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

LANCASTER COUNTY OFFICE OF THE CORONER,	:	Nos. CI-24-00035
	:	CI-24-01347
<i>Petitioner,</i>	:	(Consolidated)
	:	
vs.	:	Judge Jeffery D. Wright
	:	
	:	
JACK PANYARD and	:	Memorandum of Law in Support of Petition
LANCASTERONLINE- LNP,	:	for Review of Final Determinations of the
<i>Respondent.</i>	:	Office of Open Records at Nos. AP 2023-2662
	:	& 2024-0181

**MEMORANDUM OF LAW IN SUPPORT OF
PETITIONER LANCASTER COUNTY OFFICE OF THE CORONER'S
PETITION FOR REVIEW**

TABLE OF CONTENTS

I.	BACKGROUND	5
A.	<i>Panyard I</i> Request.....	7
B.	<i>Panyard II</i> Request	9
II.	QUESTION PRESENTED	12
III.	LEGAL STANDARDS	12
IV.	SUMMARY OF ARGUMENT	13
V.	ARGUMENT	14
A.	Section 708(b)(20) of the RTKL does not mandate disclosure of the name of a minor decedent.....	16
B.	There is no conflict between the Coroner’s Act and the RTKL with respect to disclosure of these records	18
C.	The name of a deceased minor contained only in the Coroner’s Office’s investigative records is exempt under 708(b)(17)	20
D.	The name of a deceased minor contained only in the Coroner’s Office’s investigative records is exempt from disclosure under RTKL Section 708(b)(30)	22
VI.	CONCLUSION	24
Appendix A	<i>Jack Panyard and LancasterOnline – LNP v. Lancaster County,</i> OOR Docket No. AP 2023-2662, Final Determination dated Dec. 4, 2023	
Appendix B	<i>Jack Panyard and LancasterOnline– LNP v. Lancaster County,</i> OOR Docket No. AP 2024-0181, Final Determination dated Feb. 12, 2024	
Appendix C	Referenced OOR Final Determinations in (1) <i>Walbert v. Chester Cnty.</i> , OOR Dkt. AP 2021-1308, Final Determination dated Aug. 5, 2021 and (2) <i>Morgan v. Chester Cnty.</i> , OOR Dkt. AP 2023-1105, Final Determination dated July 17, 2023	
Appendix D	Petitioner’s Reproduced Record	

TABLE OF AUTHORITIES

Cases

<i>Allegheny County v. Hailer</i> , 298 A.3d 476 (Pa. Cmwlth. 2023)	15, 18, 19
<i>Bowling v. Office of Open Records</i> , 75 A.3d 453 (Pa. 2013)	12
<i>Campbell v. Pa. Interscholastic Athletic Ass’n</i> , 268 A.3d 502 (Pa. Cmwlth. 2021), appeal partially granted, 280 A.3d 870 (Pa. 2022)	12
<i>McGowan v. Pa. Dep’t of Env’tl. Prot.</i> , 103 A.3d 374 (Pa. Cmwlth. 2014)	13
<i>Moore v. Office of Open Records</i> , 992 A.2d 907 (Pa. Cmwlth. 2010)	16, 22
<i>Office of the Governor v. Scolforo</i> , 65 A.3d 1095 (Pa. Cmwlth. 2013)	13
<i>Pennsylvania State Police v. Grove</i> , 119 A.3d 1102 (Pa. Cmwlth. 2015), rev’d in part, 161 A.3d 877 (Pa. 2017)	20
<i>Scott v. Delaware Valley Reg’l Planning Comm’n</i> , 56 A.3d 40 (Pa. Cmwlth. 2012)	12
<i>Sherry v. Radnor Twp. Sch. Dist.</i> , 20 A.3d 515 (Pa. Cmwlth. 2011)	12, 22
<i>Smith Butz, LLC v. Pa. Dep’t of Env’tl. Prot.</i> , 142 A.3d 941 (Pa. Cmwlth. 2016)	16

Administrative Decisions

<i>Morgan v. Chester Cnty.</i> , OOR Dkt. AP 2023-1105, Final Determination dated July 17, 2023	19
<i>Walbert v. Chester Cnty.</i> , OOR Dkt. AP 2021-1308, Final Determination dated Aug. 5, 2021	19, 20, 21

Statutes

Pennsylvania Coroner's Act,

16 P.S. §§ 1201-B-1252-B.....	passim
16 P.S. § 1218-B	21
16 P.S. § 1219-B	21
16 P.S. § 1236-B	11, 15, 19
16 P.S. § 1252-B	passim
Pennsylvania Right to Know Law,	
65 P.S. §§ 67.101-67.3104.....	passim
65 P.S. § 67.102	20
65 P.S. § 67.703	7
65 P.S. § 67.705	20
65 P.S. § 67.708	passim
65 P.S. § 67.3101.1	6

