qualify as seeking records in order “to determine liability for the death of the deceased.”	13
III. Pennsylvania Supreme Court precedent supports Appellants’ interpretation of Section 1252-B.....	16
CONCLUSION	20
CERTIFICATES OF COMPLIANCE	21
PROOF OF SERVICE	22

TABLE OF AUTHORITIES

Cases

<i>ACLU of Pa. v. Pa. State Police</i> , 232 A.3d 654 (Pa. 2020)	1, 13
<i>Barnhart v. Thomas</i> , 540 U.S. 20 (2003)	6, 7
<i>Bowen v. Indiana Cnty.</i> , No. AP 2019-2064, 2019 WL 7195801 (Pa. Off. Open Recs. Dec. 23, 2019)	18
<i>Chatov v. Lackawanna Cnty.</i> , No. AP 2021-1334, 2021 WL 3487254 (Pa. Off. Open Recs. Aug. 4, 2021)	18
<i>Ciavaglia v. Bucks Cnty.</i> , No. AP 2020-0761, 2020 WL 4260368 (Pa. Off. Open Recs. July 20, 2020)	18
<i>Commonwealth v. Omar</i> , 981 A.2d 179 (Pa. 2009)	7
<i>Commonwealth v. Williams</i> , 579 A.2d 869 (Pa. 1990)	8, 10
<i>Cowen v. Centre Cnty. Coroner’s Off.</i> , No. AP 2022-0559, 2022 WL 1227328 (Pa. Off. Open Recs. Apr. 21, 2022)	18
<i>Hearst Television, Inc. v. Norris</i> , 54 A.3d 23 (Pa. 2012)	<i>passim</i>
<i>JP Morgan Chase Bank N.A. v. Taggart</i> , 203 A.3d 187 (Pa. 2019)	10
<i>Keel v. Beaver Cnty.</i> , No. AP 2022-1577, 2022 WL 4016610 (Pa. Off. Open Recs. Aug. 30, 2022)	5, 9, 18

<i>Levy v. Senate of Pa.</i> , 65 A.3d 361 (Pa. 2013)	13
<i>Lloyd v. Lackawanna Cnty.</i> , No. AP 2019-0748, 2019 WL 3065546 (Pa. Off. Open Recs. July 8, 2019).....	19
<i>Lockhart v. United States</i> , 577 U.S. 347 (2016)	6, 7, 8, 9
<i>Pa. Dep’t of Banking v. NCAS of Delaware, LLC</i> , 948 A.2d 752 (Pa. 2008)	7, 10, 12
<i>Pa. State Educ. Ass’n v. Commonwealth, Dep’t of Cmty. & Econ. Dev.</i> , 148 A.3d 142 (Pa. 2016)	3
<i>Penn Jersey Advance, Inc. v. Grim</i> , 962 A.2d 632 (Pa. 2009)	16, 17
<i>Rendell v. Pa. State Ethics Comm’n</i> , 983 A.2d 708 (Pa. 2009)	6, 10, 12
<i>Stepnowski v. Comm’r</i> , 456 F.3d 320 (3d Cir. 2006).....	8
<i>Walbert v. Chester Cnty.</i> , No. AP 2021-1308, 2021 WL 3476548 (Pa. Off. Open Recs. Aug. 5, 2021)	18

Statutes

1 Pa. C.S. § 1921	10
1 Pa. C.S. § 1928	13
16 P.S. § 102.....	4
16 P.S. § 1201-B.....	4
16 P.S. § 1218-B.....	3
16 P.S. § 1219-B.....	3
16 P.S. § 1220-B.....	3

16 P.S. § 1236.1 (repealed 2018)	11, 17
16 P.S. § 1236-B.....	4
16 P.S. § 1252-B.....	1, 2, 4, 9
16 P.S. § 4235.1.....	11, 17
65 P.S. § 67.3101.1.....	3, 4
65 P.S. § 67.708.....	3

