

Paula Knudsen Burke
PA ID No. 87607
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
4000 Crums Mill Rd., Ste. 101
Harrisburg, PA 17112
Phone: (717) 370-6884
pknudsen@rcfp.org

Counsel for LNP Media Group, Inc.

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

IN RE: JONATHAN LUNA

LNP Media Group, Inc.,

Intervenor

DOCKET NO. 2020-01310

President Judge David L. Ashworth

**BRIEF IN SUPPORT OF RENEWED MOTION OF LNP MEDIA GROUP, INC. TO
UNSEAL CORONER RECORDS**

PRELIMINARY STATEMENT

In late 2003, the body of an assistant United States Attorney from Baltimore was found in a stream in rural Lancaster County. For more than twenty years after this discovery, questions have lingered about Jonathan Luna's death. The Pennsylvania State Police consider it a homicide. The Federal Bureau of Investigations has stated it was a suicide.¹

But the answers that might be found in Mr. Luna's autopsy report remain shielded from the public. In February 2020, the Lancaster County District Attorney's office sought and obtained a sealing order preventing the public from accessing a copy of the autopsy. LNP Media Group,

¹ June 22, 2006 letter from Coroner Gary Kirchner. Renewed Mot. to Unseal, Ex. A.

Inc., publisher of LNP | LancasterOnline (hereinafter “LNP”), then moved to intervene and unseal. This Court ultimately ruled in 2021 that a balancing of competing interests weighed in favor of continuing to maintain the seal on Mr. Luna’s autopsy record.

Now, however, with the passage of yet more years of unanswered questions, and even more public scrutiny, Intervenor LNP argues that the time has come to empower the public and allow it to determine, for itself, what those autopsy records reveal. This Court should dissolve the sealing order and let the public learn what law enforcement officials have long known, and at times conflicted over, regarding Luna’s death.²

I. FACTUAL & PROCEDURAL HISTORY

In early morning hours of December 4, 2003, Jonathan Luna was found dead in Brecknock Township, Lancaster County, Pa. See Opinion at 1, *In re: Jonathan Luna*, No. CI-20-01310 (Ct. Comm. Pls. Lancaster Cnty. Pa. Jan. 13, 2021) [hereinafter “Op.”]. Responding police officers found the federal prosecutor from Baltimore near his car, lying in a creek, having been stabbed multiple times.³ His death grasped the attention of audiences and reporters in Pennsylvania, Maryland, and beyond.⁴ Pennsylvania law enforcement officials considered the death a homicide,

² Dan Nephin, *Former Baltimore Reporter Hopes for ‘Final Resolution’ in Luna*, LNP | LancasterOnline (Dec. 3, 2023), https://lancasteronline.com/news/local/former-baltimore-reporter-hopes-for-final-resolution-in-luna/article_f0f5adc6-9083-11ee-ae6d-736f5bb45c67.html (“The fact that it’s been 20 years is staggering for me. How did that happen? But it doesn’t change that there ought to be some resolution to a case for someone who was serving the public and, you know, in a role where it seems like law enforcement owes some kind of final resolution.”); see also Pa.R.E. 902(6) (“The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted: . . . Newspapers and Periodicals. Material purporting to be a newspaper or periodical.”).

³ Dennis Murphy, *Mysterious Death of Baltimore Prosecutor*, NBCNews (Jan. 16, 2004), <https://www.nbcnews.com/id/wbna3969959> (“The young federal prosecutor had come so far to end up sprawled face down in a creek in rural Lancaster, Pa., drowned, with 36 shallow stab wounds on his clothed body.”).

⁴ Cheryl W. Thompson, *A Decade Later, Prosecutor Luna's Death Still a Mystery*, Wash. Post (Dec. 12, 2013), <https://www.washingtonpost.com/lifestyle/magazine/a-decade-later->

though some federal investigators and medical officials pushed a theory that it was suicide.⁵ Luna's death remains an unsolved crime and the source of considerable public intrigue to this day.⁶

Years after Luna's death, LNP and the Lancaster County Coroner's Office became entrenched in protracted litigation regarding access to coroner's records at the Prothonotary's office. *See* Pet. for Review/App. of Final Determination of Pa. Off. of Open Recs., *County of Lancaster v. Miller*, No. CI-2018-18-02915 (Ct. Comm. Pls. Lancaster Cnty., Pa. filed Apr. 25, 2018).⁷ That litigation appeared to resolve on August 23, 2019, when the Honorable Leonard G. Brown, III, granted PA Media Group and LNP's mandamus complaint, and ordered the Coroner to deposit official records and papers with the Lancaster County Prothonotary, as required by 16 P.S. § 1236-B.⁸ *See County of Lancaster v. Walker*, No. CI-18-09547, at 12 (Ct. Comm. Pls. Lancaster Cnty. Pa. Aug. 23, 2019). Following this ruling, on September 27, 2019—after the

[prosecutor-lunas-death-still-a-mystery/2013/12/10/211e2ab8-f563-11e2-aa2e-4088616498b4_story.html](https://www.lancasteronline.com/news/local/prosecutor-lunas-death-still-a-mystery/2013/12/10/211e2ab8-f563-11e2-aa2e-4088616498b4_story.html) (“Dozens of stab wounds—36 in all—punctuated his body. More than half were to his neck. There were cuts to his hands and fingernail marks near his wrists. Many of the wounds were superficial, what authorities describe as “hesitation cuts,” but his left carotid artery had been punctured, causing him to bleed to death in minutes. Luna also had a wound to his head, which he may have suffered when he landed in the creek.”).

⁵ Dan Nephin, *Luna Death Ruled a Homicide Officially, But Could It Be a Suicide?*, LNP | LancasterOnline (Dec. 3, 2023), https://lancasteronline.com/news/local/luna-death-ruled-a-homicide-officially-but-could-it-be-a-suicide/article_8218b440-9086-11ee-914e-8b02c288077c.html. *See also* Renewed Mot. to Unseal, Ex. A.

⁶ Dan Nephin, *Mystery of Jonathan Luna Persists After 20 Years*, LNP | LancasterOnline (Dec. 3, 2003), https://lancasteronline.com/news/local/mystery-of-jonathan-luna-persists-after-20-years/article_314f7902-907e-11ee-9c95-d35954e19916.html).

⁷ Lancaster County's (“the County's”) attempts to appeal PennLive reporter Barbara Miller's victory before the Office of Open Records, which ruled the Coroner must deposit coroner's records annually with the prothonotary, was consolidated with a similar appeal taken by the County against LNP Media Group reporter Carter Walker, such that the cases would then proceed under Walker's case caption and case number. *See* Order, *County of Lancaster v. Miller*, No. CI-2018-02915 & CI-2018-09547 (Ct. Comm. Pls. Lancaster Cnty., Pa. Nov. 29, 2018).

⁸ Statute repealed under 2024, May 8, P.L. 50, No. 14, § 5(2), recodified as 16 Pa.C.S. § 13935.

thirty-day appeal period had lapsed with no appeal of Judge Brown’s opinion by the Coroner’s office—LNP and PA Media Group submitted a request to Lancaster County’s solicitor seeking disclosure of specified records and papers, including those related to Mr. Luna. *See Op.* at 4. On or about October 21, 2019, Lancaster County’s solicitor emailed LNP’s lawyer and stated, “The Coroner has no records relating to Jonathan Luna, DOD, 12/4/2003, so that cannot be produced.” *Id.* at 5. The solicitor informed LNP that Mr. Luna’s coroner records could not be produced because they could not be located in the possession of the Coroner. *See id.* Luna’s records were purportedly found in the County’s possession on January 31, 2020. *Id.* at 6.

On February 4, 2020, the Lancaster County District Attorney moved to seal Mr. Luna’s coroner records in their entirety.⁹ *Id.* The following day, this Court granted the motion. *Id.* Shortly thereafter on that same day, having no knowledge of this order, LNP moved to intervene for the limited purpose of opposing sealing. *Id.* at 7. On March 2, 2020, the Court granted the motion to intervene and provisionally denied any unsealing but permitted LNP to file a motion to access the sealed documents. *Id.* LNP filed such a motion to unseal on March 19, 2020. *Id.* Thereafter, the Court ordered the Commonwealth to produce the coroner records at issue for *in camera* review to determine whether their disclosure would jeopardize the investigation into Mr. Luna’s death. *Id.* at 8.

To assist in its analysis of the records, the Court ordered the parties to attend a hearing held October 14, 2020 strictly to address the extent to which the investigation into Mr. Luna’s death remained active and ongoing, but not the extent to which disclosure might impact that investigation. *See id.* at 8–9. At the hearing, Pennsylvania State Police Trooper First Class

⁹ The Office of the District Attorney had initiated a number of sealing actions related to autopsy records – filing entirely new “miscellaneous” dockets – following Judge Brown’s decision. ¶2, 3 District Attorney Motion to Seal

Chadwick Roberts testified that criminal investigations were grouped into two categories, “closed,” and “open and ongoing.” Tr. at 38:3–18. “Closed” cases are those in which the matter has been solved or the statute of limitations has expired. Tr. at 7:17–20. “Open and ongoing” encompasses everything else, including “cold cases,” or those that remain unsolved in excess of two years, and where the investigation “ha[s] been exhausted,” Tr. at 9:23–10:1, but the statute of limitations has not elapsed, Tr. at 8:16–24. Because there is no statute of limitations for murder, and because Mr. Luna’s death remained unsolved for so many years, it was considered a “cold case.” Tr. at 32:2–3.