The Lancaster County Office of the Coroner (Coroner's Office) submits this memorandum of law in support of its Petition for Review of the Coroner's Office's denial of Mr. Jack Panyard and LancasterOnline – LNP (Requester)'s Right to Know Law (RTKL), 65 P.S. §§ 67.101-67.3104, requests for investigative records in possession of the Coroner's Office in *Jack Panyard and LancasterOnline – LNP v. Lancaster County*, OOR Docket No. AP 2023-2662, Final Determination dated Dec. 4, 2023 (*Panyard I* FD), attached as **Appendix A**, and *Jack Panyard and LancasterOnline– LNP v. Lancaster County*, OOR Docket No. AP 2024-0181, Final Determination dated Feb. 12, 2024 (*Panyard II* FD), attached as **Appendix B**.

I. BACKGROUND

These consolidated appeals challenge the Office of Open Records' direction that the names of two minor decedents contained in investigative records created and maintained by the Coroner's Office be publicly released. Under the RTKL, records in the possession of a local agency, such as the Coroner's Office, are presumed to be public unless they are (1) exempted by Section 708 of the RTKL, 65 P.S. § 67.708; (2) protected by privilege; or (3) exempted under any other Federal or State law or regulation or judicial order or decree, *id.* § 67.305. RTKL Section 708(b) provides 30 enumerated bases for the exemption of records from public access. *Id.* § 67.708(b). RTKL Section 708(e) requires that "in determining whether a record is exempt from access" under Section 708(b) "an agency shall consider and apply each exemption separately." *Id.* § 67.708(e). Two of those exemptions apply under the circumstances here to exempt the name of the deceased minors from disclosure. RTKL Section 708(b)(17) exempts from disclosure records of an agency "relating to a noncriminal investigation," including "[i]nvestigative materials, notes, correspondence and reports." *Id.* § 67.708(b)(17)(ii). RTKL Section 708(b)(30) exempts from disclosure a "record identifying the name [...] of a child 17 years of age or younger." *Id.* §

67.708(b)(30). The Coroner's Office denied both requests on the bases that the records responsive to Requester's request are exempt from disclosure under RTKL Section 708(b)(17), as the only responsive records in existence at the time of the request relate to the Coroner's noncriminal investigation, and under RTKL Section 708(b)(30), because the records disclose the name of a minor.

The RTKL, including its exemptions, do not apply if any of its provisions granting or restricting access to the requested record conflict with other federal or state laws. 65 P.S. § 67.3101.1. The Requester argued before OOR that Section 1252-B of the Coroner's Act, 16 P.S. § 1252-B, is such a conflicting statute, in that it grants access to autopsy reports and other reports a coroner prepares, with the result that the RTKL exemptions do not apply, so that the names must be disclosed, even though the only records in existence that contained the names of the deceased minors at the time of the requests were the Coroner's investigative files. *See* (R. 9a (Requester's statement of support of *Panyard II* appeal), 44a (Requester's statement of support in *Panyard I* appeal)). Without addressing this argument, OOR relied on another RTKL exemption not raised by the Coroner, Section 708(b)(20), applicable to autopsy reports (which were not yet in existence at the time of these requests), as mandating disclosure of a decedent's name such that the RTKL's remaining exemptions cannot apply even where no official report made public under the Coroner's Act is implicated.¹

¹ Section 708(b)(20), 65 P.S. § 67.708(b)(20), as written protects various autopsy reports from disclosure. To the extent it purports to do so, Commonwealth Court ruled in *Allegheny County v. Hailer*, 298 A.3d 476 (Pa. Cmwlth. 2023) that Section 708(b)(20) conflicts with and is overridden by Section 1252-B of the Coroner's Act, which provides access to such reports upon payment of a fee. However, Section 708(b)(20) also provides that "[t]his exception [i.e., exempting autopsy reports from disclosure] shall not limit the reporting of the name of the deceased individual..." In the two appeals now before this Court, OOR interpreted this proviso to Section 708(b)(20) relating to the name of the deceased to mean that the decedent's name must be disclosed even if an autopsy report has not yet been created and the only place the name appears is in the coroner's investigative file.

The sole issue in this appeal is whether the name of a deceased minor is exempt from disclosure under the RTKL when at the time of the request the only place the name appears in the coroner's records is in the coroner's investigative file and where the coroner has yet to prepare an autopsy report, toxicology report, inquisition or coroner's report, cremation or disposition authorization, or any other coroner report or coroner work product. Petitioner believes this to be an issue of first impression.