Other Authorities

Antonin Scalia & Bryan A. Garner, <i>Reading Law: The Interpretation of Legal Texts</i> (2012).....	6, 7
Becca Andrews, <i>10 Things That Have Happened Since Our CCA Investigation Broke</i> , Mother Jones (Sept. 3, 2016), https://perma.cc/9394-9M69	15, 16
Complaint, <i>Remick v. City of Phila.</i> , No. 20-CV-1959 (BMS) (E.D. Pa. filed Apr. 20, 2020)	15
Complaint, <i>Schwenk v. Garcia</i> , No. 21-CV-2079 (JPW) (M.D. Pa. filed Dec. 13, 2021)	15
HB 1931, Pr. No. 3045, Pa. Gen. Assemb. (introduced Apr. 1, 2016), https://perma.cc/5JKA-3U27	12
<i>Liability</i> , Black’s Law Dictionary (11th ed. 2019)	14
Samantha Melamed, <i>Philly Prison Officials Agree to an Independent Monitor and Hiring Bonuses to Settle Class-Action Lawsuit</i> , Phila. Inquirer (Apr. 12, 2022), https://www.inquirer.com/news/philadelphia-prison-jail-settlement-monitor-agreement-lawsuit-20220412.html	15
SB 1005 (PN 2026) Executive Summary, Pa. Gen. Assemb. (Sept. 25, 2018), https://perma.cc/X3CR-HAHX	3, 11, 12

SB 1005 (PN 2026) Section-by-Section Commentary,
Pa. Gen. Assemb. (Oct. 24, 2018),
<https://perma.cc/N9BM-B6FZ>11, 12, 17

SUMMARY OF THE ARGUMENT

Appellant Brittany Hailer’s reporting about the deaths of individuals incarcerated in the Allegheny County Jail provides critical information on how government systems treat people in custody, thereby facilitating public oversight and, as needed, reform. In this manner, providing access to the autopsy and toxicology records Ms. Hailer requested furthers the core goals of the Right-to-Know Law (“RTKL”) by enabling the public to “scrutinize the actions of public officials[] and make public officials accountable for their actions.” *ACLU of Pa. v. Pa. State Police*, 232 A.3d 654, 656 (Pa. 2020) (citation and internal quotation marks omitted). Under the RTKL, records are presumed public, exceptions are construed narrowly, and an agency must release requested records unless it can show an exception applies by a preponderance of the evidence. The Court of Common Pleas committed reversible error in finding that Allegheny County met this burden, based on a misreading of the Coroner’s Act. The County’s arguments in support of the lower court’s decision are incorrect for the same reasons.

First, the lower court erred in finding that Section 1252-B of the Coroner’s Act permits individuals to purchase autopsy and toxicology reports only if they are seeking “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. According to well-established principles of statutory interpretation, particularly the last antecedent

rule, this language applies only to requests for “other reports or documents requested by nongovernmental agencies,” *id.*, and not autopsy or toxicology reports. Such a reading is consistent with both the General Assembly’s stated intent in enacting Section 1252-B and the RTKL’s remedial purpose. The lower court’s and County’s contrary interpretation is inconsistent with the statute’s plain text and legislative history.

Second, even if this Court finds Ms. Hailer may only purchase autopsy and toxicology reports if she is seeking “to determine liability for the death of the deceased,” she fits this definition. The lower court erred in holding otherwise based on its overly narrow definition of “liability,” which the County shares. Investigative journalism like Ms. Hailer’s provides society with the information needed to hold government actors accountable, including through the legal system.

Third, the lower court further abused its discretion by misconstruing Pennsylvania Supreme Court precedent on the intersection of the RTKL and the Coroner’s Act. These cases—which the County asks this Court to ignore—instruct that the Act requires coroners’ offices in counties of the second through eighth class to provide access to autopsy and toxicology reports upon payment of the fee, under the RTKL.

ARGUMENT

I. Appellants are entitled to access the requested records under the RTKL, consistent with the plain text of Section 1252-B of the Coroner's Act.