Tr. Roberts testified his “investigation” of Luna’s death proceeded like any other cold case, with a yearly review of the case file, *see* Tr. at 10:11–16, 46:17–25, “start[ing] at the beginning” and looking at everything with a “fresh set of eyes,” Tr. at 11:1–8. However, if the investigator conjures no new leads or is presented with no new evidence to advance, then “it’s just put away and filed for eternity,” only to be potentially advanced as the same process plays out in the next annual review. *See* Tr. at 12:25–13:6. Following the hearing, the Court requested additional briefing from the parties regarding whether the annual review described constituted an ongoing investigation that would be hindered by the release of Mr. Luna’s autopsy records, whether there may be less restrictive measures than sealing, such as redacting the autopsy, and whether a temporal limit should be placed on any sealing order.

In a January 13, 2021 Opinion and Order, the Court determined that the investigation should be considered ongoing, that the autopsy records at issue were not “judicial records,” and that “the presumption of openness was outweighed here by the Court’s responsibility to protect the integrity of the Commonwealth’s ongoing investigation into the murder of Jonathan Luna.” Op. at 13, 26, 28, 32. The Court further ruled that redaction could not be done in such a specifically

targeted manner as to protect whatever information might be most sensitive to investigators, and that the sealing order should remain in place through the investigation's duration, however long that might be. Op. at 32.

In the years that have transpired since, neither the District Attorney nor the State Police have made public any further advances in the investigation whatsoever. Yet, Mr. Luna's death remains a subject of tremendous public interest, renewed periodically, including as the twentieth anniversary of the crime came and went.¹⁰ A recent documentary¹¹ recaptured audience attention with screenings¹² in Lancaster, Baltimore, and Washington D.C through the fall of 2024. Speculation has only grown¹³ as to what government officials may have learned but not shared,

¹⁰ Barry Simms, *Decades later: No Arrests, No Motive, No Closure in Johnathan Luna Case*, WBALTV (updated Nov. 20, 2023), <https://www.wbalTV.com/article/jonathan-luna-murder-investigation-20-years-later/45896809> (“The last time Assistant U.S. Attorney Jonathan Luna was in Baltimore was late at night at the federal courthouse on Lombard Street in 2003. Two decades later, there are no arrests, no motive and no closure.”); Jed Reinert, *Strange Death of Jonathan Luna - and How It Played Out in Newspapers Over 20 Years*, LNP | LancasterOnline (Dec. 3, 2023), https://lancasteronline.com/features/the-strange-death-of-jonathan-luna---and-how-it-played-out-in-newspapers/article_337ca65c-8ed3-11ee-80c7-cb2c40f71e26.html (“Twenty years ago, the mysterious death of Jonathan Luna, 38, a federal prosecutor from Baltimore whose body was found face-down in a creek in Brecknock Township, quickly captured the interest of county residents - and the nation at large.”).

¹¹ Dan Nephin, *Prosecutor Jonathan Luna's Death Explored in Red Rose Film Festival Movie*, LNP | LancasterOnline (Nov. 6, 2024), https://lancasteronline.com/news/local/prosecutor-jonathan-lunas-death-explored-in-red-rose-film-festival-movie/article_eb870518-9ca0-11ef-b1bc-cb2f9857d838.html (“Though the movie is faithful to the book, Cohen said they were able to get people to talk with many of the players in the investigation, including a former colleague of Luna's, a federal judge and a former Pennsylvania State Police commissioner.”).

¹² ‘Midnight Ride of Jonathan Luna’ Showtimes, Harbor East Cinemas (last visited Nov. 14, 2024), <https://perma.cc/YHK3-QK5L>; Documentary Film Premiere ‘The Midnight Ride of Jonathan Luna’ and an Early History of BCFD, Facebook (last visited Nov. 14, 2024) <https://www.facebook.com/events/1052184116377962/?rdr>; ‘The Midnight Ride of Jonathan Luna’ Showtime, Miracle Theatre (last visited Nov. 14, 2024), <https://themiracletheatre.com/events/the-midnight-ride-of-jonathan-luna-2/>.

¹³ Dan Nephin, *Podcasts, Social Media Posts Ponder Possibilities Regarding Luna Case*, LNP | LancasterOnline (Dec. 3, 2023), https://lancasteronline.com/news/local/podcasts-social-media-posts-ponder-possibilities-regarding-luna-case/article_ab104bd0-9084-11ee-9360-

the suspicions regarding defendants' Mr. Luna prosecuted and FBI agents and colleagues Mr. Luna worked with, the truth of alleged alluring details about Mr. Luna's personal life and work conflicts¹⁴ that may have contributed to his death,¹⁵ and whether he in fact died at the hands of another (or *others*) or by his own actions.¹⁶ Such mystery and conjecture swirl as the autopsy

[4b8b1c9587f3.html](#) (“The lack of clear resolution 20 years later on what happened to Jonathan Luna makes the case ripe for conspiracy theories. . . . [I]n a confounding case like Luna’s, he said, ‘You’re going to leave it open to people to develop their own ideas about what actually happened. And that leads into conspiracy theory territory.’”).

¹⁴ See Eric Rich & Allan Lengel, *Polygraph Loomed for Md. Lawyer*, Wash. Post (Dec. 20, 2005), <https://www.washingtonpost.com/archive/local/2005/12/20/polygraph-loomed-for-md-lawyer/62b03ff2-10db-4845-aefb-9d8dd96b43c4/> (“Federal prosecutor Jonathan P. Luna, whose death has confounded authorities for two years, was asked to take a lie detector test in connection with about \$36,000 in missing evidence shortly before he was found stabbed and drowned in rural Pennsylvania, according to several sources familiar with the investigation.”); Tom Murse, *Luna Reportedly was Facing Lie-detector Test at Time of Death*, LNP | LancasterOnline.com (published Dec. 20, 2005, last updated Aug. 5, 2014), https://lancasteronline.com/news/luna-reportedly-was-facing-lie-detector-test-at-time-of-death/article_b23942cc-47b0-5fc8-891e-74ecd19c2353.html (“The previously undisclosed lie-detector test has led some to believe that Luna may have killed himself accidentally, according to The [Washington] Post. They believe Luna might have been trying to stave off the polygraph and generate sympathy by staging an abduction but went too far by nicking an artery or crucial vein, the newspaper reported.”); Cheryl W. Thompson, *supra* note 4 (“The investigation into whether he played a role in the missing money. DiBiagio’s disdain. On top of that, Luna’s drug-trafficking case was falling apart because he neglected to provide defense attorneys with critical mitigating information. He worried that one more misstep might cost him his job.”).

¹⁵ *Luna Probe Looks at Lie-Test Angle*, Balt. Sun (originally published Dec. 21, 2005, updated Sept. 30, 2021), <https://www.baltimoresun.com/2005/12/21/luna-probe-looks-at-lie-test-angle/> (“Before his death in December 2003, Luna, who was more than \$25,000 in debt, came into a large sum of money, and investigators have been unable determine its origin, according to the source. According to the Post, the amount was more than \$10,000. But the law enforcement source said yesterday that the amount of money was significantly larger.”); Stephanie Haines, *Luna Reportedly Feared Losing Job, Hired Lawyer*, Balt. Sun (originally published Aug. 18, 2004, updated May 30, 2019), <https://www.baltimoresun.com/2004/08/18/luna-reportedly-feared-losing-job-hired-lawyer/> (“[M]any say Luna was under extreme pressure at work, where he appeared to be on the outs with his bosses. One lawyer, who did not want to be named for fear of reprisal, said he had heard DiBiagio say he wanted Luna ‘gone.’ A colleague of Luna’s said he recommended that Luna hire a lawyer to protect his job.”).

¹⁶ *On the Sixth Anniversary of Jonathan Luna's Mysterious Death, Still No Arrest*, ABC News (Dec. 4, 2009), <https://abcnews.go.com/Blotter/anniversary-jonathan-lunas-mysterious-death-arrest/story?id=9251473> (“[T]here are conflicting theories about how Luna wound up dead. Those

remains shrouded in secrecy behind the previously issued sealing order. Having doggedly pursued this story since its tragic origins, LNP now renews its efforts to unseal Mr. Luna’s coroner records.