A. *Panyard I* Request

On October 23, 2023, the Requester submitted a request to the County Coroner's Office seeking "the name of the 3-year-old who died of a gunshot wound to the head at 8:07 pm [on] [October] 20, 2023 at [address omitted] from the [C]ounty [C]oroner's office." (R. 36a-37a). On October 30, 2023, the County Coroner's Office denied the request on the bases that the request was not sufficiently specific, 65 P.S. § 67.703, would identify the name of a minor, 65 P.S. § 67.708(b)(30), sought records relating to a criminal investigation, 65 P.S. § 67.708(b)(16)(ii), and sought records relating to a noncriminal investigation, 65 P.S. § 67.708(b)(17). (R. 38a-39a).²

On November 3, 2023, the Requester appealed to OOR challenging the County Coroner Office's denial of the request, arguing that the name of a deceased individual is subject to disclosure without consideration of age. (R. 40a-45a). On November 16, 2023, the County Coroner's Office submitted a position statement and attestation of Stephen Diamantoni, M.D. (*Panyard I* Diamantoni Affidavit), the County Coroner. (R. 54a-58a). The *Panyard I* Diamantoni Affidavit states, in relevant part, that:

3. In my capacity as the Coroner, I am aware of the various types of investigations and reports completed by the

² The Coroner's Office's Reproduced Record (R.) cited herein is attached as **Appendix D**.

Lancaster County Coroner's Office, as well as the Office's record retention policies.

4. The Coroner's Office is tasked with providing medical examinations and other investigations into the cause of death of an individual and then preparing reports on those examinations and investigations.

[...]

11. The Lancaster County Coroner's Office conducted an investigation into the cause of death of a three-year old minor child which occurred on approximately October 20, 2023.

[...]

14. At the time of the October 23, 2023 request, the Lancaster County Coroner's Office's investigation into the cause of death of this minor had not yet been completed and there were no responsive records to the request.

(R. 57a-58a). On November 29, 2023, in response to a request for clarification made by OOR, the County Coroner's Office submitted a second affidavit of Stephen Diamantoni, M.D. stating that "At the time of the October 23, 2023 request, the County Coroner Office did not have any records that contained the requested information." (R. 59a, 61a).

On December 4, 2023, OOR issued a final determination that directs the County Coroner's Office "to provide the requested name" to the Requester based on OOR's conclusion that "the RTKL is clear that the name of a deceased individual is public, without consideration to the type of record the information may be contained within, 65 P.S. § 67.708(b)(20)." *Panyard I* FD at 7. In so finding, OOR rejected the County Coroner's Office's assertion that the name of a deceased minor is exempt under 65 P.S. § 67.708(b)(30), reasoning that "such an interpretation is inconsistent with the Coroner's Act, which mandates disclosure of coroner records without consideration of the decedent's age." *Panyard I* FD at 7 n.2. OOR did not address the County Coroner Office's argument that records sought by the request relate to the Coroner's investigation

into the death of a minor and therefore are records related to a non-criminal investigation exempt from disclosure under RTKL Section 708(b)(17).

B. *Panyard II* Request

On December 27, 2024, the Requester submitted a request seeking the release of “the name of the 11-year-old girl who died in a car crash on the 6000 block of Old Philadelphia Pike in Salisbury Township at 10:42 p.m., Dec. 24, 2023 from the Lancaster County Coroner’s Office.” (R. 2a-3a). The Coroner’s Office conducted a search and identified responsive records, consisting of “handwritten notes, emails, voicemails, texts, and Case Management System data entries contained within the Coroner’s Office’s investigative files pertaining to the Coroner’s investigation into the cause and manner of death of the minor described in the request.” (R. 32a, ¶ 10 (*Panyard II* Diamontoni Affidavit)). The Coroner’s Office denied the request on the basis that the request seeks records³ that are exempt from disclosure under Sections 708(b)(17) and 708(b)(30) of the RTKL. (R. 5a). The Requester appealed the Coroner’s Office’s denial to OOR on January 16, 2024, arguing that no RTKL exemptions apply because the Coroner’s Act, 16 P.S. § 1252-B, makes such information public. (R. 6a-10a).

On January 26, 2024, the County Coroner’s Office submitted to OOR a position statement and affidavit of Stephen Diamantoni, M.D., the County Coroner, (*Panyard II*

³ The Coroner’s Office explained in its January 10, 2024 response that the Coroner’s Office interpreted the request as one seeking *records* that contain the information requested. (R. 5a). In its position statement submitted to OOR, the Coroner’s Office pointed out that to the extent the request seeks disclosure of information, not records, the request was and is moot because it seeks information that is already publicly available and known to Requester. (R. 21a, n.1).