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, Dep't of Cmty. & Econ. Dev.*, 148 A.3d 142, 155 (Pa. 2016). Under the RTKL, agency records are presumed public unless they fall within a clearly outlined exception to disclosure. Although the RTKL contains an exception for “[a]n autopsy record of a coroner or medical examiner,” 65 P.S. § 67.708(b)(20), it also states that if “the provisions of this act regarding access to records conflict with any other Federal or State law, the provisions of this act shall not apply,” 65 P.S. § 67.3101.1. Thus, where disclosure requirements found in the Coroner's Act conflict with those of the RTKL, the Coroner's Act controls. *See Hearst Television, Inc. v. Norris*, 54 A.3d 23, 32 (Pa. 2012).

The Coroner's Act, found in Article XII-B of the County Code, authorizes county coroners and medical examiners to investigate certain deaths. *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* SB 1005 (PN 2026) Executive Summary at 1, Pa. Gen. Assemb. (Sept. 25, 2018), <https://perma.cc/X3CR-HAHX> (hereinafter

“Executive Summary”). That legislative update expanded the Act to cover second-class counties such as Allegheny, except as otherwise provided. *See* 16 P.S.

§§ 102(a), 1201-B.

The Coroner’s Act contains two provisions allowing for public access to autopsy and toxicology reports. First, coroners in counties of the third through eighth classes must, “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. That provision conflicts with the RTKL and requires the counties to which it applies to provide access, but it is not at issue here because Allegheny County is a second-class county. Second, in counties of the second through eighth classes, including Allegheny:

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.

This provision likewise conflicts with the RTKL’s instruction that autopsy reports are exempt from disclosure, and therefore controls. 65 P.S. § 67.3101.1.

Accordingly, the County must provide access to requesters consistent with Section

1252-B. “The RTKL provides the procedure for accessing those records that are available for immediate release for a fee” under this section. *Hearst Television*, 54 A.3d at 33; *see also infra* Part III (discussing how *Hearst Television* applies). Here, the County must provide Appellants with the requested autopsy and toxicology reports upon receipt of the proper fees.

The final phrase, “in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased,” is new to the 2018 Coroner’s Act. The County claims this phrase applies to and modifies *all* records listed in Section 1252-B, rather than just modifying “other reports or documents requested by nongovernmental agencies.” That is, the County claims that to receive an autopsy report upon payment of \$500, toxicology report upon payment of \$100, et cetera, the requester must be seeking to investigate an insurance claim or determine liability. *See* County’s Br. at 17–19. As the OOR recently held, and as discussed below, “such an interpretation is contrary to the Rules of Statutory Construction, 1 Pa. C.S. § 1903(b), is contrary to a common-sense reading of the statute, and contrary to . . . caselaw from the Supreme Court.” *Keel v. Beaver Cnty.*, No. AP 2022-1577, 2022 WL 4016610, at *2 (Pa. Off. Open Recs. Aug. 30, 2022).

If this Court finds that the General Assembly did alter the meaning of Section 1252-B in 2018, the correct reading of the revised statute is, instead, that

the phrase “in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased” modifies *only* “other reports or documents requested by nongovernmental agencies”—the item in the list immediately before it—and not the entire list of records. Under this reading, anyone may pay \$500 for an autopsy report, but only a requester seeking access “in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased” may purchase “other reports or documents.”

Appellants’ interpretation comports with the well-established “last antecedent rule.” Under this rule, when courts “interpret[] statutes that include a list of terms or phrases followed by a limiting clause,” the “‘limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows.’” *Lockhart v. United States*, 577 U.S. 347, 351–52 (2016) (quoting *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003)). The last antecedent rule, which the U.S. Supreme Court has applied “from [its] earliest decisions to [its] more recent[,] . . . reflects the basic intuition that when a modifier appears at the end of a list, it is easier to apply that modifier only to the item directly before it.” *Id.*; see also *Rendell v. Pa. State Ethics Comm’n*, 983 A.2d 708, 715–16 (Pa. 2009) (applying rule to interpret Pennsylvania statute); Antonin Scalia & Bryan A.

