

TERENCE KEEL, PHD
DIRECTOR, BIOSTUDIES LAB, INSTITUTE FOR SOCIETY AND GENETICS
UNIVERSITY OF CALIFORNIA-LOS ANGELES
621 CHARLES E. YOUNG DRIVE S, BOX 957221
3360 LIFE SCIENCES BUILDING
LOS ANGELES, CA, 90095-7221

based on publicly available data, to have died while in the custody of the Chester County Prison or during encounters with law enforcement officers within the confines of Chester County.

These 17 decedents are: **Melvin James Anderson**, (date of death: 12/6/2021); **Kenneth John Petitt** (date of death: 10/6/21); **Dimitrios Moscharis** (date of death: 6/18/2021); **John Patrick Deamics** (date of death: 4/24/2021); **Charles Raymond Troupe** (date of death: 5/9/2020); **Michael McCarraher** (date of death: 9/18/2017); **Kevin Johnson** (date of death: 12/26/2016); **Corey Lange** (date of death: 5/12/2016); **Michael Ferko** (date of death: 1/1/2016); **Jason Walling** (date of death: 12/22/2015); **Samuel Downs** (date of death: 6/18/2014); **Raemone Carter** (date of death: 3/16/2012); **Terry Saunders** (date of death: 9/14/2009); **Roderick Lloyd** (date of death: 9/17/2008); **Rebecca Haslip** (date of death: 8/4/2008); **Theodore Burley** (date of death: 6/3/2008); **Linda Vaughn** (date of death: 4/18/2008).

On July 1, 2022, the Petitioner replied via email stating that it would take an extension of 30 days to respond. On August 2, 2022, the Petitioner denied the Respondent's request. The Respondent appealed this decision to the Pennsylvania Office of Open Records ("OOR") on August 3, 2022. On August 5, 2022, the Petitioner requested that the OOR allow a two week extension to file supporting materials. The Respondent assented. OOR Appeals Officer Lyle Hartranft then granted the two-week extension, and both parties submitted Memoranda of Law on August 26, 2022. On September 30, the OOR granted the Respondent's appeal and instructed the Petitioner to release the responsive records.

The Petitioner filed a Petition for Review in the Chester County Court of Common Pleas on September 28, 2022. On November 14, 2022, the Honorable Jeffery R. Sommer issued a Scheduling Order requiring that the Record be filed on or by December 9, 2022, that the Petitioner's briefing be filed on or by December 16, 2022, and that the Respondent's briefing be

filed on or by December 23, 2022. The Record was filed in accordance with this order, as was the Petitioner's Brief.

On December 21, the Respondent filed a Motion for Continuance requesting an extension to the December 23 deadline so as to permit the Respondent sufficient time to enter an attorney in this matter. As of the time of the filing of this Brief, this Honorable Court has not issued an order in response to the Motion of Continuance. Because no order has been issued, and recognizing the proximity of the winter holiday and the reasonable time and staffing limitations presented by the holiday season, the Respondent has decided to file this Brief *pro se* in accordance with the Court's initial deadline. However, the Respondent respectfully asks that this Honorable Court permit the opportunity to supplement and/or amend this Brief at such a time as the Respondent is able to secure legal counsel.

II. INTRODUCTION AND SUMMARY OF ARGUMENT

The Respondent is the director of a research team housed at an internationally accredited and highly reputable academic institution. The Respondent's research regarding in-custody deaths, using publicly available autopsy and toxicology reports as its primary source material, has been recognized nationally to facilitate public oversight and provide information necessary for sensible and data-driven policy reforms. Providing the Respondent access to the requested records is therefore consistent with the core goals of the RTKL, in that such access would enable the public at large 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).

The Petitioner has raised two primary arguments to this Court: (1) that the exemption established by Section 708(b)(17)(20) of the RTKL applies and, furthermore, that the responsive records are also “exempt or unavailable under the Coroners Act”; and (2) that the Coroner is “bound” by HIPPA to exercise her “discretion to release records” so as to protect the privacy interests of the deceased. See Petitioner’s Brief, pp. 3, 10. The Respondent maintains that the Petitioner has failed to demonstrate the merit of each of these arguments through a preponderance of the evidence, for the following reasons:

First, the Petitioner is incorrect that the RTKL and Coroners Act only require the release of “Verification of Death” forms listing cause and manner of death, and not complete autopsy reports. The Petitioner’s argument on this point rests on at least three errors, each of which is explained in detail in Section A of the Respondent’s argument below. In summary, these errors are: (1) a misapprehension of the Pennsylvania Supreme Court’s decisions in Heart Television v. Norris and Penn Jersey Advance v. Grim and their relevance to the matter currently before this Court; (2) a failure to consider caselaw that, while not controlling in this matter, nonetheless provides an interpretation of the relevant statutes and precedents that directly contradicts the Petitioner’s position; and (3) a failure to recognize substantive factual differences distinguishing this Court’s previous decision in Coroner v. Jeffery Thompson from the present petition.

Second, the Petitioner is incorrect that HIPAA applies in this matter. Relatedly, the Petitioner is also incorrect that the Coroners Act affords any discretion whatsoever to the Chester County Office of the Coroner regarding the release of autopsy and toxicology reports. In fact, the PA Supreme Court in Hearst Television found that coroners have “no discretion” regarding the release of such reports. The Petitioner therefore cannot be bound by HIPAA or any other statute

to prevent the release of the requested autopsy and toxicology reports in consideration of the privacy rights of the deceased, as elaborated in Section B of the Respondent's argument below.

III. ARGUMENT

A. The Coroners Act, as amended in 2018, clearly establishes the public character of autopsy and toxicology reports and supersedes the exemption contained in Section 708(b)(17)(20) of the RTKL.

The Petitioner is a public agency subject to the RTKL. Therefore all its records are presumed public unless exempt by statute or protected by a privilege, judicial order, or decree. 65 P.S. § 67.305. The Petitioner is correct that the RTKL contains an exception for “[a]n autopsy record of a coroner or medical examiner.” 65 P.S. § 67.708(b)(20). But the RTKL 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. Therefore where disclosure requirements for autopsy records contained in the Coroner's Act conflict with the exemption contained in the RTKL, the Coroner's Act controls.

The OOR was correct to determine that the Coroner's Act clearly establishes the public character of autopsy and toxicology reports in at least two ways: (1) by enumerating in Section 1252-B standard fees for the immediate release of four discrete categories of coroners' records (“autopsy reports,” “toxicology reports,” “inquisition or coroners reports,” and “cremation or disposition authorizations”); and (2) mandating in Section 1236-B that at the end of each year the coroner “shall deposit all official records and papers for the preceding year in the Office of the Prothonotary for the inspection of all persons interested therein.” The Petitioner musters a number of arguments in opposition to the OOR's conclusion on this point. However, none of those arguments succeed in demonstrating through a preponderance of evidence that autopsy and

toxicology records are “exempt or unavailable under the Coroner’s Act,” as the Petitioner asserts.¹ See Petitioner's Brief, p 3.

The Petitioner’s Brief argues that (1) only “Verification of Death” forms, and not autopsy or toxicology reports, must be deposited with the Prothonotary by the Coroner; and (2) that the Coroner’s Act only allows the release of autopsy and toxicology reports to a “nongovernmental agency... in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased.” Neither of these positions holds up to scrutiny. Each are discussed in turn below.

The Petitioner references Section 1236-B of the Coroner’s Act to assert that coroners are only required to deposit “Verification of Death” forms, and not other records such as autopsy and toxicology reports, in the Office of the Prothonotary. But this assertion is completely unsupported by the statutory section at issue, which states nothing about “Verification of Death” forms (or “Return to View” forms, as they were previously known) and instead refers explicitly to “all records and papers of the coroner.” Despite a lengthy review of the legislative history regarding the Coroner’s Act, examining in particular the 2018 amendments that relocated the relevant statutory section from 1231 to 1236-B, the Petitioner fails to indicate where in the statute this Court might find any at all reference to the deposit of Verification of Death forms, much less any article suggesting “all records and papers of the coroner” can be properly interpreted to refer only to such forms.

¹ For further discussion of this matter, please see the Final Determination issued by the OOR in AP 2022-2835, *Terence Keel v. Dauphin County*, which was authored by an Appeals Officer other Lyle Hartranft, who issued the Final Determination under appeal in this Petition. Dauphin County did not appeal this Final Determination and indeed has fully complied with its order to release the responsive records to the Respondent in this matter. (OOR Final Determination AP 2022-2835 is enclosed as Exhibit A.)

Moreover, the Petitioner attempts to dismiss as irrelevant the PA Supreme Court's decisions in Penn Jersey Advance and Heart Television, which clearly affirm the public character of autopsy reports *and* that such reports are included in "all records and papers" of the coroner and so must be deposited with the Prothonotary. The Petitioner is unsuccessful in demonstrating the inapplicability of these cases. Although the Petitioner is correct that the court in Penn Jersey Advance declined to address possible interactions between the Coroner's Act and the RTKL, this point is quite irrelevant to the question at hand, which has to do with whether or not autopsy and toxicology reports are included in "all records and papers;" unfortunately for the Petitioner, the Supreme Court is emphatic that they are.² Furthermore, on this point and indeed throughout their Brief, the Petitioner suggests that the Coroner's Act was altered so substantially by its 2018 amendment that previous rulings, such as in Penn Jersey Advance, are no longer controlling and indeed should hardly even be considered by this Honorable Court, as they do not reflect the current iteration of the statute. This is untrue. The Petitioner is to be commended for supplying such a thorough description of the legislative history of the Coroner's Act, and for reproducing lengthy excerpts from the statute that clarify the substance of the amendment. However, the Petitioner's suggestion that this Court interpret the addition of two words to the end of Section 1236-B — "all persons *interested therein*" (emphasis added) — as granting the coroner total