Diamontoni Affidavit) together with an exemption log. (R. 20a-33a). The Diamantoni

Attestation states, in relevant part, that:

2. For most of my tenure as Coroner, Lancaster County was a Third Class County; Lancaster County became a Second Class A County effective January 1, 2022.

3. In my capacity as the Coroner, I am aware of the various types of investigations and reports completed by the Lancaster County Coroner's Office, as well as the Office's record retention policies.

[...]

5. At the time of the request, the Lancaster County Coroner's Office's had commenced an investigation into the cause of death of this minor but the investigation had not yet been completed and no reports or other official documents had been prepared. Accordingly, I determined that the request did not implicate any autopsy, toxicology, or other reports, which are created by the Coroner's Office after the completion of an investigation and available from the Coroner's Office for a fee.

10. Based on a thorough search of records in possession of the Coroner's Office containing the name of the minor described in the request, I identified 8⁴ Responsive Records consisting of handwritten notes, emails, voicemails, texts, and Case Management System data entries contained within the Coroner's Office's investigative files pertaining to the Coroner's investigation into the cause and manner of death of the minor described in the request ("Responsive Records").

11. Each of the Responsive Records in existence as of the time of the request is identified and described in the Exemption Log prepared under my supervision and control that is attached to my Office's Position Statement filed with the Office of Open Records as Exhibit B.

12. I determined that all of the Responsive Records are non- criminal investigative records exempt from disclosure

⁴ As set forth on the exemption log, there were 6, not 8, Responsive Records. *Panyard II* FD at 2 n.2.

under Section 708(b)(17) of the RTKL because the records consist of documents in the form of investigatory notes and communications that were created, received, and/or maintained by myself and employees of the Coroner's Office's for the purpose of my Office's investigation into the cause and manner of death of the child described in the request.

13. I additionally determined that because release of the Responsive Records would identify the name of a minor under the age of 17, the Responsive Records are exempt from disclosure under Section 708(b)(30) of the RTKL.

14. During my years as Coroner when Lancaster was a Third Class County and subject to the requirement now contained in Section 1236-B of the Coroner's Act, requiring the coroner to deposit all official records and papers for the preceding year in the Office of the Prothonotary within 30 days of the close of that year, I never deposited investigative files that contained the types of records set forth in the Exemption Log with the County Prothonotary, because I never considered the investigative file for a decedent to be part of the Coroner's Office's official records and papers.

(R. 30-32a).

On February 12, 2024, OOR issued a Final Determination that directs the County Coroner's Office "to provide the requested name" to the Requester. *Panyard II* FD at 5. In directing production of the requested name, OOR acknowledged that, as of the time of the Request, the minor decedent's name was found only in records contained in the Coroner's Office's investigative file, and that "internal investigation notes and communications need not be provided under Section 708(b)(17) of the RTKL." *Panyard II* FD at 4. However, relying on its previous decision in *Panyard I*, OOR concluded that "[t]he RTKL contemplates that a coroner will report "the name of a deceased individual no matter where that piece of information is ultimately contained. 65 P.S. § 67.708(b)(20)." *Panyard II* FD at 4.

II. QUESTION PRESENTED

Where a requester seeks the name of a deceased minor at a point in time before the coroner prepares an autopsy report, toxicology report, inquisition or coroner's report, cremation or disposition authorization, or any other coroner report or coroner work product, and at the time of the request the only place the name appears in the coroner's records is in the coroner's investigative file, is the name of the deceased exempt from disclosure under the RTKL?

Suggested answer: Yes, the name is exempt; however, OOR ordered the names of the deceased minors at issue to be released.

III. LEGAL STANDARDS

This Court is not bound by OOR's factual findings and need not accord deference to them. *See Scott v. Delaware Valley Reg'l Planning Comm'n*, 56 A.3d 40, 43 n.3 (Pa. Cmwlth. 2012). The standard of review is de novo; the scope of review is plenary. *Bowling v. Office of Open Records*, 75 A.3d 453, 476-77 (Pa. 2013).

As an agency subject to the RTKL, the Coroner's 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); *see Campbell v. Pa. Interscholastic Athletic Ass'n*, 268 A.3d 502 (Pa. Cmwlth. 2021) (noting that an agency need only meet its burden by a preponderance of the evidence, the lowest evidentiary standard, which is tantamount to a "more likely than not" inquiry), *appeal partially granted*, 280 A.3d 870 (Pa. 2022). An affidavit made under penalty of perjury is competent evidence to sustain an agency's burden of proof under the RTKL. *See, e.g., Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Cmwlth. 2011). Absent evidence that the agency has acted in bad faith, "the averments in [the affidavits] should be accepted as true." *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103

A.3d 374, 382-83 (Pa. Cmwlth. 2014), *citing Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Cmwlth. 2013).