Garner, *Reading Law: The Interpretation of Legal Texts* 144 (2012) (describing the rule). To illustrate,

Consider, for example, the case of parents who, before leaving their teenage son alone in the house for the weekend, warn him, “You will be punished if you throw a party or engage in any other activity that damages the house.” If the son nevertheless throws a party and is caught, he should hardly be able to avoid punishment by arguing that the house was not damaged. The parents proscribed (1) a party, and (2) any other activity that damages the house.

Barnhart, 540 U.S. at 27.

As another example,

[I]magine you are the general manager of the Yankees and you are rounding out your 2016 roster. You tell your scouts to find a defensive catcher, a quick-footed shortstop, or a pitcher from last year’s World Champion Kansas City Royals. It would be natural for your scouts to confine their search for a pitcher to last year’s championship team, but to look more broadly for catchers and shortstops.

Lockhart, 577 U.S. at 351–52.

“Although the last antecedent rule is not absolute, it ‘generally may be applied in absence of evidence of some contrary purpose.’” *Commonwealth v. Omar*, 981 A.2d 179, 187 (Pa. 2009) (quoting *Pa. Dep’t of Banking v. NCAS of Delaware, LLC*, 948 A.2d 752, 760–61 (Pa. 2008)).

Here, the last antecedent rule applies and instructs that the phrase “in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased” modifies only the phrase it directly follows: “other reports or documents requested by nongovernmental agencies.” *See Lockhart*, 577

U.S. at 351. It does not modify the phrases “\$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”; those documents may be purchased for any reason.

Relatedly, “[t]he corollary rule of grammar generally states that, where there is a comma before a modifying phrase, that phrase modifies all of the items in a series and not just the immediately preceding item.” *Stepnowski v. Comm’r*, 456 F.3d 320, 324 (3d Cir. 2006). Here, it is “significant to note that there is no comma,” *Commonwealth v. Williams*, 579 A.2d 869, 870 (Pa. 1990), before the phrase “in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased.” “If there were a comma . . . there might be basis for regarding the subsequent language as relating back to the” previous items in the list, including autopsy and toxicology reports. *Id.* “The legislature chose not to include a comma, however, and it would be improper to interpret the statute as though a comma exists where none in fact is present.” *Id.* at 870–71. Without a comma, and consistent with the last antecedent rule, the phrase “in order to investigate . . .” must be read to modify only “other reports or documents requested by nongovernmental agencies.” Again, the other listed documents, including autopsy reports, can be purchased for any reason.

Critically, “here the interpretation urged by the rule of the last antecedent is not overcome by other indicia of meaning. To the contrary, [the statute’s] context

fortifies the meaning that principle commands.” *Lockhart*, 577 U.S. at 352. “Our inquiry into [the statute’s] context begins with the internal logic of that provision.”

Id. A coroner’s office can easily request and process payments of \$500 for autopsy reports and \$100 for toxicology reports as a “rapid means” of providing access without using “any discretion.” *Hearst Television*, 54 A.3d at 33. But, when a requester seeks “other reports or documents” beyond the core products of the coroner’s office listed in the statute, it becomes more difficult and time-consuming for the office to determine what the requester wants, to search for the requested documents, and to assess an appropriate fee. Given this added labor, it is logical for the General Assembly to limit the types of requesters receiving “other reports or documents” to those who need them to determine liability or investigate insurance claims. By contrast, the reading the County advances would burden the coroner’s office with making frequent, laborious assessments of whether a requester is a nongovernmental agency investigating an insurance claim or determining liability. And, it would significantly lower the fees coroners’ offices collect, which county treasurers use to defray the costs of training office staff. 16 P.S. § 1252-B. The last antecedent rule, then, produces what the OOR rightly found was the “common-sense reading of the statute.” *Keel*, 2022 WL 4016610, at *2.