² The Petitioner further asserts that this Court has already ruled on precisely this issue in Coroner v. Jeffery Thompson. This assertion is misleading and the Petitioner's reliance on Thompson is misguided, as the facts in that case differ substantially from those in the matter at hand. As this Court noted in its decision in Thompson, "the documents sought by Respondent were not deposited with the Chester County Prothonotary," whereas all records responsive to the Respondent's request in this case were produced prior to 2022, and so should have already been deposited with the Prothonotary in accordance with 16 P.S. 1236. This fact substantively distinguishes the records at issue in the present petition from those at issue in Thompson. Therefore the Petitioner's suggestion that this Court apply the same reasoning applied in Thompson to the present petition is untenable. Furthermore, and despite the Petitioner's implication, in Thompson this Honorable Court did *not*, in fact, rule on whether or not the coroner's deposit of Verification of Death forms fully satisfied the statutory requirement to deposit "all records and papers" with the Prothonotary; rather, this Court only acknowledged that the coroner's deposit of Verification of Death forms met the public and judicial expectation that information relating to cause and manner of death be publicly released.

discretion over release of records, based only on an irrelevant discussion about the procurement of professional services in a previous version of the statute, is misguided and misleading. Indeed, the Petitioner's impressive account of the legislative history makes clear that the 2018 amendment may have slightly relocated the section under discussion, so as to separate it from the standard fee stipulations currently enumerated in Section 1252-B, but these changes hardly altered its meaning so substantially as to render the PA Supreme Court's decisions in Penn Jersey Advance and Hearst Television inapplicable. The only further evidence the Petitioner provides for its interpretation that 16 P.S. 1236-B requires only the deposit of "Verification of Death" forms consists of a statement made by the Deputy Coroner in an affidavit that cites no statute or court order, and is in fact directly contradicted by relevant caselaw, as discussed in further detail below.

The Petitioner cites the Centre County Court of Common Pleas decision in Richard Cowan v. Coroner to further support its position that the coroner enjoys absolute discretion over the release of official records, including autopsy reports, despite statutes which would seem to contradict this premise. The Petitioner implies that, because the Centre County Court's decision was not appealed, that this piece of caselaw, while not controlling, is settled and authoritative and therefore should be considered by the Honorable Court in this matter. The Respondent would suggest that this is misleading for two reasons. First, the OOR maintained its fierce opposition to the Centre County Court's interpretation of 16 P.S. in its Final Determination in AP 2022-1911, *Terence Keel v. Centre County Coroner* (attached as Exhibit B), and, to the Respondent's knowledge, Centre County has filed no Petition for Review appealing the OOR's determination in that matter; noting that the deadline for Centre County to do so has long since passed, it is reasonable to presume that Centre County has determined its previous position to be untenable

and shall comply with the underlying request. Second, while the Petitioner clearly feels that the decision in Cowen is applicable, despite having been decided in another jurisdiction and not being controlling in this matter, the Petitioner is apparently ignorant of a Lancaster County Court of Common Pleas decision that is also directly relevant to the issues under discussion in this matter, but that, unlike Cowen, contradicts the Petitioner's interpretation of relevant statutes and PA Supreme Court precedents.

This case, which the Petitioner fails to raise but which the Respondent would ask this Court to consider, is Lancaster v. Carter Walker and LNP Media Group (enclosed as Exhibit C). The Court in Carter Walker not only affirmed, based on Penn Jersey Advance and Hearst Television, that autopsy, toxicology, and other records must be deposited with the Prothonotary, where they are to be made available to any and all inquiring members of the public, but also issued a mandamus ruling ordering the coroner in that jurisdiction to retroactively deposit all such records for each year he had been in office.

The Respondent submits that the accumulated caselaw on this question is, as the Petitioner suggests, settled and clear — but not in favor of the Petitioner's position. For this reason, the Petitioner has been forced to selectively cite non-controlling decisions from outside jurisdictions that are directly contradicted by other such decisions left unreferenced by the Petitioner, and to cast doubt on the applicability of clearly relevant and controlling PA Supreme Court rulings by exaggerating the extent to which amendments have subsequently altered the relevant sections of the Coroner Act.

In summation, the Petitioner has failed to demonstrate by a preponderance of the evidence that the records responsive to the underlying request in this matter are unavailable to the Respondent under the Coroners Act. Therefore, the public release requirements for autopsy

and toxicology reports contained in sections 1236-B and 1252-B of the Coroner's Act must be held to supersede the exemption for autopsy reports contained in the RTKL.

B. The Petitioner has no discretion over the release of autopsy and toxicology reports, nor are such reports subject to HIPAA or any other law prohibiting their release based on the privacy interests of the deceased.

The Petitioner also asserts that HIPAA and other laws protecting the privacy of medical information require the Coroner to exercise her discretion to withhold autopsy and toxicology reports from the Respondent. The Respondent maintains that this assertion is untenable for the following reasons, each of which will be elaborated in greater detail in the paragraphs below. First, the Petitioner has not successfully demonstrated that autopsy and/or toxicology records are, in fact, subject to HIPAA or any privacy rule that would prohibit their release. Second, the Coroner does not, contrary to the Petitioner's assertion, enjoy any discretion whatsoever over the release of autopsy and toxicology reports, nor may the Coroner discriminate based on the identity of the requestor or the purpose of the request. And third, even if the Petitioner's position that only entities able "to determine liability for the death of a deceased" are eligible to receive autopsy and toxicology reports were correct—which it is not—the Respondent in this matter does, in fact, meet those criteria and so must be provided with the responsive records.

As this Court is well aware, HIPAA only applies to a specific list of discrete entities, notably health care providers, and not to law enforcement officers or public officials. Therefore HIPAA clearly does not apply in this matter.³ As evidence that HIPAA applies in this case, the

³ Furthermore, HIPAA allows covered entities to "use or disclose protected health information to the extent that such use or disclosure is required by law." 45 C.F.R. § 164.512. Therefore, even if the Chester County Office of the Coroner were subject to HIPAA (which it is not), this would not in any way release the Coroner from her obligation under the Coroners Act to make autopsy, toxicology, and other records available for public review.

Petitioner previously provided the OOR with an affidavit from the Deputy Coroner attesting that the medical examiners and toxicologists whom the Coroner's Office commissions to conduct autopsy procedures in support of the Office's investigative operations are covered by HIPAA — the implication being that coverage extends, with no limitation, to the Coroner and all other public officials despite statutes clearly mandating the transmission and public deposit of medical information (i.e. cause and manner and death) and indeed autopsy reports themselves. This position is indefensible on its face. That a coroner may choose to solicit the services of a physician to assist in the completion of an autopsy does not alter the fundamental fact that an autopsy (including toxicological analysis) is a medicolegal investigative procedure conducted by a public officer for a public purpose. Contrary to the Petitioner's position, the courts have consistently held that autopsy and toxicology reports are official reports produced by the Coroner acting in his capacity as a law enforcement officer, and so cannot be shielded from public scrutiny based on the *de minimis* privacy interests of the deceased. See Penn Jersey Advance, Hearst Television, Carter Walker.

The Petitioner further asserts, based on an ill-considered and erroneous reading of Section 1252-B of the Coroner's Act, that the coroner may only release autopsy and toxicology reports to “**nongovernmental agencies in order to investigate a claim under a policy of insurance or to determine liability for the death of the deceased.**” (quoted from 16 P.S. § 1252-B, emphasis from Petitioner's Brief, p. 8) The Respondent joins the Petitioner in pointing the Court towards Section 1252-B to consider to what extent and in what ways the coroner may exercise discretion; unlike the Petitioner, the Respondent further urges the Court to read the relevant section with the rules of statutory construction in mind. As OOR Appeals Officer Kyle Applegate pointed out in the Final Determination in *Keel vs. Dauphin County* (AP 2022-2835,

enclosed as Exhibit A), “the language that the County focuses upon in 16 P.S. § 1252-B [...] clearly modifies “other fees as may be established from time to time for other reports or documents,” and not “autopsy reports” or “toxicology reports,” which are earlier in the sentence established as unambiguously available to public requestors willing to pay standard fees. AP 2022-2835 Final Determination, p. 8. (citation and internal quotation marks omitted). Indeed, as Kyle Applegate goes on to note, the section of the statute that the Petitioner emphasizes “has absolutely nothing to do with an individual’s ability to request and obtain autopsy or toxicology reports from a coroner.” AP 2022-2835 Final Determination, p. 8. Furthermore, the PA Supreme Court made its reading of this statutory section absolutely clear in Heart Television, when it ruled that the Coroner’s Act “allows the coroner to charge fees for records, but does not afford the coroner any discretion with regard to releasing such records.” Heart Television, 54 A.3d at 32. On this point, as on the points the Petitioner has raised regarding 16 P.S. § 1236-B, the Petitioner musters a lengthy description of the legislative history as it relates to 16 P.S. § 1252-B; however, the Petition’s account of the history fails to provide this Honorable Court with any compelling reason as to why it should dismiss PA Supreme Court precedent and interpret the statute to mean something other than what a plain and straightforward reading of its language would suggest.

Finally, and as disclosed earlier in this brief, the Respondent in this matter is a reputable and highly experienced researcher who has previously published research results that would, in fact, seem to determine liability for the death of certain decedents in jurisdictions beyond Pennsylvania (e.g. California). For this reason, even if the Petitioner’s reading of 16 P.S. § 1252-B were correct, which the Respondent maintains it is not, this still would not provide the coroner with sufficient discretion to withhold the responsive records from the Respondent. Should this Honorable Court determine that the Court’s decision in this matter hinges upon the

identity of the Respondent as a nongovernmental agency capable of determining liability for the death of a decedent, the Respondent shall be happy to provide an affidavit attesting to and substantiating this claim. However, as previously argued, the Respondent does not feel the Petitioner's reading of the relevant statutory section has merit, and so does not anticipate that this Court's decision will hinge upon this issue.