II. ARGUMENT

A. This Court Should Unseal the Coroner’s Records relating to Mr. Luna’s death.

1. Coroner records are publicly accessible under statute.

The Coroner’s Act (“Act”) applies to counties of the second and second class A through the eighth class. 16 Pa.C.S.A. § 13901. As a “second class A” county,¹⁷ Lancaster County must obey the mandates of the Coroner’s Act. Amongst the Coroner’s duties under the Act is to “investigate the facts and circumstances concerning a death that appears to have happened within the county,” and to determine “if an autopsy or inquest should be conducted” for “[a] death occurring as a result of violence or trauma, whether apparently homicidal, suicidal, or accident[.]” 16 Pa.C.S.A. § 13918(a); (a)(3); *see also* 16 Pa.C.S.A § 13919(a) (stating “coroner shall perform or order an autopsy on the body” if it is “unable to determine the cause and manner of death” after investigation).

Mr. Luna’s death squarely falls within this mandate, thus his autopsy is governed by the Act. Indeed, the Commonwealth’s Supreme Court has expressly held “that autopsy reports are

who think he was murdered wonder if he was killed by someone connected to a case he had handled. Among the defendants Luna prosecuted were drug dealers and sex offenders. An alternate explanation says that Luna committed suicide and made it look like murder, perhaps because of problems at work.”).

¹⁷ See County Commissioners Association of Pa, *Welcome to Pennsylvania Counties*, PaCounties.Org (last visited Nov. 15, 2024), <https://www.pacounties.org/who-we-are/pennsylvania-county-by-class>; *County Classes*, PA Courts Dashboard (last visited Nov. 15, 2024), https://www.pacourts.us/news-and-statistics/research-and-statistics/dashboard-table-of-contents/resources/webhelp/General_Information/County_Classes.htm.

‘official records and papers’” under the Act. *Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632, 637 (Pa. 2009) (citing 16 P.S. § 1251).

Accordingly, the Act governs the storage and dissemination of autopsy reports. *See County of Lancaster v. Walker*, No. CI-18-09547, at 5 (Ct. Comm. Pls. Lancaster Cnty. Aug. 23, 2019) (applying predecessor statute provision requiring deposit of autopsies with the prothonotary). Under the Act,¹⁸ upon the payment of a \$500 fee, the coroner shall provide an autopsy report, with toxicology, inquisition, and/or coroner’s reports also available for a \$100 fee each, respectively. 16 Pa.C.S.A. § 13952. Thus, the Act effectively creates a “fee schedule that establishes the costs to be collected for coroner reports,” with access to such records not limited to distinct entities or parties, but available to any member of the public or media who wishes to pay the fee. *Allegheny County v. Hailer*, 298 A.3d 476, 481 (Pa. Commw. Ct. 2023) (applying predecessor, but near-identical, statutory provision); *see also Hearst Television, Inc. v. Norris*, 54 A.3d 23, 28 (Pa. 2012) (applying earlier predecessor statute to determine that the Act’s fee provision “provide[s] a ‘rapid means’ of obtaining an autopsy report from the coroner . . .”).

LNP is ready and willing to pay the statutory fees and receive the requested records from the Coroner’s Office, but the sealing order forecloses public access of the otherwise public record.

¹⁸ When this matter last came before this Court, the Coroner’s Act provided two methods for procuring coroner’s records, including autopsies. *Hearst Television, Inc. v. Norris*, 54 A.3d 23, 33 (Pa. 2012). As a second class county, the Lancaster County Coroner’s Office was required to deposit all of its coroner records with the county prothonotary within 30 days of the end of the calendar year, at which point individuals seeking such records could access these records by visiting the Prothonotary’s office, or its annex. *See* 16 Pa. C.S.A § 1236-B (repealed by 2024, May 8, P.L. 50, No. 14, § 5(2); now codified as 16 Pa.C.S. § 13935). Those who wished not to wait until the end of the year could instead utilize the fee schedule that has been recodified but remained largely intact. *See* 16 Pa. C.S.A § 1252-B (repealed by 2024, May 8, P.L. 50, No. 14, § 5(2), now codified as 16 Pa.C.S. § 13952). Now, with Lancaster County’s increase in population size and reclassification as a class 2A county, the coroner is no longer required to deposit his papers with the Prothonotary. *See* 16 Pa.C.S. § 13935 (requiring coroners in third through eighth class counties to deposit coroner records with the county prothonotary within 30 days of the year’s end).

See Penn Jersey Advance, Inc., 962 A.2d at 637 (holding coroner reports are “official records”); 65 P.S. § 67.305 (providing that “[a] record in the possession of a Commonwealth agency or local agency shall be presumed to be . . . public,” unless the record is protected by privilege or otherwise exempt under the RTKL or another state or federal law); 65 P.S. § 67.102 (defining “local agency” as “[a]ny local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity.”). This Court should lift the stay and thereby permit LNP to submit its request, pay the fees, and be provided Luna’s autopsy report.

2. *Reporting by the press on the actions and investigations of public officials plays a critical role in promoting accountability.*

Pennsylvania law is clear that “the right of the press and public [are] synonymous, since the media effectively functions as surrogates for the public.” *Commonwealth v. Long*, 922 A.2d 892, 899 (Pa. 2007) (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980) (plurality op.)). One important aspect of this role is that “the press serves as the information-gathering agent of the public.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 609 (1978); *see also Mills v. Alabama*, 384 U.S. 214, 219 (1966) (“The Constitution specifically selected the press . . . to play an important role in the discussion of public affairs.”). In cultivating and disseminating such information, the press plays a vital role in ensuring the public is fully informed and able to hold government accountable. *See Grosjean v. Am. Press Co.*, 297 U.S. 233, 250 (1936) (“[I]nformed public opinion is the most potent of all restraints upon misgovernment . . .”).

The Supreme Court of Pennsylvania has long recognized the role of the news media in providing accountability for government actors. In 1963, the Court reflected on the work of the news media in the context of a case examining the Pennsylvania Shield Law, which protects reporters who are subpoenaed for their notes, documents, or testimony.

[I]Independent newspapers are today the principal watch-dogs and protectors of honest, as well as good, Government. They are, more than anyone else, the principal guardians of the general welfare of the Community and, with few exceptions, they serve their City, State or Nation with high principles, zeal and fearlessness. They are, in the best sense of the maxim, ‘pro bono publico’.

In re Taylor, 193 A.2d 181, 185 (Pa. 1963).¹⁹ The Pennsylvania Supreme Court’s description of the importance of the news media underscores journalists’ essential investigative roles to help uphold good government and provide accountability when government actors fail to carry out their duties.

This oversight role is at its zenith when reporting on matters of law enforcement and criminal justice, where immense responsibility falls on government officials charged with seeking justice, providing closure, and ensuring the immense power of the state is levied against the proper parties. *See Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966) (“[A] responsible press has always been regarded as the handmaiden of effective judicial administration. . . . The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.”)

Members of the news media routinely seek to access autopsy reports to provide accountability to their community about the circumstances of a person’s death. Courts throughout the country have found that public access to autopsy records enhances trust in the state’s publicly elected coroners and appointed medical examiners, whom the public has “a great interest” in monitoring. *See, e.g., Campus Commc’ns, Inc. v. Earnhardt*, 821 So.2d 388, 401(Fla. Dist. Ct. App. 2002) (“[T]he public obviously has a great interest in making certain its government, the

¹⁹ In 2008, the Pennsylvania Supreme Court reaffirmed *Taylor* and the policy basis for the Shield Law, stating that the privilege “was enacted to protect the free flow of information to the news media in their role as information providers to the general public.” *Castellani v. Scranton Times, L.P.*, 956 A.2d 937, 951 (Pa. 2008).

medical examiner in the instant case, carries out its duties in a responsible fashion”). The Supreme Court of California recounted the numerous important ways in which autopsies serve accountability functions beyond just criminal investigations:

[S]uch reports serve many other equally important purposes. For example, the decedent's relatives may use an autopsy report in determining whether to file an action for wrongful death. And an insurance company may use an autopsy report in determining whether a particular death is covered by one of its policies. . . . Also, in certain cases an autopsy report may satisfy the public’s interest in knowing the cause of death, particularly when (as here) the death was reported in the local media. In addition, an autopsy report may provide answers to grieving family members.

California v. Dungo, 286 P.3d 442, 450 (Cal. 2012), *as modified on denial of reh’g* (Dec. 12, 2012).

Media organizations like LNP cannot fulfill this important mission of “report[ing] fully and accurately the proceedings of government,” if they cannot access the government’s “official records and documents,” which “are the basic data of governmental operations.” *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 491–92 (1975). In its efforts to responsibly report on a matter of public concern, LNP is simply trying to obtain the crucial documents—in this instance, Mr. Luna’s autopsy records—that may assist in providing answers to questions surrounding Mr. Luna’s death, and, in so doing, holding to account local, state, and federal officials whose clandestine handling of this matter undermines the public’s trust and understanding of its government.