Next, the construction urged by the last antecedent rule is consistent with the statute’s legislative history and purpose. *See, e.g., Williams*, 579 A.2d at 871 (applying rule where consistent with “legislative purpose”); *Pa. Dep’t of Banking*, 948 A.2d at 760 (finding legislative history supports rule’s application).¹ All available evidence shows that when the General Assembly enacted the new Section 1252-B in 2018, it did *not* intend to significantly restrict individuals from purchasing autopsy reports and other core documents from coroners. It intended for coroners to collect *more*, not less, money under the statute. The Section-by-Section Commentary to the Act describes Section 1252-B as “analogous to” the provisions it replaced, “[former Coroner’s Act] Section 1236.1(c) and SCCC

¹ Alternatively, if this Court does not agree with Appellants’ interpretation of the statute, Appellants urge this Court to find that theirs is one of two reasonable interpretations of an ambiguous statute. *See JP Morgan Chase Bank N.A. v. Taggart*, 203 A.3d 187, 194 (Pa. 2019) (“A statute is ambiguous when there are at least two reasonable interpretations of the text.” (internal quotation marks and citation omitted)); *cf. County’s Br.* at 18–19 (claiming text is unambiguous but advancing contrary interpretation). When a statute is ambiguous, courts determine the proper interpretation by looking to legislative intent, including factors such as “[t]he occasion and necessity for the statute,” “[t]he contemporaneous legislative history,” “[t]he object to be attained,” and “[t]he consequences of a particular interpretation.” 1 Pa. C.S. § 1921(c); *see Hearst Television*, 54 A.3d at 31–32; *Rendell*, 983 A.2d at 715. Here, as discussed *infra*, the legislative history shows that the General Assembly did not intend to limit the reasons for which a requester may purchase an autopsy or toxicology report under Section 1252-B, but rather rejected efforts to restrict access.

Section 1235.1(c), except that the fees for reports have been increased.”² SB 1005 (PN 2026) Section-by-Section Commentary at 14, Pa. Gen. Assemb. (Oct. 24, 2018), <https://perma.cc/N9BM-B6FZ> (hereinafter “Commentary”). Similarly, the Executive Summary describes Section 1252-B as “contain[ing] the fee schedule previously in Section 1236.1 (Requests for Examinations and Reports)” and 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. Neither document mentions any intent to limit the types of requesters eligible to purchase autopsy reports under Section 1252-B.

In fact, the General Assembly expressly rejected attempts to insert new access restrictions into Section 1252-B. Legislators “remove[d from Section 1252-B] a new subsection which would have specified that the section should not be construed as authorizing disclosure of a record exempt from public access under

² 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). SCCC Section 1235.1(c) is an identical provision, applicable to second-class counties including Allegheny. 16 P.S. § 4235.1(c).

Act 3 of 2008, known as the Right-to-Know Law.” *Id.* at 7 n.15; *see also* Commentary at 14 (noting the same); Appellants’ Principal Br. at 14–16 (describing legislators’ history of rejecting proposals to insert new access restrictions into this statute). Moreover, the Pennsylvania State Coroners Association asked the General Assembly to integrate House Bill 1931 of 2015 into the revised County Code. Executive Summary at 6. That bill, which was never signed into law, contained a provision requiring that autopsy reports and other records requested from a coroner’s office “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.” HB 1931, Pr. No. 3045 at 16–17, Pa. Gen. Assemb. (introduced Apr. 1, 2016), <https://perma.cc/5JKA-3U27>. The General Assembly did not incorporate that provision into the updated Coroner’s Act. Instead, it adopted only provisions that were “consistent with the purpose of the Code revision,” which was to streamline and modernize the County Code—not to create new, substantive access restrictions. Executive Summary at 1, 6.