IV. CONCLUSION

The Respondent maintains that the Chester County Office of the Coroner erred in denying the underlying request for autopsy and toxicology reports submitted on June 27, 2022, and that the Final Determination issued by the OOR on September 30 was correct to instruct the Petitioner to release the responsive records. Based upon the reasoning set forth in this Brief, the Respondent asks the Court to DENY the Petition for Review submitted by the Chester County Office of the Coroner and uphold the OOR's Final Determination ordering that agency to immediately release the requested records. The Respondent further asks that this Honorable Court allow the Respondent to amend and/or supplement this Brief after entering an attorney in this matter. As disclosed previously in his December 21 Motion for Continuance, the Respondent has encountered unavoidable barriers securing an attorney, despite considerable effort, but is confident he will find legal counsel in the new year.

RESPONDENT'S EXHIBIT A



IN THE MATTER OF

**TERENCE KEEL AND THE UNIVERSITY :
OF CALIFORNIA-LOS ANGELES, :
INSTITUTE FOR SOCIETY AND :
GENETICS, BIOSTUDIES LAB, :
Requester :**

v.

DAUPHIN COUNTY,
Respondent

.....

Docket No: AP 2022-2385

On October 13, 2022, Dr. Terence Keel and the University of California-Los Angeles, Institute for Society and Genetics, Biostudies Lab (collectively, the “Requester”), submitted a request (“Request”) to Dauphin County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking autopsy and toxicology reports for twenty-four (24) decedents.¹ On October 13, 2022, the County denied the Request, arguing that it seeks “non-financial records filed with the agency’s Office of the Prothonotary, a judicial agency.”

¹ A request was originally made to County Coroner Graham Hetrick on June 27, 2022; however, on October 13, 2022, the County's Open Records Officer informed the Requester that any requests for the records must be submitted to the County's Open Record Officer. The instant Request was then submitted to the County's Open Records Officer, copying the County Coroner and the County Prothonotary.

On October 13, 2022, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the County to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On October 17, 2022, the County made a submission in support of its position, which was verified, subject to the penalties set forth in 18 Pa.C.S. § 4904, by Stephen Libhart, the County's Open Records Officer. In this submission, the County reiterates that the requested reports are "non-financial records" of the County Prothonotary and argues that autopsy and toxicology reports are not available from the County Coroner.

On October 18, 2022, based upon the County's arguments concerning the records being deposited with the County Prothonotary, the OOR asked the Requester if they had attempted to obtain the records from the Prothonotary. The same day, the Requester made a submission in support of their appeal and informed the OOR that they had contacted the Prothonotary.

On October 20, 2022, the County made a supplemental submission, verified by Open Records Officer Libhart, which claimed that autopsy and toxicology reports cannot be obtained from the County Coroner.

On October 24, 2022, the Requester made a submission addressing the County's supplemental submission and arguing that the requested reports have not been deposited with the County Prothonotary as required by law.² In support of this argument, the Requester submits the declaration, made under penalty of perjury, of Paula Knudsen Burke, who visited the County Prothonotary and attempted to review the Coroner's files for three of the individuals listed in the

² The Requester also made a separate submission that provides a copy of an email response from the County Prothonotary. The response notes that the Requester may conduct an in-person inspection of any records deposited under 16 P.S. § 1236-B.

Request: Edward C. Sinkovitz, Kyle J. Nadwodny, and Kejuan Cooke, all of whom died in 2021.

The Burke declaration further states, in relevant part, that:

4. I followed the [Prothonotary] employee to a corner behind the filing stacks, where I observed five brown banker's boxes.
5. I was given the box containing 2021 deaths and directed to an empty desk.
6. I was able to find one-page forms called "Coroner's View" for each deceased person, arranged by month, but not date within those months.
7. I viewed the one-page forms for Mr. Nadwodny and Mr. Cooke, but I was unable to locate any paper related to Mr. Sinkovitz....
10. At the back of the white binder labeled "Coroner's Reports 2021" there was a certification from Dauphin County Coroner Graham Hetrick that the documents contained within the binder comprised the documents he was submitting for the year. There were no autopsy reports, toxicology reports or any detailed records....

The OOR asked the County to address the Burke declaration, and specifically whether or not the requested autopsy and toxicology reports were ever deposited with the County Prothonotary as claimed. On October 27, 2022, the County responded, providing copies of records concerning the deposit of Coroner records for 2019, 2020, and 2021. In correspondence to the County Prothonotary dated November 19, 2019, the Coroner states: "This letter will confirm our agreement that the Office of the Coroner will store its official records within the Coroner's Office as an extension of the Prothonotary's office." Although there is a place for the Prothonotary to sign, the correspondence is unexecuted by the Prothonotary. In the February 3, 2021 and January 28, 2022 correspondence, the Coroner confirms that Coroner records for 2020 and 2021 have been deposited. With respect to this correspondence, the County's Open Records Officer "surmise[s] the documents actually provided to the Prothonotary by the [C]oroner are substantially the same as indicated in the [Burke declaration]."

LEGAL ANALYSIS

The County is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the County is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The case at issue involves autopsy-related records originating from the County Coroner. While the RTKL makes “[a]n autopsy record of a coroner or medical examiner” exempt from disclosure, 65 P.S. § 67.708(b)(20), the RTKL’s exemptions do not apply when another law makes records public. 65 P.S. § 67.306.

In Pennsylvania, autopsy records of a coroner may be obtained through two mechanisms set forth in the County Code. First, autopsy records may be obtained from the judiciary after they are deposited by a coroner with the Prothonotary at the end of each year. 16 P.S. § 1236-B. Second, autopsy records may be obtained directly from a coroner, for a fee. 16 P.S. § 1252-B. The Pennsylvania Supreme Court has held that this second mechanism is “a rapid means of procuring an autopsy report for those who do not wish to wait until after the end of the year, and who are also willing to pay the charges associated with procuring it.” *Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632, 637 (Pa. 2009); *see also Hearst TV Inc. v. Norris*, 54 A.3d 23 (Pa. 2012) (reiterating that there are two mechanisms for obtaining coroner records).

1. The County has not demonstrated that the requested autopsy and toxicology reports have been deposited with the County Prothonotary in accordance with the County Code

With respect to the first mechanism, the portion of the County Code referred to as the Coroner's Act used to state:

Every coroner, within thirty (30) days after the end of each year, shall deposit all of his official records and papers for the preceding year in the office of the prothonotary for the inspection of all persons interested therein.

16 P.S. § 1251. However, that section was repealed and replaced by Act 154 of 2018, and the County Code now provides that:

In counties of the third, fourth, fifth, sixth, seventh and eighth classes, every coroner, within thirty (30) days after the end of each year, shall deposit all official records and papers for the preceding year in the Office of the Prothonotary for the inspection of all persons interested therein.

16 P.S. § 1236-B.

The Pennsylvania Supreme Court has made clear, on multiple occasions, that autopsy reports are “official records and papers” that are required to be deposited with a county prothonotary. *In re Buchanan*, 880 A.2d 568, 571 (Pa. 2005) (finding that it was reasonable to conclude that autopsy reports are considered “official records and papers”); *Grim*, 962 A.2d at 636-37 (“... [T]o the extent that *Buchanan* left any room for doubt, we now hold expressly that autopsy reports are ‘official records and papers’ under Section 1251”); *see also Norris*, 54 A.3d 23 (Pa. 2012) (reaffirming that “official records and papers” must be deposited with the county prothonotary). The caselaw cannot be any clearer: autopsy reports are “official records and papers” that are required to be deposited with the county prothonotary. Similarly, toxicology reports are also “official records and papers.” According to the Court in *Grim*, if something is a duty of a coroner in their official capacity, the resulting record is thus “an official record or paper subject to disclosure.” *Grim*, 54 A.3d at 636.

There can be no doubt that coroners in counties of the third through eight classes are still required to deposit their “official records and papers.” The language of 16 P.S. § 1236-B is nearly identical to 16 P.S. § 1251, which the Pennsylvania Supreme Court has extensively analyzed. In ascertaining legislative intent, we are to presume “[t]hat when a court of last resort has construed the language used in a statute, the General Assembly in subsequent statutes on the same subject matter intends the same construction to be placed upon such language.” 1 Pa.C.S. § 1922(4).

The County “concur[s] with the [Requester’s] understanding of the provisions of 16 P.S. § 1236-B,” requiring the depositing of autopsy and toxicology reports, and argues that the requested reports are therefore “non-financial records of a judicial agency” because they are coroner records that have been deposited with the Dauphin County Prothonotary. However, there is a material dispute regarding whether the autopsy and toxicology reports have, in fact, been deposited with the Prothonotary.

The Requester has submitted the Burke declaration, which supports a claim that, at least for 2021, the Coroner has not deposited any autopsy or toxicology reports. The County has produced correspondence concerning the transfer of some records from the Coroner to the Prothonotary for 2020 and 2021. If the Coroner believed that “Coroner’s View” forms were the only documents he was required to deposit in 2021, it is likely that he held such a belief for the 2020 records as well. For the 2019 Coroner records, the Coroner apparently did not deposit *any* records, choosing instead to “store its official records ... as an extension of the Prothonotary’s office.”³ The County’s argument on appeal is also somewhat contradictory; it is, on one hand, arguing that the records have been deposited with the Prothonotary and are therefore judicial in nature, and on the other hand, arguing that records from the County Coroner are not subject to

³ It is not clear how such an arrangement would be legal under 16 P.S. § 1236-B or its predecessor, 16 P.S. § 1251.

disclosure at all. Because there is uncontradicted evidence that the County Coroner did not comply with 16 P.S. § 1236-B for 2019 and 2021, and because the County Coroner's position appears to be that autopsy and toxicology reports can never be publicly disclosed, we cannot conclude that the requested reports have actually been deposited with the Prothonotary as required by law or that the records are judicial records.

While the OOR is unable to require the County Coroner to comply with 16 P.S. § 1236-B,⁴ the abrogation of the Coroner's statutory duties is relevant as to whether the County has acted in bad faith under the RTKL, which will be discussed below.

2. The requested autopsy and toxicology reports are available, for a fee, under the County Code

With respect to the second mechanism for obtaining coroner records, the County argues that its Coroner no longer has any obligation to provide autopsy and toxicology reports. Prior to 2018, the Coroner's Act stated 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(c) (emphasis added). The County Code now provides that:

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

16 P.S. § 1252-B (emphasis added).

⁴ The appropriate remedy appears to be a mandamus action. *See generally Grim*, 962 A.2d at 636 (stemming from mandamus actions to compel the coroner to deposit his "official records and papers").