3. *The Commonwealth cannot meet its burden to keep the records at issue sealed behind the now twenty-year guise of an “ongoing criminal investigation.”*

Because the District Attorney’s stated reason for a sealing order only diminishes as the years since Mr. Luna’s death roll on, and with the underlying crime remaining unsolved and the investigation all but inert, this Court should lift the sealing order and permit LNP to pursue the

requested records from the Lancaster County Coroner's Office. LNP does not dispute that "trial courts are adequately equipped and authorized to protect autopsy records from disclosure based on 'judicial discretion and necessity' under appropriate circumstances." *Penn Jersey Advance, Inc.*, 962 A.2d at 637 (quoting *In re Buchanan*, 880 A.2d 568, 575 (Pa. 2005)). However, "there is no general governmental privilege to seal autopsy reports, even where a criminal investigation is ongoing." *In re Buchanan*, 823 A.2d 147, 153 (Pa. Super. Ct. 2003), *aff'd*, 880 A.2d 568 (Pa. 2005).

Accordingly, a court may only exercise its power to limit access to these records via sealing or redactions in "circumstances in which the Commonwealth . . . demonstrate[s] that the release of an autopsy report would *substantially impede, obstruct, or interfere* with an ongoing investigation." *Id.* (emphasis added). "[I]t is not enough for the Commonwealth merely to assert that an investigation is ongoing. The Commonwealth must make a specific showing that the release of the report would have a substantial negative impact on its investigation." *Id.* Even in those situations where a court may be concerned about the release of records affecting an investigation, "[t]he trial court must make sufficient findings of fact" to support its order depriving public access, such as determining that release may "keep[] witnesses from coming forth or prevent[] investigators from verifying information that they receive from informants." *Id.* at 154. Further, a court "also must determine whether there is any less restrictive way to protect the investigation than sealing the report in its entirety." *Id.*

After requesting to seal Mr. Luna's autopsy report out of concern for the purported threat release of the document may cause to the ongoing investigation into his death, the Commonwealth presented Tpr. Roberts' testimony during the October 2020 hearing. Tpr. Roberts described that cold cases go through an annual review, *see* Tr. at 10:11–16, 46:17–25, in which an investigator

reviews the existing records on file for the case, cross references related federal and state databases if new evidence has emerged, pursues any new leads in the hopes of advancing the case, however, without such new information to advance, “there’s really essentially nothing left to do at that time,” *see* Tr. at 12:12–24, 13:12–17; 14:17–22. For Mr. Luna’s death, Tpr. Roberts said he had performed his yearly review of the case in December of 2019, and he was likely to do so again in December of 2020. Tr. at 36:1–20. During this 2019 review, Tpr. Roberts said he spoke to the FBI simply to learn who the special agent assigned to the case was; in so doing, he learned that the federal agency had not advanced the matter either. *See* Tr. at 53:18–54:5. Tpr. Roberts said that no new leads had appeared in the case since 2015, when a fingerprint in a database from someone applying for a job appeared to match evidence, but ultimately the connection was false, and it led nowhere. *See* Tr. 32:16–19, 33:17–25, 34:14–35:4.

In the years before this 2019 review, no other new evidence, leads, or theories had emerged. Tr. at 49:3–23. Tpr. Roberts confirmed that since taking over the case in 2013, no other member of the State Police had conducted interviews, found new evidence, or advanced the investigation. *See* Tr. at 63:12–64:17. With due credit to the State Police’s efforts, an investigation in which information has only stalled—with the Commonwealth unable to make any showing of even incremental advancement in cultivating persons of interest, suspects, witnesses, or any material evidence, and in which the current progress of the investigation constitutes a yearly file review of the case file and cross referencing of databases—the County cannot point to sufficient, specific findings to support the conclusion that the investigation is “on going” and requires the drastic measure of sealing a record to which the public should otherwise have statutorily provided access. *In re Buchanan*, 823 A.2d at 153; 16 Pa.C.S.A. § 13952.

Additionally, Tpr. Roberts expressed general concern that in any cold case, keeping from the public “the small details” that only those familiar with the crime (be they witnesses, perpetrators, or investigators) may possess safeguards the ability to assess the credibility of new information developed in the case. Tr. at 16:22–17:19. He extolled how keeping certain details in one more-than-25-year-old cold case “close to the chest, not out in public, helped solve that crime,” Tr. at 26:23–27: 3, but then Tpr. Roberts explained how a positive DNA match led to the suspect’s eventual arrest in that matter, Tr. At 25:11–26:22. He proceeded to describe several other cold cases solved after delays of varying years, nearly all of which resulted from positive DNA matches, *see* Tr. at 27:14–30:4. It is difficult to see how the potential disclosure of any details of these cases—had an autopsy report been requested and released, as is the circumstances at issue here—would have muddled the investigation and undermined the veracity of the critical DNA evidence connecting the respective suspects to their crimes.

Generalized proclamations in favor of shielding from public knowledge details of the crime, as might be reflected in the autopsy report, does not provide a “a specific showing that the release of the report would have a substantial negative impact on its investigation.” *In re Buchanan*, 823 A.2d at 153. Further, borrowing from the Right to Know Law jurisprudence developed by courts of the Commonwealth, agencies seeking to withhold records from public access cannot rely on conclusory assertions supporting nondisclosure, nor can they simply “track[] the language” of previously established rules for nondisclosure while offering “no detail beyond the fact that a responsive record exists.” *Pa. State Police v. Muller*, 124 A.3d 761, 765 (Pa. Commw. Ct. 2015). See also, Order and Opinion, *Lancaster Cnty. Off. of the Coroner v. Panyard*, No. CI-24-00035 at 12 (Ct. Comm. Pls. Lancaster Cnty., Pa. Nov. 25, 2024) (finding that the Coroner’s affidavits which “state merely the occurrence of investigations and regurgitate the

Office's duties under the Coroner's Act" were "far from proof" that a systemic or searching inquiry, a detailed examination, or an official probe was underway), attached as Appendix A.

Further, the twenty years since Mr. Luna's death have produced a litany of reporting digging into any number of details of the murder, Mr. Luna's life and career, theories as to how and why he was killed and who may have done it, and the lingering mysteries of such a high-profile death. Such coverage has discussed specific information likely to be found in an autopsy, such as: the events leading up to Mr. Luna's death, including his meandering trip from Baltimore to Lancaster County on that night;²⁰ the setting of the crime scene;²¹ the discovery of a potential murder weapon;²² the location of where exactly police found his body at the crime scene;²³ the

²⁰ Helen Colwell Adams, *Book Update Tells of Wounds to Back, Hands of Assistant U.S. Attorney Found Dead in 2003*, LNP | LancasterOnline (Dec. 3, 2006), https://lancasteronline.com/news/book-update-tells-of-wounds-to-back-hands-of-assistant-u-s-attorney-found-dead/article_50ca268e-9957-5520-b23d-dbbdbb7466c5.html.

²¹ Gail Gibson, *Prosecutor of Drug Case Found Killed*, Balt. Sun. (originally published Dec. 5, 2003, updated June 29, 2019), <https://www.baltimoresun.com/2003/12/05/prosecutor-of-drug-case-found-killed/> ("His body was found on a two-lane road in rural Brecknock Township, across the street from a Mennonite farm and next door to the Sensening & Weaver Well Drilling business. The site was about a mile off the Pennsylvania Turnpike, and about 70 miles northeast of Baltimore.").

²² Gail Gibson, *Search Uncovers Luna's Penknife*, Balt. Sun (originally published Feb 14, 2004, updated May 30, 2019), <https://www.baltimoresun.com/2004/02/13/search-uncovers-lunas-penknife/> (discussing discovery of a small knife at scene of Luna's death).

²³ Gail Gibson, *supra* note 21 ("Luna's 1999 Honda Accord was found nose-down in a small creek beside a well-drilling business. His body was found lying in a field near the blood-splattered car. Law enforcement sources said Luna had been severely beaten and repeatedly stabbed. . .").

blood-spattered tableau of Mr. Luna's car;²⁴ the number and location of numerous stab wounds;²⁵ his cause of death being drowning, or some combination of drowning and bleeding to death from the myriad stab wounds;²⁶ a bloody toll ticket found in the car potentially evidencing someone other than Mr. Luna driving;²⁷ and speculation as to whether Mr. Luna's cause of death was homicide or suicide.²⁸

²⁴ Niles Lathem, *Fed's Horrid End; U.S. Attorney Stabbed 36 Times-Then Drowned*, N.Y. Post (Dec. 6, 2003), <https://nypost.com/2003/12/06/feds-horrid-end-u-s-attorney-stabbed-36-times-then-drowned/> (“Blood smeared the driver’s side door and front fender of Luna’s car, which was found running by a well-drilling company worker who also found the body, said a search warrant affidavit by a Pennsylvania State Police investigator. . . . A ‘large pool of blood’ was on the floorboard in front of the car’s passenger seat and money and cell phone equipment were scattered inside, the affidavit said.”); Cheryl W. Thompson, *supra* note 4 (“Fassnacht noticed blood on the driver’s door and a fender, and a large pool of blood in the back. The blood had seeped through the front seat to the floor in the rear. Cash—about \$200—was scattered about. The Honda’s engine was idling, but there was nothing to indicate the car had been in an accident.”).