Further, applying the last antecedent rule in this case is consistent with the remedial purpose of the RTKL. *See Rendell*, 983 A.2d at 716 (applying rule where “this construction aligns with the [statute’s] status as remedial legislation designed to promote public trust in government”); *Pa. Dep’t of Banking*, 948 A.2d at 761

(“Our interpretation harmonizes the remedial purposes of the statute”). The RTKL “replaced the Right to Know Act and significantly expanded public access to governmental records . . . with the goal of promoting government transparency.” *Levy v. Senate of Pa.*, 65 A.3d 361, 368 (Pa. 2013). It is “remedial legislation” that must be interpreted “liberally to effect its object and promote justice.” *Id.* at 380 (citing 1 Pa. C.S. § 1928(c)). Adopting the County’s reading of Section 1252-B would vitiate the RTKL’s remedial purpose by significantly limiting access to autopsy and toxicology reports—documents that provide the public with vital information on the lives and deaths of Pennsylvanians in state custody.

In sum, reading Section 1252-B as not imposing new access restrictions on autopsy and toxicology reports is consistent with the statute’s plain text, rules of statutory construction, the statute’s internal logic, its legislative history and context, and the RTKL’s remedial purpose. The lower court’s decision to the contrary imposed “a presumption against disclosure that is irreconcilable with the RTKL” constituting reversible error, and the County’s arguments in support of upholding it are not persuasive. *ACLU of Pa.*, 232 A.3d at 670.

II. In the alternative, Appellants qualify as seeking records in order “to determine liability for the death of the deceased.”

Alternatively, if this Court finds that Section 1252-B does require requesters to show they are seeking to purchase an autopsy or toxicology report “in order to investigate a claim asserted under a policy of insurance or to determine liability for

the death of the deceased,” Appellants qualify under the latter category. Ms. Hailer sought autopsy and toxicology records in her capacity as a nongovernmental entity seeking to determine liability for the death of Daniel Pastorek, who died while incarcerated in Allegheny County. She testified that “[t]he 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,” and whether any “systemic deficiencies at the prison . . . create[] risk of harm to other inmates and potential liability.” R.167a.

The lower court looked to Black’s Law Dictionary’s definition of “liability”:
“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[.]” *Liability*, Black’s Law Dictionary (11th ed. 2019) (emphasis added); Appellants’ Principal Br., Ex. A, at 3–4. The court found that this definition was limited to “liability in a criminal, civil, or financial sense.” *Id.* This interpretation improperly overlooked the “accountable” and “society” components of the definition, which encompass the public’s interest in learning about an issue and determining how to respond, including in ways that may involve legal action. *See* Appellants’ Principal Br. at 17 (defining these terms).

Even if this Court accepts the County’s and lower court’s argument that “liability” means only “a legal, not social, responsibility,” County’s Br. at 21,

investigative journalism often fuels lawsuits that seek to remedy wrongdoing and hold public officials to account. For example, a pending federal class-action civil rights lawsuit against former Allegheny County prison contractor Joseph Garcia relies on extensive reporting by the York Daily Record, York Dispatch, WITF, and New York Post about his controversial, violent training methods. *See* Complaint, *Schwenk v. Garcia*, No. 21-CV-2079 (JPW) (M.D. Pa. filed Dec. 13, 2021). A class-action civil rights lawsuit alleging that Philadelphia jails failed to keep inmates safe during the COVID-19 pandemic relied on reporting from the Philadelphia Inquirer, WHYY, and other outlets. *See* Complaint, *Remick v. City of Phila.*, No. 20-CV-1959 (BMS) (E.D. Pa. filed Apr. 20, 2020). The lawsuit led to a settlement that would require the city to improve hygiene and safety measures in its jails, and would subject the jails to court supervision for two years. *See* Samantha Melamed, *Philly Prison Officials Agree to an Independent Monitor and Hiring Bonuses to Settle Class-Action Lawsuit*, Phila. Inquirer (Apr. 12, 2022), <https://www.inquirer.com/news/philadelphia-prison-jail-settlement-monitor-agreement-lawsuit-20220412.html>. And, following Mother Jones' publication of an in-depth investigation into a for-profit prison company, shareholders and inmates filed multiple lawsuits over the company's understaffing and failure to prevent violence within the prison. *See* Becca Andrews, *10 Things That Have*

Happened Since Our CCA Investigation Broke, Mother Jones (Sept. 3, 2016), <https://perma.cc/9394-9M69>.