IV. SUMMARY OF ARGUMENT

This case arises from OOR's direction that the Coroner's Office disclose the names of minor decedents when the only Coroner's Office's records in existence at the time of the requests were the Coroner's Office's investigative files.

The exemptions provided under RTKL Section 708(b)(17), which exempts non-criminal investigative records from disclosure, and RTKL Section 708(b)(30), which exempts records revealing the name of a minor under the age of 18, each provide an exemption that applies to the records in existence at the time of the requests. OOR's inquiry should have ended there. However, OOR improperly invoked and misinterpreted Section 708(b)(20) of the RTKL as requiring the Coroner's Office to release the names of the decedents regardless of the applicability of the RTKL's exemptions for investigative records and those disclosing the name of a minor. Significantly, Section 708(b)(20)'s disclosure provision is only triggered where, unlike here, an official autopsy report is in existence. To the extent that RTKL Section 708(b)(20) is in conflict with the Coroner's Act, which mandates the disclosure of certain official coroner reports including autopsy records, that conflict is not relevant here as those official reports under the Coroner's Act were not in existence at the time of the requests. Nonetheless, OOR expanded the limited proviso contained in Section 708(b)(20)'s protection of autopsy reports – "[t]his exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death" – to hold here that the name a deceased individual is public such that the Coroner's Office is foreclosed from asserting any of the remaining RTKL exemptions, including Section 708(b)(17)'s protection of investigation records and Section 708(b)(30)'s protection of personal information of a minor.

If not for this error, OOR would have found that at the time of these requests, the information sought was only present in those investigative records created and maintained by the Coroner's Office as part of the Coroner's Office's statutory duty to investigate deaths in the county. Therefore, Section 708(b)(17)'s exemption of noncriminal investigative records applies to the responsive records and information contained therein. Moreover, as no official report subject to disclosure under the Coroner's Act was in existence at the time of the request, there is no conflict between Section 708(b)(30) of the RTKL, which protects records containing the personal information of a minor from release, and the Coroner's Act, which mandates disclosure of certain official records, not in existence at the time of these requests, that contain such information.

The records here are exempt from disclosure under the RTKL. This Court should reverse OOR and affirm the Coroner's Office's denial of the requests.

V. ARGUMENT

This case involves RTKL requests seeking the names of minor decedents that at the time of the requests were contained only in the Coroner's Office's investigative records, records which are exempt from disclosure under RTKL Sections 708(b)(17) and 708(b)(30). In directing the Coroner's Office to release the minor decedents' names, OOR premised its decision on Section 708(b)(20) of the RTKL without addressing Requester's argument that the records are public by virtue of the Coroner's Act. OOR misinterprets Section 708(b)(20) of the RTKL. The Requester, for his part, reads Section 1252-B of the Coroner's Act too broadly. Neither requires disclosure of the name of a deceased minor contained only in the Coroner's investigative file.

The exemption for autopsy records, RTKL Section 708(b)(20), does not apply, but even if so, could not limit the applicability of RTKL Sections 708(b)(17) or (30) of the RTKL because Section 708(b)(20)'s allowance of disclosure of the decedent's name: (1) presupposes the

existence of an autopsy report, which had not been prepared as of the time of the request; and (2) is overridden by the express and specific exemption in RTKL Section 708(b)(30) that protects the names of minors under the age of 18.

Nor does Section 1252-B of the Coroner's Act conflict with and override the RTKL under the facts presented here. Interpreting Section 1252-B in *Allegheny County v. Hailer*, 298 A.3d 476 (Pa. Cmwlth. 2023) in the context of a newspaper's RTKL request for autopsy and toxicology reports, the Commonwealth Court reversed the trial court's decision that such reports are only available to nongovernmental agencies seeking information for purposes of investigating insurance or liability claims. Observing that "Section 1252-B is, essentially, a fee schedule that establishes the costs to be collected for *coroner reports*," *id.* at 481 (emphasis added), the court concluded that such reports are available generally in exchange for a fee, and that availability is not limited to nongovernmental agencies seeking information for purposes of investigating insurance or liability claims. As support for its conclusion that all such reports are public, the court also relied on Section 1236-B of the Coroner's Act, 16 P.S. § 1236-B, which requires that coroners in third through eighth class counties⁵ must deposit all of their "official records" for the preceding year with the county prothonotary within 30 days of the year end. *Id.* at 481-482. In other words, the Coroner's Act's conflicts with the RTKL only to the extent that the RTKL exempts from disclosure formal Coroner reports specifically made public under Coroner's Act – i.e., an autopsy report, toxicology report, inquisition or coroner's report, cremation or disposition authorization. A coroner's noncriminal investigative file is not part of the "official record" that a coroner in a third class county deposits