²⁵ James Dao & Eric Lichtblau, *Torture Is Possible in Prosecutor's Death*, N.Y. Times (Dec. 6, 2003), <https://www.nytimes.com/2003/12/06/us/torture-is-possible-in-prosecutor-s-death.html?pagewanted=all> (“Jonathan P. Luna, a federal prosecutor in Baltimore whose body was found in rural Pennsylvania on Thursday, was stabbed 36 times and may have been tortured before he was thrown into a creek to drown, officials said on Friday.”).

²⁶ James Dao & Eric Lichtblau, *supra* note 25 (“‘He was alive when he was put in the water, and he drowned,’ Dr. Walp said. He added that if Mr. Luna had not been moved to the creek, he would probably have bled to death. But the coroner is listing both the stab wounds and the drowning as causes of death.”).

²⁷ *\$100,000 Reward Offered in Luna Case*, Balt. Sun, (originally published March 13, 2004, updated Sept. 30, 2021), (<https://www.baltimoresun.com/2004/03/13/100000-reward-offered-in-luna-case/>) (discussing how bloody Pennsylvania Turnpike ticket found in Luna's car “raised the question of whether someone else was driving because Luna’s Accord had an EZ Pass card, which allows drivers to enter the turnpike without taking a toll ticket—something a driver unfamiliar with the vehicle might not have known.”).

²⁸ Helen Colwell Adams, *Coroner Refuses to File Autopsy Records*, LNP | LancasterOnline (published Oct. 14, 2007, last updated Aug. 5, 2014), https://lancasteronline.com/news/coroner-refuses-to-file-autopsy-records/article_0fb16533-2086-58a6-afdd-a4d78d76c1ff.html (“Anonymous federal sources later told major newspapers that Luna might have killed himself or died accidentally in the course of staging a suicide attempt. Despite FBI requests to change the manner of death to suicide, Kirchner has said he supports Walp’s conclusions.”); Helen Colwell Adams, *Coroner's Office Hasn't Filed Any of Its Paperwork in Courthouse*, LNP | LancasterOnline (Sept. 30, 2007, updated Aug. 5, 2014), https://lancasteronline.com/news/coroners-office-hasnt-filed-any-of-its-paperwork-in-courthouse/article_6b7ad917-6df8-

A recent documentary goes so far as to re-enact key events in Mr. Luna's life leading up to and after his death. *THE MIDNIGHT RIDE OF JONATHAN LUMA* (Kathryn F. Gahan prod. 2022). The 500-plus page book that preceded the film, and provides much of its source material, delves into these matters with even greater minutiae. William Keisling, *The Midnight Ride of Jonathan Luna* (Yardbird Books, 1st ed. 2008).

In the years immediately following Mr. Luna's death, a private investigator pleaded with the County Corner to produce records.²⁹ Interest remained more than a decade after Mr. Luna's death, renewed by the last push to unseal these records.³⁰ Speculation and distrust of the current

[5090-8570-d99d9834cb01.html](#) (“Anonymous federal sources earlier told major newspapers that Luna either committed suicide or died during a faked suicide attempt. Kirchner resisted FBI efforts to get him to change Walp’s ruling on manner of death from homicide to suicide.”); Helen Colwell Adams, *supra* note 20 (“The Sun has quoted federal sources saying Luna did not ‘appear to suffer substantial defense wounds on his hands.’ The Post quoted an FBI source saying Luna was ‘staging an abduction but went too far by nicking an artery or crucial vein.’”).

²⁹ Helen Colwell Adams, *supra* note 28 (“Private investigator Ed Martino has written a letter to coroner Dr. G. Gary Kirchner, asking Kirchner to ‘comply with the law and file all autopsy records in your possession, up to and including the year 2006.’”); Danny Jacobs, *Jonathan Luna and the FOIA Request*, *The Daily Record* (Aug. 2, 2014), <https://thedailyrecord.com/2014/08/02/jonathan-luna-and-the-foia-request/> (discussing the discovery of a previously filed motion to access documents related to the investigation of Luna’s death and the author’s potential pursuit of these records).

³⁰ Justin Fenton, *Mysterious Death of Baltimore Prosecutor Jonathan Luna Renewed Attention After Coroner's Records Found*, *Balt. Sun* (Feb. 12, 2020), <https://www.baltimoresun.com/2020/02/11/mysterious-death-of-baltimore-prosecutor-jonathan-luna-gets-renewed-attention-after-coroners-records-found/> (“The mysterious death of former Baltimore federal prosecutor Jonathan Luna 16 years ago is getting renewed attention after the coroner’s office in Lancaster County, Pennsylvania, located records thought to be in federal custody.”).

official narrative of events remains rampant,³¹ with the focus of such distrust fixed squarely on law enforcement.³²

Such speculation provides even stronger justification for public access to a document that may add clarity to the media's coverage of this mystery, helping to cultivate responsible and accurate reporting that may assist in defusing conspiracies and conflicting narratives. *See Whitney v. California*, 274 U.S. 357, 377 (1927) (J. Brandies, concurring), *overruled by Brandenburg v. Ohio*, 395 U.S. 444 (1969) (“If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.”).

³¹ Cheryl W. Thompson, *supra* note 4 (“Why would Luna, a hardworking prosecutor with a successful wife and two adorable boys, commit suicide? Were the workplace issues enough for him to drive through three states to kill himself? Did he know someone in Lancaster County? How did he happen onto that remote road in the dark? Would he stab himself three dozen times? If he was killed, who did it? Why? Was someone waiting in the back seat when he drove out of a Baltimore parking garage that night? Did he meet someone along the way?”); *Questions About 3 Men’s Deaths Feed Into Distrust*, Balt. Sun (originally published Dec. 3, 2008, updated Sept. 30, 2021) <https://www.baltimoresun.com/2008/12/04/questions-about-3-mens-deaths-feed-into-the-distrust-2/> (discussing how the deaths of “[a] federal prosecutor[, a] prominent businessman[, and a] former city councilman . . . [maybe] part of a conspiracy to silence those who knew too much about Baltimore’s underworld, about how, it is quietly alleged, a culture of drugs and corruption survives and helps build parts of this city while turning the rest into wastelands of addiction and despair?”); Tricia Bishop, *5 Years Later, Prosecutor’s Death Still a Mystery*, Balt. Sun (originally published Nov. 30, 2008, updated May 30, 2019) <https://www.baltimoresun.com/2008/11/30/5-years-later-prosecutors-death-still-a-mystery/> (“Over the next several years, reputations were sullied, investigations allegedly botched and Senate inquiries made. A Pennsylvania private investigator has put forth hypotheses – based on evidence he claims to have found – implicating the FBI, and book authors suggested deadly federal informants were to blame. And now, nothing.”).

³² Jossie Carbonare, *Private Investigator in Jonathan Luna Murder Reveals New Information on 16 Year Cold Case*, FOX43 (Feb, 7, 2020), <https://www.fox43.com/article/news/jonathan-luna-murder-mystery-2003/521-2229b272-9355-43a8-8163-506440862577> (“‘You have a cover up which is what I think this is, both by the FBI and the Pennsylvania State Police,’ said Buckingham. . . . ‘We don’t know what he would be doing in that area on his own. The body was dropped off there for a specific reason, and his car, there was another car involved and it had to be the getaway car.’”).

It is clear the public still has considerable interest in Luna's murder. The release of the autopsy report would not be the breaking of some dam of confidentiality that would wash away the hard-won gains of investigators; it would be just another stream of information flowing into an already existing ocean of facts, intrigue, conjecture, conspiracy, and distrust. Further, permitting the Commonwealth to rely on such generalized claims will only keep the records at issue perpetually sealed, regardless of how truly "cold" the case has become. More than twenty years after the mysterious discovery of Mr. Luna's body found miles from his home and work shocked the Lancaster County community and continues to stymie investigators, this Court should exercise its discretion, determine the investigation is insufficiently "ongoing" to permit sealing, and provide access to journalists who wish to exercise their statutory rights to pay the fee, be provided the autopsy, and potentially share with an interested public whatever new revelations this document may yield.

CONCLUSION

Accordingly, LNP respectfully requests this court grant its motion to unseal and order the County to ensure the autopsy is in the possession of the County Corner such that LNP, or any other member of the media, may utilize 16 Pa.S.C.A. § 13952, and obtain the desired autopsy report.

Respectfully submitted,

/s/ Paula Knudsen Burke

Paula Knudsen Burke

Reporters Committee for Freedom of
the Press

4000 Crums Mill Rd., Ste. 101

Harrisburg, PA 17112

Attorney for LNP Media Group, Inc.

| *LancasterOnline*

Dated: November 27, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the parties and in the manner listed below.

VIA E-FILING and ELECTRONIC MAIL

Heather Adams, District Attorney
HAdams@lancastercountypa.gov
Travis Anderson, First Assistant District Attorney
TrAnderson@lancastercountypa.gov
Office of the District Attorney
50 North Duke Street, 6th Floor
Lancaster, PA 17608

Dated: November 27, 2024

Respectfully submitted,

/s/ Paula Knudsen Burke
Paula Knudsen Burke

CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY

I certify that 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.