As these lawsuits and others like them show, investigative reporting is critical to holding the criminal justice system liable when it goes awry, including through the courts. To do that work, reporters need access to records maintained by government agencies, including autopsy and toxicology reports. Those records are essential to shedding light on the lives and deaths of incarcerated individuals and enabling the public to hold officials accountable. Only this interpretation of “liability,” which encompasses the critical work done by requesters like Ms. Hailer, aligns with both Section 1252-B and the RTKL’s transparency goals. Accordingly, if the Court finds Section 1252-B only permits paid access to autopsy and toxicology reports for those seeking to determine liability for the deceased’s death, it should also find that Appellants meet this definition.

III. Pennsylvania Supreme Court precedent supports Appellants’ interpretation of Section 1252-B.

Last, the County seeks to avoid two relevant Pennsylvania Supreme Court precedents: *Hearst Television, Inc. v. Norris*, 54 A.3d at 33, and *Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632, 637 (Pa. 2009). See County’s Br. at 7, 11–17. These cases state that, as discussed *supra*, the Coroner’s Act generally provides two methods of accessing autopsy and toxicology reports: free access following the documents’ year-end filing with the prothonotary and faster access

through the coroner's office for a fee. Only the latter method applies in second-class counties such as Allegheny. The County essentially contends that because these cases discuss both access methods, and Allegheny County only offers the second, the cases do not apply at all. This all-or-nothing approach is entirely unsupported and contrary to the case law.

Hearst Television and *Penn Jersey* analyzed the language in Section 1252-B's predecessor, which likewise "provide[d] a rapid means of procuring coroners' records for a fee." *Hearst Television*, 54 A.3d at 26 (citing *Penn Jersey*, 962 A.2d at 637). The County makes much of the fact that *Hearst Television* and *Penn Jersey* addressed the provision applicable to counties of the third through eighth class, *see* County's Br. at 11–17, but the Second Class County Code contained an identical provision permitting paid access to autopsy reports. Section 1252-B, the current, combined version of those provisions, establishes the same system of paid access for those "who do not wish to wait until after the end of the year" in third through eighth-class counties where the records end up in the prothonotary's office, *Penn Jersey*, 962 A.2d at 637, and to purchasers in second-class counties where the records do not go to the prothonotary's office. *See* 16 P.S. § 1236.1(c) (repealed 2018); 16 P.S. § 4235.1(c); *see also* Commentary at 14 (describing Section 1252-B as "analogous to" those provisions). To purchase autopsy records, then as now, "[t]he RTKL provides the procedure for accessing those records that

are available for immediate release for a fee.” *Hearst Television*, 54 A.3d at 33; *see also id.* at 32 (noting that the RTKL’s conflict provision requires disclosure “if the RTKL conflicts with another law”).

The OOR has repeatedly and correctly upheld this mandate under Section 1252-B and the RTKL, ordering coroners’ offices to release autopsy reports upon payment of the fee, regardless of whether those reports have been or ever will be deposited with the prothonotary. *See* R.006a; *Keel*, 2022 WL 4016610, at *3; *Cowen v. Centre Cnty. Coroner’s Off.*, No. AP 2022-0559, 2022 WL 1227328, at *2 (Pa. Off. Open Recs. Apr. 21, 2022) (holding Section 1252-B requires coroner’s office to provide paid access to autopsy reports regardless of whether they had been deposited with prothonotary); *Walbert v. Chester Cnty.*, No. AP 2021-1308, 2021 WL 3476548, at *3 (Pa. Off. Open Recs. Aug. 5, 2021) (same); *Chatov v. Lackawanna Cnty.*, No. AP 2021-1334, 2021 WL 3487254, at *4 (Pa. Off. Open Recs. Aug. 4, 2021) (same, and noting that coroner’s office indeed provides paid access); *Ciavaglia v. Bucks Cnty.*, No. AP 2020-0761, 2020 WL 4260368, at *15 (Pa. Off. Open Recs. July 20, 2020) (holding Section 1252-B requires coroner’s office in second class A county, where reports do not get deposited with prothonotary, to provide paid access to autopsy reports); *Bowen v. Indiana Cnty.*, No. AP 2019-2064, 2019 WL 7195801, at *4 (Pa. Off. Open Recs. Dec. 23, 2019);

Lloyd v. Lackawanna Cnty., No. AP 2019-0748, 2019 WL 3065546, at *6 (Pa. Off. Open Recs. July 8, 2019).