The County argues that because the Requester is not identified “as acting in a capacity of investigating a claim(s) asserted under a policy of insurance or to determine liability for the death of the decedents,” the Requester is prohibited from obtaining autopsy and toxicology reports under 16 P.S. § 1252-B. However, statutory construction does not support this argument; it actually contradicts it.

First, the language that the County focuses upon in 16 P.S. § 1252-B – “in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased” – clearly modifies “other fees as may be established from time to time for other reports or documents.” This section sets forth specific fees for specific records, and then includes a “catch-all” for *other* reports or documents that may be requested “from time to time”⁵ from a coroner; this “catch-all” does not affect or modify the prior specific fees for specific records. *See* 1 Pa.C.S. § 1903(b) (“General words shall be construed to take their meanings and be restricted by preceding particular words”). While the “catch-all” is limited to records needed by nongovernmental agencies, it has absolutely nothing to do with an individual’s ability to request and obtain autopsy or toxicology reports from a coroner. Indeed, the Coroner’s Act *also* referred to “such other fees as may be established from time to time for other reports and documents requested by nongovernmental agencies,” and the Court in *Grim* did not attach any significance to that phrase because autopsy reports, not unnamed “other reports and documents,” were at issue. *See also* Norris, 54 A.3d 23 at 32 (treating “other reports and documents” as a distinct category separate from autopsy and toxicology reports”). Here, autopsy and toxicology reports are at issue; because both records are specifically addressed in 16 P.S. § 1252-B, the language referencing “other fees” is meaningless to our analysis.

⁵ The use of the phrase “from time to time” is quite telling, evidencing a belief from the General Assembly that these “other fees for other reports or documents” may not be commonplace. 1 Pa.C.S. § 1903(a).

Further, there is clear legislative intent for coroners to provide copies of autopsy and toxicology reports upon payment of fees. “The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.” 1 Pa.C.S. § 1921. Absent certain exceptions that are not at issue here, we must liberally construe statutes “to effect their objects and to promote justice.” 1 Pa.C.S. § 1928(c). In ascertaining legislative intent, we are to presume “[t]hat when a court of last resort has construed the language used in a statute, the General Assembly in subsequent statutes on the same subject matter intends the same construction to be placed upon such language.” 1 Pa.C.S. § 1922(4).

In *Norris*, the Court found that the Coroner’s Act “allows the coroner to charge fees for records, but does not afford the coroner any discretion with regard to releasing such records.” *Norris*, 54 A.3d at 32. The County Code likewise does not afford a coroner any discretion; instead the General Assembly chose to use even stronger language to explain that a coroner “*shall* charge and collect a fee.” 16 P.S. § 1252-B (emphasis added). Using the rules of statutory construction, the General Assembly clearly intended to ensure that no discretion is involved – a fee is paid to the coroner, and the coroner provides the record. In fact, the heading of 16 P.S. § 1252-B is simply entitled “Fees for reports.” 1 Pa.C.S. § 1924 (noting that headings “shall not be considered to control but may be used to aid in the construction thereof”). The General Assembly intended for a process where specific fees are paid to obtain specific reports from coroners, without limitation.

The County Code makes autopsy and toxicology reports available from county coroners for a fee. Despite that mandate, the County sets forth a variety of arguments as to why these reports should not be available from its Coroner: that the records are protected by the Health Information Portability and Accountability Act of 1996 (“HIPAA”), 45 C.F.R. § 164.502(a), and the Federal

Privacy Rule, 42 U.S.C. § 1320d(6); that the records are made confidential based upon guidance found in a publication from the Pennsylvania Department of Drug and Alcohol Programs⁶; and that several RTKL exemptions apply. All of these arguments disregard the known fact that we are dealing with settled law: the Pennsylvania Supreme Court has interpreted the prior Coroner’s Act, and the General Assembly enacted “new” provisions within the County Code that are largely the same as the prior Coroner’s Act. There is only one reference to Court precedent on the matter, a footnote citation to a concurring and dissenting opinion in *Grim*. It appears that the County prefers to ignore this precedent rather than address it or even acknowledge its existence.

Regardless, the County’s arguments have no merit. The County does not explain how the Department of Drug and Alcohol Programs’ publication has the force and effect of law or negates a statutory enactment. The RTKL exemptions cited by the County do not apply, as nothing in the RTKL can “supersede or modify the public or nonpublic nature of a record or document established” in another law. 65 P.S. § 67.306. Finally, with respect to HIPAA and the Privacy Rule, the County does not set forth any credible argument how the County Code is superseded by federal law. The County’s argument is devoid of any citation to any controlling caselaw, and its citation to a Rutgers Law Journal article for a theory concerning a “chain of trust” under HIPAA amplifies that defect. Importantly, the County does not explain how its coroner can be a “covered entity” for purposes of HIPAA⁷. However, the simplest argument against the County’s invocation of HIPAA and the Privacy Rule is that the application of those laws was already considered by the Pennsylvania Supreme Court when it found, repeatedly, that autopsy reports are subject to public access. *See, e.g., Grim, supra* (concurring and dissenting opinion of Justice Eakin).

⁶ The County does not provide any formal citation or link to the publication, but it appears to be accessible at https://www.ddap.pa.gov/Documents/Agency%20Publications/Confidentiality_Federal_State_Regulations_Guide.pdf (last accessed Oct. 27, 2022).

⁷ The Coroner is not a health plan, a health care clearinghouse, or a health care provider. 45 CFR § 160.103.

The OOR notes a recent decision of the Centre County Court of Common Pleas in *County of Centre v. Richard Cowen*, Centre County Docket 2022-1053 AP, where that court “concludes, in light of the amendments to the Coroners Act, the requested records are exempt under § 708(b)(20) of the Right to Know Law.” However, that one-page Order does not acknowledge, address or analyze the Supreme Court precedent on the matter, nor does it explain how “the amendments to the Coroners Act” affect that precedent.⁸ Based upon these missing components, the OOR does not believe that the *Cowen* Order is persuasive, much less binding, authority on the matter. We cannot disregard settled caselaw on a subject due to minor changes in a statute.

3. The County, based upon the actions of its Coroner, may have acted in bad faith

Under the RTKL, courts are permitted to impose sanctions and civil penalties if the conclude that an agency has acted in bad faith. 65 P.S. §§ 67.1304-1305. A finding of bad faith may be appropriate where an agency fails to perform its statutory duties. *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161, 1172 (Pa. Commw. Ct. 2018), *aff’d*, 243 A.3d 19 (Pa. 2020) (bad faith involves failing to perform a good faith search and review of records to ascertain if the requested material exists or if any exclusion applies prior to denial of access); *see also Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119 (Pa. Commw. Ct. 2017) (a finding of bad faith was warranted where the agency based a denial on the identity of the requester, refused to provide a legal rationale for denial and did not perform a good faith search).

Although the OOR has made such findings, only the courts have the authority to impose sanctions on agencies. *See* 65 P.S. § 67.1304; *Bowling v. Office of Open Records*, 75 A.3d 453 (Pa. 2013) (“As we observed, Section 1304 of the RTKL permits a Chapter 13 court to award costs and attorneys’ fees, and to impose sanctions, after the court, not the appeals officer, makes relevant

⁸ Decisions from courts of common pleas in RTKL matters “shall clearly and concisely explain the rationale for the decision.” 65 P.S. § 67.1302(a).

factual findings and legal conclusions.... Section 1304(a)(1) requires a court to make factual findings regarding whether an agency denying access to records acted ‘willfully or with wanton disregard’ or ‘otherwise ... in bad faith.’”); *Mission Pa., LLC v. McKelvey*, 212 A.3d 119, 138 (Pa. Commw. Ct. 2019) aff’d in part, 255 A.3d 385 (Pa. 2021) (“the statute is clear that only a court may make a finding regarding an agency’s bad faith”); *Uniontown, supra* (“[t]he RTKL reserves bad faith determinations for disposition by Chapter 13 Courts”).

In this case, there is no evidence that the requested autopsy and toxicology reports were ever deposited with the County Prothonotary pursuant to 16 P.S. § 1236-B, despite the County informing the Requester the records had been deposited. The County and its Coroner recognize this obligation under 16 P.S. § 1236-B, yet the record shows that the Coroner and County appear to have ignored clear directives from the Pennsylvania Supreme Court that autopsy and toxicology reports must be deposited annually. Further, the County and its Coroner refuse to follow 16 P.S. § 1252-B, despite the clear statutory language and caselaw on the matter. Instead, they have made frivolous arguments that do not address that binding precedent.

An agency cannot ignore a clear statutory mandate that has been thoroughly analyzed by every level of the judiciary simply because they do not believe it to be correct or wise. The Coroner’s actions not only directly impact the Requester but also the public interest as a whole. Because the records have not been deposited with the Prothonotary as mandated by the Coroner’s Act, the practical effect is that any requester, including the Requester here, is left to obtain them, at great cost, under 16 P.S. § 1252-B. For these reasons, the OOR believes that a finding of bad faith by a reviewing court would be appropriate to not only provide the public access to coroner records envisioned by the General Assembly and reenforced by the Pennsylvania Supreme Court, but also to discourage other agencies from acting similarly in violation of the public interest.