Date: November 27, 2024

Submitted by: /s/Paula Knudsen Burke

APPENDIX A

ATTEST: 

Copies to: Paula Knudsen Burke, Esquire¹
Kevin J. McKeon, Esquire / Melissa A. Chapaska, Esquire¹

ENTERED AND FILED

2024 NOV 25 PM 2: 22

PROTHONOTARY'S OFFICE
LANCASTER, PA

**IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION**

LANCASTER COUNTY OFFICE	:	
OF THE CORONER	:	
	:	
	:	
v.	:	CI-24-00035 (Lead)
	:	<i>Consolidated with CI-24-01347</i>
	:	
	:	
JACK PANYARD and	:	
LNP LancasterOnline	:	

OPINION

BY: WRIGHT, J. November 25th, 2024

The matters before this Court are consolidated Petitions for Review from two Office of Open Records (OOR) Final Determinations regarding Right to Know Law (RTKL)¹ requests for the names of two minor decedents. This Court exercises appellate jurisdiction pursuant to 42 Pa.C.S. 933(a)(3) and Section 1302(a) of the RTKL. For the reasons that follow, I affirm the OOR's Determinations requiring release of the decedents' names.²

¹ 65 P.S. §§ 67.101-67.3104, hereinafter "RTKL Sections 101-3104."
² This Opinion largely adopts the Findings of Fact and Conclusions of Law of Respondents LNP | LancasterOnline and Jack Panyard, which embodies the reasoning of the appeals officers who authored the relevant OOR Final Determinations. See Bowling v. Off. Of Open Recs., 75 A.3d 453, 477 (Pa. 2013) ("[W]e perceive nothing in the RTKL that would prevent a [reviewing] Court from simply adopting the findings of fact and conclusions of law of an appeals officer when appropriate, thus, in the proper case, effectively achieving

BACKGROUND

The parties to this consolidated action are Petitioner Lancaster County Office of the Coroner (“the Coroner”) and Respondents LNP | LancasterOnline and Jack Panyard³ (collectively “LNP”). Docket number CI-24-00035 concerns an October 23, 2023, RTKL request that LNP submitted to Lancaster County (“the County”) seeking the name of a 3-year-old boy who died by gunshot wound and whose death had been reported by the Coroner (“Request I”). (Office of Open Records Record at 36a [hereinafter “OOR Record at ____”]). Docket number CI-24-01347 concerns a December 27, 2023, RTKL request that LNP submitted to the County seeking the name of an 11-year-old girl who died in a car accident and whose death had been reported by the Coroner (“Request II”). (OOR Record at 2a). At the time of both Requests, LNP already knew: (1) each child’s age; (2) the cause of death in each incident; and (3) the location of the incident resulting in each decedent’s respective passing. (OOR Record at 2a, 36a). Neither Request sought information regarding the cause and manner of death, nor did the Requests seek autopsy records or other files in the Coroner’s possession. (OOR Record at 2a–3a, 36a–37a).

The County denied both Requests. In denying Request I, the County asserted that the request was insufficiently specific, citing RTKL Section 703. The County also concluded that the “request is not seeking records, but rather is only seeking a name.” (OOR Record 38a). To the extent the County

the result sought by the OOR.”).

³ Panyard is a breaking news reporter at LNP.

understood that the request sought records in the Coroner's possession, the County concluded that disclosure was exempt under RTKL Section 708(b)(17), governing noncriminal investigatory records, and RTKL Section 708(b)(30), governing records that include the names of a minor. (OOOR Record at 38a-39a).

In denying Request II, the Coroner, after what he claimed to be a thorough search, determined eight potential records that may contain the name but concluded that all fell under the noncriminal investigatory records exemption set forth in RTKL Section 708(b)(17) and/or the minor information exemption set forth in RTKL Section 708(b)(30). (OOOR Record at 5a). To the extent the Coroner understood that "the [second] request seeks disclosure of information," he determined the request moot, asserting the information sought was already publicly available. (OOOR Record at 5a).

LNP appealed both denials to the Office of Open Records (OOR), ultimately prevailing in both appeals. (Request I: Jack Panyard and LancasterOnline-LNP v. Lancaster Couty, OOR Docket No. AP 2023-2662, Final Determination, Dec. 4, 2023 [hereinafter "Request I OOR Final Determination at ____"]; Request II: Jack Panyard and LancasterOnline-LNP v. Lancaster Couty, OOR Docket No. AP 2024-0181, Final Determination, Feb. 12, 2024 [hereinafter "Request II OOR Final Determination at ____"]). In each appeal, the Coroner provided sworn Affidavits which: (1) restated the duties of the Office under the Coroner's Act; (2) noted that the Office commenced investigations into each death that were not yet complete at the time of each request; (3) stated that at

the time of each request, there were no records responsive to the request; (4) concluded that the information requested did not implicate autopsy reports or other coroner's records but existed in investigatory records and were thus exempt from disclosure under RTKL Section 708(b)(17); and (5) concluded that such records were also exempt under RTKL Section 708(b)(30) as their release would disclose the name of a minor. (OOB Record at 30a-31a, 57a-58a, 60a-61a).

In its Final Determinations, the OOR granted the appeals and directed the County to provide the respective decedent's name. (Request I OOR Final Determination at 7; Request II OOR Final Determination at 5). The OOR concluded that a request for the name of a decedent is a request for specific information, and thus, a request for a record under the RTKL. (Request I OOR Final Determination at 3-4; Request II OOR Final Determination 2-4). The OOR noted that "[i]t strains credulity to believe that the Coroner's Office did not possess the name of the decedent, under these circumstances, prior to the submission of the Request." (Request I OOR Final Determination at 6). Additionally, the OOR ruled that the Requests did not seek noncriminal investigative records under Section 708(b)(17) and that RTKL Section 708(b)(30)'s protection of a minor's personal information did not preclude disclosure. (Request I OOR Final Determination at 7 n.2; Request II OOR Final Determination at 2-4). The OOR reasoned that because the RTKL is clear that the name of a deceased individual is public, without consideration to the type of record the information may be contained within, the Coroner must provide the

requested names. (Request I OOR Final Determination at 8; Request II OOR Final Determination at 4–5).

On January 3, 2024, Lancaster County appealed Request I to the Lancaster County Court of Common Pleas. On January 9, 2024, the County filed an Amended Petition for Review, substituting the Coroner’s Office for the County of Lancaster. On February 26, 2024, the Coroner appealed Request II to the Lancaster County Court of Common Pleas. On March 11, 2024, upon application of the Parties, I issued an Order consolidating the Petitions for Review for Requests I and II. Both parties filed a Memorandum of Law and, following oral argument, Proposed Findings of Fact and Conclusions of Law. The matter is now ripe for review.

DISCUSSION

This court applies a de novo standard to its plenary review of the OOR’s determinations. Bowling v. Off. of Open Recs., 75 A.3d 453, 475–477 (Pa. 2013). The RTKL replaced Pennsylvania’s prior open records law, 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). In so doing, 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.’” McKelvey v. Pa. Dep’t of Health, 255 A.3d 385, 400 (Pa. 2021) (quoting Pa. State Educ. Ass’n v. Commw., Dep’t of Cmty. & Econ. Dev., 148 A.3d 142, 155 (Pa. 2016)). The RTKL is “remedial legislation” that must be

interpreted “liberally to effect its object and promote justice.” Levy, 65 A.3d at 380. “[T]he burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” RTKL Section 708(a); Borough of Pottstown v. SuberAponte, 202 A.3d 173, 180 (Pa. Commw. Ct. 2019) (same).

By the very text of the RTKL statute, the Pennsylvania General Assembly stated that “[a] record in the possession of a Commonwealth agency or local agency shall be presumed to be a public record,” unless “the record is exempt under [RTKL] section 708,” privileged, or exempt from disclosure under another law, regulation, or judicial order. RTKL Section 305(a); see also ACLU of Pa. v. Pa. State Police, 232 A.3d 654, 656–57 (Pa. 2020) (“[C]ourts reviewing OOR[] decisions[] must construe” exceptions to disclosure “strictly, lest they subvert the RTKL’s purpose.”). Though agencies responding to a records request “shall consider and apply each exemption separately,” see RTKL Section 708(e), they must do so within the RTKL’s statutory scheme, effectuating its remedial intent and resolving conflicts between disclosure mandates and exemptions in favor of access to presumptively public records. Levy, 65 A.3d at 368; see RTKL § 305. For the reasons that follow, unambiguous Pennsylvania law, tenants of statutory construction, and the Coroner’s own past practice dictate that the at-issue decedents’ names must be disclosed.