The Court in *Hearst Television* found that Section 1252-B's predecessor "allows the coroner to charge fees for records, but does not afford the coroner any discretion with regard to releasing such records." *Hearst Television*, 54 A.3d at 32. The County contends that the addition of the language on insurance claims and liability determinations in Section 1252-B gives the coroner's office discretion in releasing autopsy reports. County's Br. at 19. But, as discussed above, that language at most applies only to "other reports or documents requested by nongovernmental agencies," not to autopsy reports. *See supra* Part I. For requesters seeking to purchase autopsy reports, under Section 1252-B like its predecessors, the coroner's office must immediately release the record upon payment of the fee. Accordingly, consistent with the case law and as the OOR correctly held, "any Coroner's records responsive to the Request identified in Section 1252-B of the Coroner's Act are available through the RTKL for the fees set forth in the Coroner's Act." R.006a. This Court should hold that, upon receipt of the fees, the coroner's office must disclose the requested records to Appellants.

CONCLUSION

For the foregoing reasons and those set forth in their principal brief, Appellants respectfully request that this Court reverse the December 1, 2021 Opinion and Order of the Court of Common Pleas of Allegheny County.

Dated: September 20, 2022

/s/ Paula Knudsen Burke
Paula Knudsen Burke
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
Pa. I.D.: 87607
PO Box 1328
Lancaster, PA 17608
Phone: (717) 370-6884
pknudsen@rcfp.org

Counsel for Appellants

CERTIFICATES OF COMPLIANCE

I hereby certify that:

1. This filing complies with the word count limit set forth in Pennsylvania Rule of Appellate Procedure 2135(a)(1). Based on the word-count function of Microsoft Word, the filing contains 4,619 words.

2. This filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: September 20, 2022

/s/ Paula Knudsen Burke

Paula Knudsen Burke
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
PA ID: 87607

PROOF OF SERVICE

I hereby certify that on September 20, 2022, I electronically filed this brief with the Clerk of Court for the Commonwealth Court of Pennsylvania by using the PACfile electronic filing system. Notice was provided to the following via PACfile:

For Appellee Allegheny County:

Margaret C. Shiels, Esq.
Maggie.shiels@alleghenycounty.us

George Janocsko, Esq.
George.janocsko@alleghenycounty.us

Andrew F. Szefi, Esq.
Andrew.szefi@alleghenycounty.us

Allegheny County Law Department
300 Fort Pitt Commons Building
445 Fort Pitt Boulevard
Pittsburgh, PA 15219

For Interested Party Office of Open Records:

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

For Amicus Curiae Pennsylvania State Coroners Association:

Susan M. Shanaman, Esq.
sms Shanaman@aol.com
240 N 3rd Street, Suite 402
Harrisburg, PA 17101

(717) 412-0002

For Amici Curiae Pennsylvania NewsMedia Association and Cornell Law School First Amendment Clinic:

Melissa Bevan Melewsky
melissam@pa-news.org
3899 North Front Street
Harrisburg, PA 17110
(717) 703-3048

For Amici Curiae Abolitionist Law Center and Pennsylvania Institutional Law Project:

James Patrick Davy
jimdavy@allriselaw.org
All Rise Trial & Appellate
P.O. Box 15216
Philadelphia, PA 19125
(609) 273-5008

Dated: September 20, 2022

/s/ Paula Knudsen Burke

Paula Knudsen Burke
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
PA ID: 87607