Additionally, an award of sanctions and civil penalties is appropriate to offset the costs of the Requester having to obtain the records that should have been easily and readily accessible under 16 P.S. § 1252-B.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is required to provide access to the requested autopsy and toxicology reports, either by depositing those records with the Prothonotary or by providing them to the Requester pursuant to the fees set forth in the County Code. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Dauphin County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: November 3, 2022

/s/ Kyle Applegate
Kyle Applegate, Esq.
Chief Counsel

Sent via email to: Terence Keel;
Stephen Libhart

⁹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

RESPONDENT'S EXHIBIT B



FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
TERENCE KEEL AND THE UNIVERSITY	:	
OF CALIFORNIA-LOS ANGELES,	:	
INSTITUTE FOR SOCIETY AND	:	
GENETICS, BIOSTUDIES LAB,	:	
Requester	:	
	:	
v.	:	Docket No: AP 2022-1911
	:	
CENTRE COUNTY OFFICE OF THE	:	
CORONER,	:	
Respondent	:	

INTRODUCTION

Terence Keel and the University of California-Los Angeles, Institute for Society and Genetics, Biostudies Lab (collectively, the “Requester”) submitted a request (“Request”) to the Centre County (“County”) Office of the Coroner (“Office”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking autopsy and toxicology reports. The Office denied the Request arguing, among other things, that the records are exempt medical records, and the Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted**, and the Office is required to take further action as directed.

FACTUAL BACKGROUND

On June 27, 2022, the Request was filed, seeking “the complete autopsy and toxicology reports” for 232 individuals. On July 5 2022, the Office invoked a thirty-day extension during

which to respond to the Request. 65 P.S. § 67.902(b). On August 4, 2022, the Office denied the Request, arguing that the records are exempt medical records, 65 P.S. § 67.708(b)(5).

On August 18, 2022, the Requester appealed to the OOR, challenging the denial and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the Office to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On August 26, 2022, the Requester submitted a position statement asking the OOR to “grant requestor’s Appeal and order the immediate release of the requested records.”

On August 30, 2022, the Office submitted a position statement indicating that, pursuant to 16 P.S. § 1236-B, the Office deposited the responsive records in the Centre County Prothonotary and are not in possession of the responsive records. The Office also indicated that “the Requester should utilize the County’s *webia* system to access the Prothonotary records directly.”

On October 5, 2022, the OOR contacted the Requester asking whether or not the Requester reached out to the Centre County Prothonotary or used the Centre County’s *webia* system in an attempt to obtain the responsive records. On October 6, 2022, the Requester responded indicating that he has “not contacted the Prothonotary regarding the responsive records, as [he] assumed that to initiate new communications in this matter while this appeal was ongoing would disrupt the appeal process.”² The Requester also indicated that he “registered for and accessed the [C]ounty’s *webia* system” but was unable to access the records.

On October 14, 2022, the Requester contacted the OOR indicating that he contacted the County Prothonotary and that he did not receive a response thereto.³ That same day, the OOR

¹ The Requester granted the OOR additional time to issue a final determination. *See* 65 P.S. § 67.1101(b)(1).

² The OOR responded that there is nothing precluding the Requester from contacting the Prothonotary during the appeal process in order to obtain records responsive to the Request.

³ However, that same day, the Requester provided an update indicating that an employee of his reached out to the County Prothonotary, Jeremy Breon. Mr. Breon indicated that the Prothonotary’s Office is not in possession of any autopsy or toxicology reports but only “Return to View” forms. The Requester maintains his arguments that “1)the

asked the Requester for an extension of time to issue the final determination and provided the Office an opportunity to respond to the Requester's October 14, 2022 correspondence raising concerns that the responsive records "have never been deposited by the Coroner in the Office of the Prothonotary."

On October 24, 2022, the Office submitted an additional response arguing that "[a] recent decision of the Centre County Court of Common Pleas in *County of Centre v. Richard Cowen*, Centre County Docket 2022-1053 [OOR Dkt. AP 2022-0559], ... makes clear that as a result of amendments to the Coroner's Act, see specifically the amendments to Section 1252-B of the Coroner's Act, 'the requested records are exempt under § 708(b)(20) of the Right to Know Law.'" The Office also argues that the Requester "is not a qualified party to receive the records under the Coroner's Act." That same day, the Requester also submitted a supplemental brief arguing that the "OOR should grant the Requester's appeal and order the immediate release of the responsive records."

LEGAL ANALYSIS

The Office is a local agency subject to the RTKL. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. See 65 P.S. § 67.305. As an agency subject to the RTKL, the Office is required to demonstrate, "by a preponderance of the evidence," that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as "such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence." *Pa. State Troopers Ass'n v. Scolforo*, 18 A.3d 435, 439

responsive records in this matter are in the possession of the Coroner; and 2) the Coroners Act requires that the Coroner make the responsive records available for inspection."

(Pa. Commw. Ct. 2011) (quoting *Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The case at issue involves autopsy-related records originating from the County Coroner. While the RTKL makes “[a]n autopsy record of a coroner or medical examiner” exempt from disclosure, 65 P.S. § 67.708(b)(20), the RTKL’s exemptions do not apply when another law makes records public. 65 P.S. § 67.306.

In Pennsylvania, autopsy records of a coroner may be obtained through two mechanisms set forth in the County Code. First, autopsy records may be obtained from the judiciary after they are deposited by a coroner with the Prothonotary at the end of each year. 16 P.S. § 1236-B. Second, autopsy records may be obtained directly from a coroner, for a fee. 16 P.S. § 1252-B. The Pennsylvania Supreme Court has reasoned that this second mechanism is “a rapid means of procuring an autopsy report for those who do not wish to wait until after the end of the year, and who are also willing to pay the charges associated with procuring it.” *Penn Jersey Advance, Inc. v. Grim*, 962 A.2d 632, 637 (Pa. 2009); *see also Hearst TV Inc. v. Norris*, 54 A.3d 23 (Pa. 2012) (reiterating that there are two mechanisms for obtaining coroner records).

1. The County has not demonstrated that the requested autopsy and toxicology reports have been deposited with the County Prothonotary

With respect to the first mechanism, the portion of the County Code referred to as the Coroner’s Act used to state:

Every coroner, within thirty (30) days after the end of each year, shall deposit all of his official records and papers for the preceding year in the office of the prothonotary for the inspection of all persons interested therein.

16 P.S. § 1251. However, that section was repealed and replaced by Act 154 of 2018, and the County Code now provides that:

In counties of the third, fourth, fifth, sixth, seventh and eighth classes, every coroner, within thirty (30) days after the end of each year, shall deposit all official records and papers for the preceding year in the Office of the Prothonotary for the inspection of all persons interested therein.

16 P.S. § 1236-B.

The Pennsylvania Supreme Court has made clear, on multiple occasions, that autopsy reports are “official records and papers” that are required to be deposited with a county prothonotary. *In re Buchanan*, 880 A.2d 568, 571 (Pa. 2005) (finding that it was reasonable to conclude that autopsy reports are considered “official records and papers”); *Grim*, 962 A.2d at 636-37 (“... [T]o the extent that *Buchanan* left any room for doubt, we now hold expressly that autopsy reports are ‘official records and papers’ under Section 1251”); *see also Norris*, 54 A.3d 23 (Pa. 2012) (reaffirming that “official records and papers” must be deposited with the county prothonotary). The caselaw cannot be any clearer: autopsy reports are “official records and papers” that are required to be deposited with the county prothonotary. Similarly, toxicology reports are also “official records and papers.” According to the Court in *Grim*, if something is a duty of a coroner in their official capacity, the resulting record is thus “an official record or paper subject to disclosure.” *Grim*, 54 A.3d at 636.

There can be no doubt that coroners in counties of the third through eight classes are still required to deposit their “official records and papers.” The language of 16 P.S. § 1236-B is nearly identical to 16 P.S. § 1251, which the Pennsylvania Supreme Court has extensively analyzed. In ascertaining legislative intent, we are to presume “[t]hat when a court of last resort has construed the language used in a statute, the General Assembly in subsequent statutes on the same subject matter intends the same construction to be placed upon such language.” 1 Pa.C.S. § 1922(4).

Here, the Office initially submitted the attestation of Attorney Dupuis who attests that the “autopsy and toxicology records for the years prior to 2022 ... are with the Prothonotary of Centre

County[,] and that “[t]he Requester should seek the records from the Prothonotary of Centre County.” Dupuis Attestation ¶¶ 4-5. The Office also suggested that the Requester could obtain the records under the County’s *webia* system “to access the Prothonotary records directly. *Id.* at ¶¶ 10-12. In response, the Requester spoke with the County Prothonotary who indicated that his office is not in possession of any autopsy or toxicology reports but is only in possession of “Return to View” forms. *See* Requester’s October 14, 2022 correspondence.

The OOR asked the Office to respond to the Requester’s argument that the records have not been deposited with the County Prothonotary. In response, the Office argues that the Requester “is not a qualified party to receive the records under the Coroner’s Act[,]” and that the “requested records are exempt under § 708(b)(20) of the Right to Know Law.”

The OOR recognizes that the Centre County Court of Common Pleas recently held in a one-page Order that these records are exempt under Section 708(b)(20) of the RTKL; however, there was no discussion of the settled caselaw regarding the Coroner’s mandate under 16 P.S. § 1236-B. The RTKL’s exemptions do not apply when another law makes those records public. 65 P.S. § 67.306.

While the OOR is unable to require the County Coroner to comply with 16 P.S. § 1236-B,⁴ the abrogation of the Coroner’s statutory duties is relevant as to whether the County has acted in bad faith, which will be discussed below.

2. The requested autopsy and toxicology reports are available, for a fee, under the County Code

With respect to the second mechanism for obtaining coroner records, the County argues that the “[t]he Prothonotary has correctly identified the Coroner’s records held by his office, which

⁴ The appropriate remedy appears to be a mandamus action. *See generally Grim*, 962 A.2d at 636 (stemming from mandamus actions to compel the coroner to deposit his “official records and papers”).

records were deposited by the Centre County Coroner in accordance with Pennsylvania law.”⁵

Prior to 2018, the Coroner’s Act stated 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(c) (emphasis added). The County Code now provides that:

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

16 P.S. § 1252-B (emphasis added).

The County argues that the Requester “is not a qualified party to receive the records under the Coroner’s Act.” However, statutory construction does not support this argument.