I. A request for "information" in an agency's possession is a request for a "record," regardless of how the agency retains that information and, therefore, a decedent's name is a presumptively public record the Coroner must produce

A decedent's name is information that a coroner acquires in connection with the coroner's duties of reviewing a death occurring within the coroner's respective county. See 16 Pa. C.S.A. § 13918. Because a coroner's records include the "identity of the deceased" or name of a decedent, any record with the name is a "record" under the RTKL. See RTKL Section 102 (defining "record" as including any "[i]nformation, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency"). A request for "information" is a request for a "record," regardless of how such information may be maintained or used by the agency. See Commw., Dep't of Env't Prot. v. Cole, 52 A.3d 541, 547 (Pa. Commw. Ct. 2012) (holding that a request for data, collected on forms and saved in database, was a request for a record that the agency must produce). Thus, the name of a decedent is a "public record" that may be produced upon request, as it is a record—in the form of information, however documented—in possession of the Coroner, so long as it is not otherwise precluded from disclosure under another federal or state law, judicial decree, privilege, or RTKL Section 708(b) exemption. See RTKL Section 305(a); RTKL Section 708(b)(20).

II. The tenets of statutory construction dictate that RTKL Section 708(b)(20) requires disclosure of a decedent's name and that this provision applies to the exclusion of others

The RTKL provides a dichotomy: public records are either accessible, or— if a privilege, statutory conflict, or RTKL Section 708(b) exemption applies— barred from disclosure. See RTKL Section 305; see Uniontown Newspapers Inc. v. Pa. Dep't of Corr. (Uniontown II), 243 A.3d 19, 31–32 (Pa. 2020) (applying plain language of statute, in context of scheme) (citing 1 Pa.C.S.A. § 1921(a)). The instant consolidated Appeals implicate three RTKL Section 708(b) exemptions: (1) RTKL Section 708(b)(20), which addresses the public's access to autopsy records; (2) RTKL Section 408(b)(17), which addresses the public's access to records relating to noncriminal investigations; and (3) RTKL Section 708(b)(30), which addresses the public's access to records that identify the name, home address or date of birth of a child 17 years of age or younger. I will address each of these exemptions to explain why Section 708(b)(20)'s unambiguous "exception to the exemption" applies to the exclusion of the others.

a. Section 708(b)(20)

RTKL Section 708(b)(20) provides that the following shall be exempt from disclosure under the RTKL:

An autopsy record of a coroner or medical examiner and any audiotape of a postmortem examination or autopsy, or a copy, reproduction or facsimile of an autopsy report, a photograph, negative or print, including a photograph or videotape of the body or any portion of the body of a deceased person at the scene of death or in the course of a postmortem examination or autopsy taken or made by or caused to be taken or made by the coroner or medical

examiner.

Section 708(b)(20). Critically, however, the final sentence in Section 708(b)(20) states: This exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death.” RTKL Section 708(b)(20) (emphasis supplied). Section 708(b)(20) explicitly states that RTKL disclosure exemptions related to autopsy records shall not limit the reporting of the name of the deceased individual and the cause and manner of death.

The Coroner asks this court to accept that Section 708(b)(20)’s proviso applies (1) only where the request seeks an autopsy report or specified evidence gathered during an autopsy or postmortem examination, and (2) only to the extent that the names of the deceased individual is contained in the requested autopsy report. Such an interpretation defies law and logic. The RTKL and interpretive case law establish that the name of a deceased individual is a piece of reportable information entirely separate and apart from a coroner’s autopsy or related records. See Allegheny Cnty. v. Hailer, 298 A.3d 476, 478 (Pa. Commw. Ct. 2023) (stating that “[t]he name of the decedent and cause and manner of his or her death may be reported,” and distinguishing such information from “autopsy and toxicology records,” which the Court acknowledges may be exempt from disclosure under the RTKL). Further, permitting the Coroner to withhold a decedent’s name until the completion and release of an autopsy report, at which time a requester could pay money to access the autopsy, traps this presumptively public record in disclosure purgatory as an autopsy is not a foregone conclusion. See 16 Pa.C.S.A. §

13952 (setting forth a payment schedule for coroner records); see 16 Pa.C.S.A § 13918(a) (instructing coroner to determine if an autopsy is need). Such an interpretation would be antithetical to the legislative purpose of the RTKL. See Levy, 65 A.3d at 368.⁴

Thus, the plain language of RTKL Section 708(b)(20) dictates that a decedent's name is not exempt under the RTKL and, therefore, must be disclosed as a public record. See Uniontown II, 243 A.3d at 31-33. Further, the Coroner's assertion that, at best, RTKL Section 708(b)(20) is a permissive instruction to the Coroner is contrary to established law. See Hearst Television, Inc. v. Norris, 54 A.3d 23, 33 (Pa. 2012) (holding RTKL Section 708(b)(20) "provide[s] immediate access to cause and manner of death records," which also applies to a decedent's name); Hailer, 298 A.3d at 481; see also RTKL Section 305(a).

⁴ Of note, the Coroner's Act sets forth annual disclosure requirements, stating that "within 30 days after the end of each year," every coroner "shall deposit all official records and papers for the preceding year in the office of the prothonotary for the inspection of interested members of the public." 16 Pa.C.S. § 13935 (formerly Section 1252-B of the coroner's Act). This provision may work to make public the at-issue names, at least within 30 days after the end of the applicable calendar year. However, this reporting requirement applies only to third, fourth, fifth, sixth, seventh, and eighth class counties. Lancaster County is classified as a second-class county. As stated in Hailer, supra, accepting the Coroner's conclusion that it need not produce the decedents' names "would lead to the absurd result that a requester could receive autopsy records" or information like a decedent's name, "located anywhere in the Commonwealth, unless those records are located in" a second class county like Lancaster. Hailer, 298 A.3d at 482. The Hailer court goes on to explain that "there is no language in the RTKL or the Coroner's Act to suggest that access to certain public records depends on the county class in which the records are located." Id.

b. Section 708(b)(17)

The Coroner invokes RTKL Section 708(b)(17), an exemption providing that certain records pertaining to noncriminal investigations need not be disclosed under the RTKL. The noncriminal investigation exemption protects the following records: complaints submitted to an agency, investigative materials, notes, correspondence, and reports; records that identify confidential sources; records made confidential by law; audit-related work papers; and any record that would reveal the institution, progress or result of an agency investigation, deprive a person of the right to an impartial adjudication, constitute an unwarranted invasion of privacy, hinder an agency's ability to secure an administrative or civil sanction, or endanger the life or physical safety of an individual. RTKL Section 708(b)(17)(i)-(vi). The Coroner's invocation of this exemption fails for two reasons.

First, the affidavits submitted by the Coroner's Office are insufficient to show that RTKL Section 708(b)(17) applies. The Coroner acknowledges that Section 708(b)(17) is triggered only if the Coroner demonstrates by a preponderance of the evidence that "a systematic or searching inquiry, a detailed examination, or official probe was conducted regarding a noncriminal matter." Johnson v. Pennsylvania Convention Ctr. Auth., 49 A.3d 920, 925 (Pa. Commw. Ct. 2012) (citing Dept. of Health v. Office of Open Records, 4 A.3d 803 (Pa. Commw. Ct. 2010)). Regarding Requests I and II, the Coroner's Affidavits state, simply, that the Coroner is "aware of the various types of investigations and reports completed by the Lancaster county Coroner's Office" and that the

Office "is tasked with providing medical examinations and other investigations into the cause of death of an individual and then preparing reports on those examinations and investigations." (OOR Record at 30a, 60a).

The Affidavits lack a comprehensive description of how the Coroner's specific "investigations" varied in any way from the everyday official duties of the Office. See Pa. Dep't. of Lab. & Indus. v. Darlington, 234 A.3d 865, 875-77 (Pa. Commw. Ct. 2020) ("[M]erely stating that an investigation occurred is not sufficient[.]"). Instead, the Coroner's Affidavits state merely the occurrence of investigations and regurgitate the Office's duties under the Coroner's Act. Id. This is far from proof that "a systematic or searching inquiry, a detailed examination, or an official probe" was conducted under the Coroner's official duties. Johnson, 49 A.3d at 925 (quoting Pa. Dep't of Health, 4 A.3d at 811).

The Coroner's assertions that records responsive to LNP's request (i.e. the decedent's name) exist in various "investigative files," (OOR Record at 31a), or the records related to such an investigation, "track[]the language of the exception [the Coroner's Office] presupposes [and are therefore] insufficient to demonstrate that the responsive records are exempt from disclosure." Pa. State Police v. Muller, 124 A.3d 761, 765 (Pa. Commw. Ct. 2015); see also Pa. Dep't of Educ. v. Bagwell, 131 A.3d 638, 659 (Pa. Commw. Ct. 2016) (refusing to apply RTKL disclosure exemption because "the affidavit contains general statements parroting the elements of the exception").