⁵ As of 2022, Lancaster County became a second class A county, so is no longer subject to Section 1236-B's requirements. However, as set forth in his affidavit in *Panyard II*, Dr. Diamantoni served as the Lancaster County Coroner when Lancaster County was a third class county subject to Section 1236-B's requirements, and so is familiar with what is and is not an "official record" that must be deposited with the prothonotary. (R. 30a ¶¶ 2-3).

with the county prothonotary under Section 1236-B of the Coroner's Act, as Dr. Diamantoni explained in his affidavits. *See* (R. 30a, 32a ¶¶ 2, 10 (*Panyard II* Diamontoni Affidavit); R. 57a-58a ¶¶ 4-9 (*Panyard I* Diamontoni Affidavit)). The official reports deemed public under the Coroner's Act were not in existence at the time of the requests and are therefore not relevant to these appeals. *See Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Cmwlth. 2010) (the standard under Section 705 of the RTKL is "whether such a record is in existence and in possession of the Commonwealth agency *at the time of its right-to-know request*." (emphasis added); *see also, Smith Butz, LLC v. Pa. Dep't of Envtl. Prot.*, 142 A.3d 941, 945 (Pa. Cmwlth. 2016) (after a RTKL request is submitted, the requester may not expand or modify the request on appeal).

Therefore, the Coroner's Act does not override the exemption in Section 708(b)(17) that protects a noncriminal investigation records, and it does not override Section 708(b)(30)'s protection of a minor's name where the only place that name appears in a coroner's records is the coroner's investigative file.

A. Section 708(b)(20) of the RTKL does not mandate disclosure of the name of a minor decedent

The RTKL's autopsy record exemption, Section 708(b)(20), does not require the Coroner's Office to report "'the name of the deceased individual,' no matter where that piece of information is ultimately contained" or otherwise limit the applicability of Sections 708(b)(17) or (30) of the RTKL. Section 708(b)(20) provides:

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

examiner. This exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death.

65 P.S. § 67.708(b)(20). The Responsive Records at issue here do not include any “autopsy record” as defined by Section 708(b)(20). The Coroner’s Office did not list Section 708(b)(20) as a basis for denial to either of the requests. OOR nonetheless based both final determinations on Section 708(b)(20)’s proviso that “[t]his exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death.” OOR offers no support for its conclusion, and it finds no basis in the text.

RTKL Section 708(b)(20) is an exception that applies to autopsy reports. Its proviso necessarily applies to the exception from disclosure addressed in Section 708(b)(20): autopsy reports. OOR’s reliance on the proviso to mandate disclosure of a decedent’s name regardless of where it appears and even though no autopsy report is yet in existence, without consideration of whether such information is otherwise exempt under any other of the thirty exemptions available under RTKL Section 708(b), *Panyard II* FD at 4, directly contradicts RTKL Section 708(e)’s mandate that “[i]n determining whether a record is exempt from access under this section, an agency shall *consider and apply each exemption separately*,” 65 P.S. § 67.708(e).

OOR contends that its expansion of Section 708(b)(20) to foreclose the availability of Section 708(b)(17) under the RTKL is justified because “[o]therwise a coroner can simply withhold a name, without any time limitations, due to its relationship to the coroner’s noncriminal investigation and its inclusion within investigative records.” *Panyard II* FD at 4. As a matter of fact and of policy, OOR is wrong. Autopsy and toxicology reports are publicly available pursuant to Section 1252-B of the Coroner’s Act, such that the RTKL does not apply to those *official Coroner reports* subject to the Coroner’s Act. The records in this case are not those official Coroner reports made public by the Coroner’s Act; therefore, the RTKL and the exemptions contained therein apply

to the investigative records involved here. To be sure, under the current state of the law as articulated in *Allegheny County v. Hailer*, to the extent the 3-year old and 11-year old decedents' names appear in an autopsy, toxicology, or other report or "official record" of the Lancaster County Coroner, the names will be considered "public" and the cited RTKL exemptions will not apply to those records. But as of the time of the requests, no such reports or official records were in existence; the name appeared only in the Coroner's investigative file and the records in that file are indisputably exempt from disclosure under Section 708(b)(17) of the RTKL.

B. There is no conflict between the Coroner's Act and the RTKL with respect to disclosure of these records

In an argument raised but not adopted by OOR, Requester asserted that the Coroner's Act as interpreted by *Allegheny County v. Hailer* makes the requested minor decedents' names public in nature because, as provided in Sections 306 and 3101.1 of the RTKL, the access provisions of the RTKL and the Coroner's Act conflict, with the result that the Coroner's Act takes precedence and the RTKL does not apply. But neither the Coroner's Act nor the court's interpretation and application of it to the records in existence at the time of these requests mandates that the names are public.