First, the language that the County focuses upon in 16 P.S. § 1252-B – “in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased” – clearly modifies “other fees as may be established from time to time for other reports or documents.” This section sets forth specific fees for specific records, and then includes a “catch-all” for *other* reports or documents that may be requested “from time to time”⁶ from a coroner; this “catch-all” does not affect or modify the prior specific fees for specific records. *See* 1 Pa.C.S. § 1903(b) (“General words shall be construed to take their meanings and be restricted by preceding particular words”). While the “catch-all” is limited to records needed by

⁵ Again, the OOR notes that it appears that the autopsy and toxicology reports were not deposited with the County Prothonotary but, instead, only the “Return of View” forms. Those forms are not autopsy or toxicology reports.

⁶ The use of the phrase “from time to time” is quite telling, evidencing a belief from the General Assembly that these “other fees for other reports or documents” may not be commonplace. 1 Pa.C.S. § 1903(a).

nongovernmental agencies, it has absolutely nothing to do with an individual's ability to request and obtain autopsy or toxicology reports from a coroner. Indeed, the Coroner's Act *also* referred to "such other fees as may be established from time to time for other reports and documents requested by nongovernmental agencies," and the Court in *Grim* did not attach any significance to that phrase because autopsy reports, not unnamed "other reports and documents," were at issue. *See also* Norris, 54 A.3d 23 at 32 (treating "other reports and documents" as a distinct category separate from autopsy and toxicology reports"). Here, autopsy and toxicology reports are at issue; because both records are specifically addressed in 16 P.S. § 1252-B, the language referencing "other fees" is meaningless to our analysis.

Further, there is clear legislative intent for coroners to provide copies of autopsy and toxicology reports upon payment of fees. "The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions." 1 Pa.C.S. § 1921. Absent certain exceptions that are not at issue here, we must liberally construe statutes "to effect their objects and to promote justice." 1 Pa.C.S. § 1928(c). In ascertaining legislative intent, we are to presume "[t]hat when a court of last resort has construed the language used in a statute, the General Assembly in subsequent statutes on the same subject matter intends the same construction to be placed upon such language." 1 Pa.C.S. § 1922(4).

In *Norris*, the Court found that the Coroner's Act "allows the coroner to charge fees for records, but does not afford the coroner any discretion with regard to releasing such records." *Norris*, 54 A.3d at 32. The County Code likewise does not afford a coroner any discretion; instead the General Assembly chose to use even stronger language to explain that a coroner "*shall* charge and collect a fee." 16 P.S. § 1252-B (emphasis added). Using the rules of statutory construction,

the General Assembly clearly intended to ensure that no discretion is involved – a fee is paid to the coroner, and the coroner provides the record. In fact, the heading of 16 P.S. § 1252-B is simply entitled “Fees for reports.” 1 Pa.C.S. § 1924 (noting that headings “shall not be considered to control but may be used to aid in the construction thereof”). The General Assembly intended for a process where specific fees are paid to obtain specific reports from coroners, without limitation.

The County Code makes autopsy and toxicology reports available from county coroners for a fee. The Pennsylvania Supreme Court has interpreted the prior Coroner’s Act, and the General Assembly enacted “new” provisions within the County Code that are largely the same as the prior Coroner’s Act. There is only one reference to Court precedent on the matter, a footnote citation to a concurring and dissenting opinion in *Grim*. It appears that the County would prefer to ignore this precedent rather than address it or even acknowledge its existence.

3. The County, based upon the actions of its Coroner, may have acted in bad faith

Under the RTKL, courts are permitted to impose sanctions and civil penalties if the conclude that an agency has acted in bad faith. 65 P.S. §§ 67.1304-1305. A finding of bad faith may be appropriate where an agency fails to perform its statutory duties. *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161, 1172 (Pa. Commw. Ct. 2018), *aff’d*, 243 A.3d 19 (Pa. 2020) (bad faith involves failing to perform a good faith search and review of records to ascertain if the requested material exists or if any exclusion applies prior to denial of access); *see also Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119 (Pa. Commw. Ct. 2017) (a finding of bad faith was warranted where the agency based a denial on the identity of the requester, refused to provide a legal rationale for denial and did not perform a good faith search).

Although the OOR has made such findings, only the courts have the authority to impose sanctions on agencies. *See* 65 P.S. § 67.1304; *Bowling v. Office of Open Records*, 75 A.3d 453

(Pa. 2013) (“As we observed, Section 1304 of the RTKL permits a Chapter 13 court to award costs and attorneys’ fees, and to impose sanctions, after the court, not the appeals officer, makes relevant factual findings and legal conclusions.... Section 1304(a)(1) requires a court to make factual findings regarding whether an agency denying access to records acted ‘willfully or with wanton disregard’ or ‘otherwise ... in bad faith.’”); *Mission Pa., LLC v. McKelvey*, 212 A.3d 119, 138 (Pa. Commw. Ct. 2019) *aff’d in part*, 255 A.3d 385 (Pa. 2021) (“the statute is clear that only a court may make a finding regarding an agency’s bad faith”); *Uniontown, supra* (“[t]he RTKL reserves bad faith determinations for disposition by Chapter 13 Courts”).

In this case, there is no evidence that the requested autopsy and toxicology reports were ever deposited with the County Prothonotary pursuant to 16 P.S. § 1236-B, despite the County informing the Requester the records had been deposited and advising the Requester to use its *webia* system to access the records. The County and its Coroner recognize this obligation under 16 P.S. § 1236-B, yet the Coroner appears to have ignored clear directives from the Pennsylvania Supreme Court that autopsy and toxicology reports must be deposited annually. Instead, the County informed the OOR that the autopsy and toxicology reports had been deposited with the Prothonotary when indeed they have not. The Coroner’s actions not only directly impact the Requester but also the public interest as a whole. Because the records have not been deposited with the Prothonotary as mandated by the Coroner’s Act, the practical effect is that any requester, including the Requester here, is left to obtain them, at great cost, under 16 P.S. § 1252-B. For these reasons, the OOR believes that a finding of bad faith by a reviewing court would be appropriate to not only provide the public access to coroner records envisioned by the General Assembly and reenforced by the Pennsylvania Supreme Court, but also to discourage other agencies from acting similarly in violation of the public interest. Additionally, an award of

sanctions and civil penalties is appropriate to offset the costs of the Requester having to obtain the records that should have been easily and readily accessible under 16 P.S. § 1252-B.⁷

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the Office is required to provide access to the requested autopsy and toxicology reports, either by depositing those records with the Prothonotary or by providing them to the Requester pursuant to the fees set forth in the County Code. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Centre County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁸ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: November 2, 2022

/s/ Lyle Hartranft
Lyle Hartranft, Esq.
Appeals Officer

Sent via email to: Terence Keel;
John Franek, Jr., AORO;
Elizabeth Dupuis, Esq.

⁷ Again, the OOR recognizes that the *Cowen* opinion issued by the Centre County Court of Common Pleas essentially holds that 16 P.S. § 1252-B is inapplicable. Notwithstanding the issue of whether or not that opinion was correctly decided, the County Coroner has a clear statutory duty to deposit autopsy and toxicology reports under 16 P.S. § 1236-B. There is no good faith reason for refusing to follow the requirements of 16 P.S. § 1236-B, considering we are dealing with settled caselaw from the Pennsylvania Supreme Court.

⁸ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

RESPONDENT'S EXHIBIT C

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

COUNTY OF LANCASTER,	:	
Petitioner,	:	No. CI-18-09547
	:	LEAD CASE
v.	:	
	:	PETITION FOR REVIEW PURSUANT TO
CARTER WALKER and LNP MEDIA	:	THE PENNSYLVANIA RIGHT TO
GROUP,	:	KNOW LAW
Respondents.	:	
<hr/>		
COUNTY OF LANCASTER,	:	Consolidated Case
Petitioner,	:	
	:	PETITION FOR REVIEW PURSUANT TO
v.	:	THE PENNSYLVANIA RIGHT TO
	:	KNOW LAW
BARBARA MILLER and PENNLIVE	:	
GROUP,	:	
Respondents.	:	
<hr/>		
PA MEDIA GROUP	:	
and	:	
LNP MEDIA GROUP, INC.,	:	Consolidated Case
Plaintiffs,	:	
	:	CIVIL ACTION—MANDAMUS
v.	:	
STEPHEN DIAMANTONI	:	
CORONER,	:	
Defendant.	:	
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OPINION

This case is before the court on the motions for judgment on the pleadings filed in the above-captioned mandamus action, which was consolidated with appeals from the decision of the Pennsylvania Office of Open Records involving requests by plaintiffs PA Media Group and LNP Media Group for autopsy reports and toxicology records. Plaintiffs ask in their mandamus action for this court to order Defendant, Stephen Diamantoni, the Coroner for Lancaster County

(“Coroner”), to deposit all of his official records and papers with the Lancaster County Prothonotary for each and every calendar year in which he has occupied the office of Coroner. For the reasons explained below the mandamus will be granted and the right-to-know appeals will be dismissed as moot.

I. PROCEDURAL BACKGROUND

These actions began when Barbara Miller, a reporter with PennLive, and Carter Walker, a reporter with LNP Media Group, sought to gain access to the Coroner’s autopsy and toxicology reports. They filed separate requests under the Right to Know Law, 65 P.S. § 67.101 et seq. (“RTKL”), seeking access to these records. The Coroner denied access to these records, relying on exclusions contained in the Coroner’s Act, 16 P.S. § 1201-B et seq. The denials were timely appealed to the Office of Open Records (“OOR”) which entered an order on March 26, 2018, directing production of the requested records.

The Coroner filed petitions for review of the OOR’s decisions, on April 4, 2018, and November 2, 2018. The two OOR petitions were consolidated. At a status conference on November 6, 2018, the parties agreed that the OOR appeals would be stayed and that PennLive and LNP Media would file a mandamus action to address their request for records. Plaintiffs, PA Media Group¹ and LNP Media Group, Inc. filed their mandamus complaint on January 7, 2019, and an amended complaint on April 17, 2019. The pleadings closed on May 24, 2019, after which the parties filed cross-motions for judgment on the pleadings. All parties agree that no factual disputes exist and that the court can decide the mandamus action as a matter of law. The

¹ PA Media Group supports the online presence known as PennLive.

parties are joined in their positions by four amici curiae, two for plaintiffs and two for defendant.²

II. FACTS

Defendant, Stephen Diamantoni is the elected coroner of Lancaster County and is a “coroner” as defined by the Coroner’s Act. 16 P.S. § 1202-B. Lancaster County is a county of the third class. Part of the duties of the Coroner, as required by the Coroner’s Act, is to perform autopsies and related medical and legal investigations concerning the death of persons who die in Lancaster County and whose deaths were sudden, unexplained, and/or suspicious. During the course of performing these duties, the Coroner creates official papers, records, and reports including autopsy reports, toxicology reports, and related records regarding the deaths of persons in Lancaster County. The Coroner acknowledges that during his tenure he has performed these duties and created these reports.