Moreover, neither of the Coroner's Affidavits attest to how the release of just the decedent's name—and not an associated document specifically provided

for in Section 708(b)(17)—implicates, undermines, or relates to the confidentiality that the noncriminal investigatory records exemption presumably protects. The RTKL contemplates that a coroner will report the name of the deceased individual only, which can be easily extracted from—thereby preserving the privacy of—a record that may remain exempt from disclosure.⁵ See RTKL Sections 706, 708(b)(20). Therefore, the Coroner’s asserted evidence does not establish that Section 708(b)(17) exempts disclosure. As a practical matter, permitting nondisclosure in this case—where the Coroner appears to have simply performed his job of examining the decedent’s bodies—would “craft a gaping exemption, under which any . . . information-gathering could be shielded from disclosure.” Pa. Dep’t of Pub. Welfare v. Chawaga, 91 A.3d 257, 259 (Pa. Commw. Ct. 2014).

Second, even assuming, *arguendo*, that the Coroner could establish the pertinence of Section 708(b)(17), principles of statutory construction direct

⁵ Section 706 of the RTKL states:

If an agency determines that a public record, legislative record or financial record contains information which is subject to access as well as information which is not subject to access, the agency's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record, legislative record or financial record and cannot be separated, the agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The agency may not deny access to the record if the information which is not subject to access is able to be redacted. Information which an agency redacts in accordance with this subsection shall be deemed a denial under Chapter 9.

against its application. RTKL Section 708(b)(20) precisely applies to the release of a decedent's name, as requested here. Because RTKL Section 708(b)(20) more specifically applies to the facts at issue, this provision controls to the exclusion of other exemptions the Coroner asserts. See 1 Pa.C.S.A. § 1933 ("If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision."); Commw., Dep't of Pub. Welfare v. Eiseman, 125 A.3d 19, 32 (Pa. 2015) (same).

c. Section 708(b)(30)

Finally, the Coroner invokes RTKL Section 708(b)(30), which provides that a record identifying the name, home address, or date of birth of a child 17 years or age or younger need not be disclosed under the RTKL. Section 708(b)(30). RTKL § 708(b)(30) is also inapplicable because a decedent minor no longer possesses a strong privacy interest that the exemption seeks to protect. See County of Lancaster v. Walker, No. CI-18-09547 (consolidated cases), at 9 (Pa. Ct. Com. Pls., Lancaster Cnty., Aug. 23, 2019) (Brown, J.) ("[T]here is no case law to support the proposition that any constitutional or common-law rights to privacy apply to the dead, or even if they did, that a party presently before the court has standing to assert such rights."). Further, even if such a privacy interest existed, the Coroner is not the proper party to assert it. See id.; Pa. State Educ. Ass'n, 148 A.3d at 161 (Wecht. J, concurring) (holding that Pennsylvania courts recognize privacy is a personal right, as protected by Article 1, Section 1 of the State's constitution). Last, as stated above, RTKL Section 708(b)(20) more specifically applies to the at-issue facts

and, thus, controls.

III. The Coroner's past practice demonstrates that Section 708(b)(20) requires disclosure of the Decedents' names

Perhaps most tellingly, while the Coroner grounds its denials of LNP's requests in a meandering explanation of how the information sought is not a disclosable "record" and in Sections 708(b)(17)' and (30)'s exemptions, the Coroner has not taken this position in many similar cases. On numerous occasions, the Coroner has publicly disclosed the names of minors who perished in Lancaster County, often within days of the death and frequently in instances that may warrant further investigation. Of note to the matters before me, the Coroner's Office at least twice disclosed the identifies of minors whose deaths occurred since the OOR adjudications regarding Requests I and II. This practice wholly discredits the argument that the unfinished status of such an investigation precludes disclosing a decedent's name, cause and manner of death, as required by Section 708(b)(20). Further, such disclosures directly contradict the Coroner's arguments that RTKL Sections 708(b)(17) and 708(b)(30) exempt the names from disclosure.

In its Brief in Opposition to the Coroner's Petition for Review, LNP writes:

A review of the LNP's archives⁶ yields numerous examples: While continuing to argue in favor of nondisclosure in this appeal, on July 2, 2024, the Coroner's Office identified Anna King as the "nine-year-old Amish girl [who] died after a horse pulled her down a road in Salisbury Township," roughly one

⁶ Pa.R.E. 902(6) ("The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted: . . . Newspapers and Periodicals. Material purporting to be a newspaper or periodical.").

week earlier.⁷ By June 12, 2024, the Coroner identified Benjamin Blank as “[t]he 3-year-old Christiana boy killed in a farming accident” on June 4, 2024 in Colerain Township.⁸

Predating Panyard’s records requests at issue in these cases, three days after an 11-year-old Amish boy was struck and killed by a passing car while riding a scooter in Drumore Township on August 25, 2023, the Coroner identified the decedent as Samuel K. Fisher.⁹ By July 27, 2023, the Coroner identified Samuel K. Yoder as the “5-year-old boy [who] died Monday in a farm-related accident in Little Britain Township.”¹⁰ The decedents in all of these unfortunate incidents were minors, therefore the disclosure of their names implicated Section 708(b)(30). Additionally, these deaths all resulted from circumstances likely prompting investigations into at least potential negligence, if not criminal conduct, likely implicating Sections 708(b)(16) or 708(b)(17)’s exemption provisions. The coroner’s office of neighboring York County also appears to recognize Section 708(b)(20)’s disclosure requirement and provides the names and causes of death of recently deceased children.¹¹

Similarly, the Coroner’s Office frequently discloses the identities of adults who perish in circumstances where an active criminal or noncriminal investigation is ongoing.¹²

⁷ Olivia M. Miller, Coroner IDs Girl Killed By Horse, LNP, July 3, 2024.

⁸ Staff, Boy Who Was Killed in Farm Accident Identified, LNP, June 12, 2024.

⁹ Jack Panyard, Amish Boy Dies After Being Struck, LNP, Aug. 29, 2023.

¹⁰ Staff, Coroner Identifies 5-Year-Old Who Died on Farm, LNP, July 27, 2023.

¹¹ Ashley Stalnecker, Boy, 4, Found Dead in Parked Vehicle, LNP, Aug. 27, 2021.

¹² Staff, Sunday’s Fiery Fatal Tanker Truck Crash Ruled Accidental, LNP, May 8, 2024, (identifying Josue Vazquez, 31, as a man who died from smoke inhalation and thermal burns despite “State police continu[ing] to investigate the crash”); Staff, Driver Who Died in Crash Friday Named, LNP, Feb. 26, 2024, (disclosing Michael Halupa, 68, who died of “multiple traumatic injuries” from a single-car crash that was “under investigation” at the time); Jack Panyard, Single-Vehicle Crash Claims County Man, LNP, Feb. 22, 2024, (identifying Matthew Caraballo, 29, who “died of multiple traumatic injuries” from a single-vehicle crash that was “still under investigation” at the time of publication); Staff, Smoke, Burns Killed Bainbridge Victim, LNP, Jan. 23, 2024 (identifying George Schabelnik, 74, who died of burns and smoke inhalation from a fire the State Police fire marshal was investigating); Staff, Coroner IDs Teen Killed in City Saturday, LNP, Jan. 8, 2024 (identifying Elliot Corbin, 19, killed in a shooting that was under investigation); Jack Panyard, Man Found Dead in Car in Cocalico Creek, LNP,

(Coroner's Mem of Law in Opp'n to Coroner's Pet. For Review, July 15, 2024, at 25–27). As LNP aptly states, [w]hile these disclosures are laudable and essential to fulfilling both the purpose of the RTKL and LNP's obligation to inform its readers, this pattern degrades the consistency and sincerity of the arguments the Coroner's Office brings before this Court." (Coroner's Mem of Law in Opp'n to Coroner's Pet. For Review, July 15, 2024, at 25–26).¹³

CONCLUSION

For the foregoing reasons, the names of decedents in Requests I and II are not exempt from disclosure under the RTKL. The Coroner must, therefore, produce records responsive to LNP's requests, which simply requires the Coroner to provide the decedents' names. I decline to make a finding that the Coroner's refusals were made in bad faith. An appropriate Order follows.

Dec. 13, 2023 (as police were still investigating the death, naming 77-year-old Marlin Fausnacht, who died when he drove his car into a creek); Staff, 2 Found Dead Are ID'd, LNP, Nov. 14, 2023 (despite police continuing to investigate the grisly crime, identifying Angelica Morales Damarts, 34 as the victim of Ramon Eusebio-Diaz, 47, who then shot himself); Staff, Death of Man Found on Street Ruled Homicide, LNP, Apr. 9, 2021 (naming Hipolito Gonzalez, 61, who died of severe head injuries being investigated as a homicide at the time of the disclosure of his name and cause of death).

¹³ It is, of course, well beyond the powers of this Court to order journalistic integrity. However, my decision that the RTKL does not protect the minor decedents' names from disclosure does not suggest that the Court is numb to the deeply personal nature of the information that LNP seeks. I trust that reporters like Mr. Panyard will not forget that legal entitlement to information does not diminish the moral responsibility to allow families grieving the incomparable loss of a child to do so without being unwillingly thrust into public view.