The Coroner's Act, 16 P.S. § 1252-B, limits its focus to formal reports produced by a coroner in carrying out official coroner duties:

The coroner shall charge and collect a fee of \$500 for an autopsy report, \$100 for a toxicology report, \$100 for an inquisition or coroner's report, \$50 for a cremation or disposition authorization and other fees as may be established from time to time for other reports or documents requested by nongovernmental agencies in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased. The fees collected under this section shall be accounted for and paid to the county treasurer in accordance with section 1760 and

shall be used to defray the expenses involved in the county complying with the training of coroners or coroner office personnel, as may be required or authorized by this or any other act.

16 P.S. § 1252-B. As is clear from the plain language of this section and OOR’s prior decisions interpreting the Coroner’s Act, communications related to the coroner’s non-criminal investigations are not one of the categories of records available for a fee under the Coroner’s Act. Therefore, disclosure of noncriminal investigative records or particular information recorded in them is not mandated by the Coroner’s Act, and thus remain subject to the RTKL and its exemptions. *See id.*; *see also, Walbert v. Chester Cnty.*, OOR Dkt. AP 2021-1308, Final Determination dated Aug. 5, 2021 (holding that “communications within the [Coroner’s] office and with the police constitute records related to a noncriminal investigation” exempt from disclosure under Section 708(b)(17)); *see also, Morgan v. Chester Cnty.*, OOR Dkt. AP 2023-1105, Final Determination dated July 17, 2023 (communications are not available for a fee under the Coroner’s Act).⁶

Nothing in Section 1252-B, Section 1236-B, or *Allegheny County v. Hailer* states or even implies that a coroner’s entire noncriminal investigation file is a “report” or an “official record.” Rather, as construed by the *Hailer* Court, Section 1252-B of the Coroner’s Act makes a coroner’s formal work product – autopsy reports, toxicology reports, inquisition or coroner’s reports, and other official reports produced by the Coroner – public. At the time of the requests no such reports existed. Instead, at the time of the requests, the information requested was contained only in the Coroner’s noncriminal investigative file, which is not implicated in Section 1252-B of the Coroner’s Act. Accordingly, there is no conflict between the Coroner’s Act and the RTKL with

⁶ Copies of OOR final determinations cited herein are attached as **Appendix C**.

respect to the Request, and the exemptions from disclosure under Section 708(b)(17) and (b)(30) of the RTKL apply and control.

C. The name of a deceased minor contained only in the Coroner's Office's investigative records is exempt under 708(b)(17)

The records⁷ at issue in these appeals consist of internal investigation notes and communications that are exempt under the RTKL. *See* RTKL Section 708(b)(17); *see, e.g., Walbert*, OOR Dkt. AP-2021-1308 *supra*. (holding that records in possession of the county coroner related to the coroner's investigation into the cause of death of the individual are noncriminal investigative records exempt from disclosure under RTKL Section 708(b)(17)) (internal citations omitted).⁸

For Section 708(b)(17) to apply, an agency must demonstrate that (1) “a systematic or searching inquiry, a detailed examination, or an official probe” was “conducted as part of an agency's official duties” and (2) that the records claimed exempt relate to such investigation. *Id.* The Coroner's official responsibilities with respect to circumstances of the death of the minor decedents at issue here satisfy this requirement.

⁷ OOR's conclusion that “the Request does not actually seek” communications and investigation notes, “but instead seeks a specific piece of information, a name,” *Panyard II* FD at 4, is contrary to the RTKL, which mandates information sought must exist within some form, must document a transaction or activity of the agency, and must only be provided to a requester in its existing form. *See* 65 P.S. § 67.102; *see also*, 65 P.S. § 67.705. As OOR recognized in *Panyard I*, a request for a name under the RTKL “implicitly seek[s] a record showing the information sought.” *Panyard I* FD at 4, citing *Eiland v. Dauphin County*, OOR Dkt. AP 2020-0293, 2020 PA O.O.R.D. LEXIS 718.

⁸ OOR's departure from this prior holding, that communications with the Coroner's Office related to the noncriminal investigation of a decedent are exempt from disclosure under Section 708(b)(17) of the RTKL without announcing its intent to do so was legal error. *Pennsylvania State Police v. Grove*, 119 A.3d 1102, 1106 (Pa. Cmwlth. 2015), *rev'd in part on other grounds*, 161 A.3d 877 (Pa. 2017) (holding that an agency's reliance on prior OOR decisions regarding the nature of records is “not misplaced” and, to the extent OOR intends to overrule its prior decision, it should announce its intention to diverge from precedent and permit the parties to submit additional evidence).