Section 1236-B of the Coroner’s Act provides:

In counties of the third, fourth, fifth, sixth, seventh and eighth classes, every coroner, within 30 days after the end of each year, shall deposit all official records and papers for the preceding year in the Office of the Prothonotary for the inspection of all persons interested therein.³

16 P.S. § 1236-B (emphasis added). The Coroner annually deposits Coroner View Reports within 30 days after the end of each year, which state the cause of death, but has never deposited any other records with the Prothonotary.

² Writing in support of plaintiffs are The News Media Alliance and Pennsylvania Newsmedia Association and the Reporters Committee for the Freedom of the Press. Writing in support of defendant are the Pennsylvania District Attorneys Association and the Pennsylvania State Coroner’s Association.

³ The Coroner’s Act was amended to add § 1236-B in place of § 1251, effective December 28, 2018. Prior to the December 28, 2018, amendments, § 1251 provided, “Every coroner, within thirty (30) days after the end of each year, shall deposit all of his official records and papers for the preceding year in the office of the prothonotary for the inspection of all persons interested therein.”

Plaintiffs, PA Media Group and LNP Media Group are print and digital news organizations and the publishers of the Patriot News and the LNP newspaper respectively. In 2018 and 2019, reporters for both plaintiffs have gone to the Lancaster County Prothonotary's Office and requested to see the official records and papers for the preceding year filed by the Coroner pursuant to Section 1236-B of the Coroner's Act.⁴ The only records that have been filed are the view reports mentioned above.

III. DISCUSSION

The parties agree that the issue the court must resolve is whether the provisions of the Coroner's Act set forth a non-discretionary, statutory duty on the part of the Coroner to deposit with the Prothonotary his official records and papers including autopsy reports, toxicology reports, and related reports. Plaintiffs argue it does. The Coroner raises three direct objections in response: (1) the disclosure of "private and confidential medical and psychiatric data in autopsy reports" is in contravention of the recently enacted Case Records Public Access Policy of the Unified Judicial System, 204 Pa. Code § 213.81, Section 1.0(K); (2) plaintiffs, as media entities, are not appropriate recipients of such information; and (3) such disclosure would violate statutory and constitutional privacy guarantees and contravene public policy. The court will review each of the Coroner's objections to disclosure in the order raised.

At the outset, it is important to recognize that the Pennsylvania Supreme Court has spoken clearly on the duties of a coroner under the Coroner's Act prior to its amendment in December 2018. Though the Coroner's Act has been amended, the observations and holdings of the Supreme Court in Penn Jersey Advance, Inc. v. Grim, 962 A.2d 632 (Pa. 2009), remain

⁴ Prior to December 28, 2018, plaintiffs would have needed to request to see the records pursuant to Section 1251.

binding on this court. Similar to the present case, in Penn Jersey, newspapers filed a mandamus action seeking to compel the Lehigh County Coroner to deposit all of his official records and papers, including an autopsy report, related to the death of a police officer. The Supreme Court squarely addressed Section 1251, the predecessor of Section 1236-B,⁵ to determine whether to grant the mandamus.

The Supreme Court held that autopsy reports are official records and accordingly must be deposited with the Prothonotary as directed by statute. Neither party here argues that the reports are not official, but the Pennsylvania State Coroner's Associations posits that a different statute, 16 P.S. §405, would allow the prothonotary and the coroner to agree that the records be kept at the coroner's office instead. State Coroner Br. 8. But, 16 P.S. §405, deals with the storage of county records, and gives county commissioners (not prothonotaries) the power to contract with other persons for storage/retrieval/transmission of county records. Section 405 does not mention the coroner at all and the court finds this argument unpersuasive. The question has been answered: the duty to deposit the records is not discretionary but is obligatory. The Supreme Court went further in its holding, though, and explained:

In reaching this holding, we have not ignored the concern . . . that, if autopsy reports are defined as "official records," the public may be able to gain access to material such as potentially privileged information, related to the decedent's medical history and graphic photographs taken during the autopsy. . . . [W]e note that [this] concern, while certainly legitimate, does not justify reclassifying autopsy reports from "official" records to "unofficial" ones. As we noted in *Buchanan*, trial courts are adequately equipped and authorized to protect autopsy reports from disclosure based on "judicial discretion and necessity" under appropriate circumstances. This inherent power provides trial courts with the means to limit public access to autopsy reports (or portions thereof) based on privacy or privilege concerns where warranted. For example, if graphic photographs or items of

⁵ Section 1251 and Section 1236-B contain identical language, except that Section 1236-B limits the disclosure to counties of the third, fourth, fifth, sixth, seventh, and eighth classes.

information subject to a claim of privilege are included as part of an autopsy report, anyone seeking to protect an interest in such material, and having standing to do so, can seek appropriate relief from the trial court.

Penn Jersey, 962 A.2d at 636 (citations and quotations omitted). See also Hearst Television, Inc. v. Norris, 54 A.3d 23, 32 (Pa. 2012) (“Section 1236.1(c) [now Section 1236-B] allows the coroner to charge fees for records, but does not afford the coroner any discretion with regard to releasing such records.”). The Coroner argues that since Penn Jersey was decided, various new regulations and case law call into question the mandatory duty of the Coroner.

The Coroner cites to no case law directly supporting his position that he is prohibited from depositing the records identified by Section 1236-B. Instead, the Coroner’s real focus is on the phrase “for the inspection of all persons interested therein.” The Coroner seeks to control who inspects the records after they are deposited with the Prothonotary. However, what happens after the Coroner fulfils his statutory duty by depositing the records is not within the statutory purview of the Coroner. Moreover, the Coroner has no standing to assert potential rights of parties who are not presently before the court.

A. The Unified Judicial System’s Public Access Policy

On January 6, 2018, in an effort to safeguard private information, the Supreme Court of Pennsylvania implemented the Case Records Public Access Policy of the United Judicial System of Pennsylvania, 204 Pa. Code § 213.81 (“Public Access Policy”). This policy is not a creature of the legislative branch but was promulgated by the Supreme Court which also decided Penn Jersey, holding that a coroner’s autopsy reports are official records that must be deposited with

the Prothonotary.⁶ While the other arguments of the Coroner were directly addressed by Penn Jersey, the Public Access Policy was not in effect when Penn Jersey was decided.

The Public Access Policy, as evidenced by its title, applies to public access to “case records.” Case records are defined as:

(1) documents for any case filed with, accepted and maintained by a court or custodian; (2) dockets, indices, and documents (such as orders, opinions, judgments, decrees) for any case created and maintained by a court or custodian. This term does not include notes, memoranda, correspondence, drafts, worksheets, and work product of judges and court personnel. Unless otherwise provided in this policy, this definition applies equally to case records maintained in paper and electronic formats.

204 Pa. Code § 213.81, Section 1.0(B). The Coroner’s records are simply not “case records” according to this definition. Nor are they filed “for any case” as there would be no civil case maintained by the Prothonotary related to any such filing—they instead are deposited in the Prothonotary’s office by statutory mandate.

Though the Supreme Court would be well aware of its case law in which it held that the records of a coroner are public and must be deposited each year with the Prothonotary, nowhere in the Public Access Policy does the Supreme Court reference reports of coroners. Perhaps most illuminating on this issue is the absence of any mention of records sought by plaintiffs in the Public Access Policy’s list of records where public access is limited, which relies on case law and statutory law and which was compiled by the Administrative Office of the Pennsylvania Courts. The list was updated as recently as August 16, 2019. See 49 Pa.B. 4544.

As explained in Section III.C below, while privacy and public-policy concerns are legitimate and important, the Supreme Court has recognized the ability of the trial courts to

⁶ See Pa. Const. Art. V § 10(c) (“The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts . . .”); 42 Pa.C.S.A. § 1702.

protect such interests “under appropriate circumstances” when a party has standing to assert such a privilege or concern. The Supreme Court, though having had the opportunity to specifically address reports of coroners in the Public Access Policy and its 2018 amendments, has chosen not to do so, nor has it addressed coroner records in recently proposed amendments. See 2019 PA Reg. Text 527046.

B. Coroner’s Act’s Definition of “All Persons Interested Therein”

The Coroner asserts that the phrase “for the inspection of all persons interested therein,” contained in Section 1236-B of the Coroner’s Act, excludes news organizations like plaintiffs.

Furthermore, the phrase “for the inspection of all persons interested therein” raised no concerns with the Supreme Court in Penn Jersey and this court sees no reason to prohibit disclosure based upon it. Media parties in Penn Jersey similar to those in the present case were seeking disclosure and a coroner was refusing to provide records. There is certainly a legitimate interest, as asserted by plaintiffs, in reviewing records to determine the effect of opioids on deaths in Lancaster County.

The parties agree that in order to view the Coroner’s records deposited with the Prothonotary, a person would need an “interest” in the records, but disagree on what is meant by “interest.” While the Supreme Court in Penn Jersey did not specifically address what is meant by “interested,” it did state that trial courts are able to restrict “public access” to a coroner’s records where warranted. Penn Jersey, 962 A.3d at 637. Clearly, the Supreme Court interpreted “persons interested” to refer to any persons who would like to view the records, rather than the Coroner’s more narrow reading as “a specific segment of the population benefitting from the action of the coroner.” Coroner br. 6. Plaintiffs agree that there may exist exceptions to the disclosure of certain records, but such exceptions are best dealt with on a case-by-case basis.

The case-by-case approach is one directed by the Pennsylvania Supreme Court. See Penn Jersey, 962 A.3d at 636.

C. Statutory and Constitutional Privacy Guarantees and Public Policy

The Coroner and his amici contend that various constitutional and statutory privacy protections prohibit the Coroner from complying with his statutory duty under the Coroner's Act, and public policy also prohibits him from fulfilling this obligation. For the Coroner's constitutional defense, he relies on Pa. State Educ. Ass'n v. Dep't of Cmty. & Econ. Dev., 148 A.3d 142 (Pa. 2016) (hereinafter "PSEA"). The Coroner then asserts that along with the Public Access Policy discussed above, the Vital Statistics Act prohibits disclosure; and finally argues that it is against public policy to deposit the records.

The PSEA case involved a request for injunctive relief to prevent the release of home addresses of public-school employees, and a declaration that the home addresses of public-school employees are exempt from public access. The Pennsylvania Supreme Court described the case as involving "an examination of the scope of the 'personal security' exception to disclosure under the Right to Know Law" and reiterated that "certain types of information, including home addresses, implicated the right to privacy under Article 1, Section 1 of the Pennsylvania Constitution and thus required a balancing to determine whether the right to privacy outweighs the public's interest in dissemination." PSEA, 148 A.3d at 144. The Court reaffirmed this analysis when considering privacy rights and public disclosure. See id.

However, there 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. Under the Restatement (Second) of Torts § 652I:

The right protected by the action for invasion of privacy is a personal right, peculiar to the individual whose privacy is invaded. The cause of action is not assignable, and it cannot be maintained by other persons such as members of the individual's family, unless their own privacy is invaded along with his.

Restatement (Second) of Torts § 652I(a). Furthermore, the right to privacy under the Pennsylvania Constitution is a “personal right.”⁷ PSEA, 148 A.3d at 161 (Wecht, J., concurring) (“We have recognized that the personal right to privacy emanating from Article 1, Section 1 protects one's home address or other personal information from being disclosed by state actors unless the public interest in the dissemination of that information outweighs the potential invasion of any privacy interest.”); see also Clayman v. Bernstein, 38 Pa. D. & C. 543, 548 (C.P. Phila. 1955) (quoting 1 Cooley on Torts (4th ed.) 449, § 135) (“It may be conceded that [the right to privacy] is a personal right and ‘One has no right of privacy with respect to his relatives, living or dead.’”).

Next, the Coroner contends that an example of records not available to the public is information gathered under the Vital Statistics Law, 35 P.S. § 450.101 et seq. Relying on the definition of “vital statistics” as including a “compilation” of data, the Coroner concludes that a coroner’s records are vital statistics and thus prohibited from production. However, as explained by the Coroner’s amicus curiae, Pennsylvania State Coroner’s Association, “the autopsy is the external and internal examination of the deceased” State Coroner Br. 9. Despite the assertions of the Coroner, an autopsy is not a “compilation” governed by the Vital Statistics Act. Moreover, the Vital Statistics Act’s prohibition of the disclosure of records is limited to records

⁷ “In the absence of statute, the action for the invasion of privacy cannot be maintained after the death of the individual whose privacy is invaded.” Restatement (Second) of Torts § 652I(b).

of the Department of Health and records “created under” the Vital Statistics Act. 35 P.S. § 450.801. The Vital Statistics Act mandates only that when a case has been referred to a coroner, the coroner “shall make an immediate investigation and shall supply the necessary data, including the medical certification of the death.” 35 P.S. § 450.503. As the records sought by plaintiffs were not “created under” the Vital Statistics Act or held by the Department of Health, the disclosure of these records is not prohibited under the Vital Statistics Act.

The Coroner also contends that the language in the Vital Statistics Act⁸ should inform this court’s interpretation of the “persons interested therein” under the Coroner’s Act. The court is not persuaded by this argument.⁹ The Coroner’s Act does not make the Coroner the guardian of distribution of the records he maintains as an elected official. Instead, the legislature, rightly or wrongly, has directed the Coroner to deposit all official records and papers for the preceding year in the Office of the Prothonotary. Once the Coroner deposits such records they are “for the inspection of all persons interested therein.” Should any controversy arise as to disclosure once the Coroner deposits the records, the trial courts are the ones equipped and authorized to:

protect autopsy reports from disclosure based on “judicial discretion and necessity” under appropriate circumstances. This inherent power provides trial courts with the means to limit public access to autopsy reports (or portions thereof) based on privacy or privilege concerns where warranted. For example, if graphic photographs or items of information subject to a claim of privilege are included as part of an autopsy report, anyone seeking to protect an interest in such material, and having standing to do so, can seek appropriate relief from the trial court.

Penn Jersey, 962 A.2d at 636 (emphasis added) (quoting Commonwealth ex rel. Dist. Attorney, 800 A.2d 568, 575 (Pa. 2005)). The standing mentioned by the Supreme Court may also

⁸ The Vital Statistics Act provides that vital statistics records should only be disclosed where it is found that the applicant “has a direct interest in the content of the record and that the information contained therein is necessary for the determination of personal or property rights.” 35 P.S. § 450.804.

⁹ See Section III.B above for a more in-depth discussion of “persons interested therein.”

manifest where information is gathered in criminal investigations and governed by the Criminal History Records Information Act, 18 Pa.C.S.A. § 9101 et seq., but the challenge would need to be asserted by the Office of the District Attorney on a case-by-case basis, not as the blanket prohibition sought by the Coroner here.

The Coroner and his amici also make an overarching public-policy argument, though not specifically articulated, that the legislature is wrong and its mandate on coroners to deposit records is misguided. This argument is one better taken up with the legislature, which amended the Coroner's Act less than one year ago. It is not the role of the court to substitute its judgment for that of the legislature. The legislature is presumed to know about the current body of case law. Furthermore, "it is well-settled that if the legislature in a later statute uses the same language used in a prior statute which has been construed by the courts, there is a presumption that the repeated language is to be interpreted in the same manner as such language had previously interpreted when the court construed the earlier statute." PSEA, 148 A.3d at 157; see also 1 Pa.C.S.A. § 1922(4). This court must construe the December 2018 statutory amendments to the Coroner's Act as consistent with previous court interpretations and with the Pennsylvania Constitution, and must presume that the legislature did not intend to violate the Constitution of this Commonwealth when enacting them. 1 Pa.C.S.A. § 1922(3).

Despite the conclusion of this court that the Coroner is obligated to deposit his records with the Prothonotary as directed by statute, the current statutory scheme does create procedural due process concerns. Section 1236-B of the Coroner's Act provides a 30-day delay between the end of the prior year and when the Coroner must deposit his records. As plaintiffs point out, this is adequate time for an interested party to raise an issue with the court regarding the availability of the records. Left unaddressed by plaintiffs, though, is how a citizen is expected to know that

the intrusive reports of the Coroner, created as a result of the death of a loved one, are mandated by law to be deposited with the Prothonotary, and that an interested party may petition the court to seal or otherwise restrict from access certain information. The Court in PSEA noted an “almost complete lack of procedural due process for individuals whose personal information is subject to disclosure.” PSEA, 148 A.3d at 158. While the individual whose information is subject to disclosure under the Coroner’s Act is deceased, there still may be rights that a third party could raise, though the court expresses no opinion on this here.¹⁰ While such privacy and public policy concerns are legitimate and important, the Supreme Court has recognized the ability of the trial courts to protect such interests “under appropriate circumstances” when a party has standing to assert such a privilege or concern. The Coroner does not have standing to assert the potential privacy concerns of a past or future decedent or that of his or her family. “[A]nyone seeking to protect an interest in such material, and having standing to do so, can seek appropriate relief from the trial court.” Penn Jersey, 962 A.2d at 637. This is not the situation in the current case—no third parties with potentially enforceable rights are before the court.

An appropriate order follows.

¹⁰ It is also unclear at what point a district attorney’s office is to seek a protective order where public access to a coroner’s autopsy report might harm an ongoing criminal investigation.

COUNTY OF LANCASTER,	:
Petitioner,	:
	: No. CI-18-09547
v.	: LEAD CASE
	:
CARTER WALKER and LNP MEDIA GROUP,	: PETITION FOR REVIEW PURSUANT TO
	: THE PENNSYLVANIA RIGHT TO
Respondents.	: KNOW LAW
	:
COUNTY OF LANCASTER,	: Consolidated Case
Petitioner,	:
	: PETITION FOR REVIEW PURSUANT TO
v.	: THE PENNSYLVANIA RIGHT TO
	: KNOW LAW
BARBARA MILLER and PENNLIVE GROUP,	:
	:
Respondents.	:
	:
PA MEDIA GROUP	:
and	:
LNP MEDIA GROUP, INC.,	: Consolidated Case
Plaintiffs,	:
	: CIVIL ACTION—MANDAMUS
v.	:
	:
STEPHEN DIAMANTONI,	:
CORONER,	:
Defendant.	:

- 1

- a. deposit all of his official records and papers for each and every calendar year in which he has occupied the office of coroner with the Lancaster County Prothonotary within sixty (60) days from the date of this order;
- b. on or before January 30 of the year following each calendar year he remains in office deposit his official records and papers as required by 16 P.S. § 1236-B; and
- c. the records and papers deposited shall include autopsy reports, toxicology reports, inquests and other related documents pertaining to the actions completed by the Coroner's office as set forth under the Coroner's Act.
3. The petitions for review filed on April 25, 2018, and November 2, 2018, are DISMISSED as moot.

BY THE COURT:



LEONARD G. BROWN, III, JUDGE



ATTEST:


Deputy

Copies to: Craig J. Staudenmaier, Esquire *ESERVED*
✓ Christina L. Hausner, Esquire
✓ Susan M Shanaman, Esquire
Heather F. Gallagher, Esquire *ESERVED*
✓ Kurt Wimmer, Esquire
✓ Melissa Bevan Melewsy, Esquire
✓ Kyle Applegate, Esquire
✓ *JOSEPH D. BONN, ESQ.*