Section 1218 of the Coroner's Act provides that:

(a) Duty. The coroner having a view of the body shall investigate the facts and circumstances concerning a death that appears to have happened within the county, notwithstanding where the cause of the death may have occurred, for the purpose of determining whether or not an autopsy or inquest should be conducted [...]

(b) Purpose. The purpose of an investigation under subsection (a) shall be to determine:

(1) The cause and manner of the death.

(2) Whether or not there is sufficient reason for the coroner to believe that the death may have resulted from a criminal act or criminal neglect of a person other than the deceased.

16 P.S. § 1218-B. Furthermore, where additional investigation is necessary, Section 1219 of the Act provides that:

(a) Autopsy. If, after investigation, the coroner is unable to determine the cause and manner of death, the coroner shall perform or order an autopsy on the body.

(b) Inquest. If the coroner is unable to determine the cause and manner of death following an autopsy, the coroner may conduct an inquest upon a view of the body as provided by law. At the inquest, the coroner's duty shall be to:

(1) Ascertain the cause of death.

(2) Determine whether an individual other than the deceased was criminally responsible by act or neglect and the identity of the individual who may be responsible.

(3) Examine further evidence and witnesses regarding the cause of death.

16 P.S. § 1219-B. The OOR has previously found that this statutory authority grants coroners the ability to conduct noncriminal investigations. *See Walbert*, OOR Dkt. AP 2021-1308 *supra*. (finding that “communications within the office and with the police constitute records related to a noncriminal investigation authorized by the ... [Coroner's] Act”).

Here, Dr. Diamantoni's affidavits confirm that his investigations into the deaths of the minor decedents at issue were in fact "systematic or searching" inquiries that were conducted as part of his official duties. (R. 30a-32a ¶¶ 5-8, 10 (*Panyard II* Diamantoni Affidavit); R. 57a-58a ¶¶ 3-5, 11, 14 (*Panyard I* Diamantoni Affidavit)). Dr. Diamantoni's affidavits in *Panyard I* and *II* are sufficient to show that the records at issue reflect internal notes and correspondence related to the Coroner's noncriminal investigation into the cause and manner of death of the minors whose names are the subject of the requests, and are competent evidence to sustain the Coroner's burden of proof under the RTKL. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Cmwlth. 2011) (an affidavit is competent evidence to sustain an agency's burden of proof under the RTKL); *see also, Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Cmwlth. 2010) (same). As Dr. Diamantoni's affidavits demonstrate, the only responsive records as of the time of the request were records that were part of the Coroner's noncriminal investigative file. Therefore, the Section 708(b)(17) noncriminal investigation exemption is an independent and complete basis for denial of the Request.

D. The name of a deceased minor contained only in the Coroner's Office's investigative records is exempt from disclosure under RTKL Section 708(b)(30)

Section 708(b)(30) of the RTKL exempts from public disclosure: "(30) A record identifying the name, home address or date of birth of a child 17 years of age or younger." 65 P.S. § 67.708(b)(30). Accordingly, even if the Coroner's investigative records that were in existence at the time of the request somehow failed to qualify as records protected from disclosure under the Section 708(b)(17) noncriminal investigation exemption, Section 708(b)(30) would exempt from disclosure those portions of those records that contain the information requested – the 3-year old and 11-year old decedents' names.

OOR concludes that the proviso in Section 708(b)(20) that permits disclosure of the name of the decedent in an autopsy report without consideration of age overrides the exemption in Section 708(b)(30). *Panyard II* FD at 7 n.2. Whatever the merit of that conclusion, it does not apply here, because no autopsy report or other official Coroner report or action was in existence at the time of the requests; the only responsive records at the time of the requests were the Coroner's investigative records. For the same reason, neither RTKL Section 708(b)(20)'s proviso allowing release of a decedent's name nor Section 1252-B of the Coroner's Act make the responsive noncriminal investigation records public (such that Section 708(b)(30) of the RTKL would not apply), because none of the records in existence at the time of the requests are the type of formal coroner reports (including autopsy, toxicology, inquisition, coroner, or other reports) addressed in those statutes. Rather, the responsive records here are "early days" investigative records – notes and internal emails – which contain the names of minor decedents and that for that reason plainly are exempt under Section 708(b)(30).

VI. CONCLUSION

Where, as here, at the time of the request the only place the minor decedent's name appears in the coroner's records is in the coroner's investigative file, the Coroner's Act does not displace the exemptions under the RTKL, and the name of the deceased is exempt from disclosure under 708(b)(17) and 708(b)(30) the RTKL

For the reasons stated above, the Lancaster County Coroner's Office respectfully requests an order of this Court reversing OOR's Final Determination and ordering that no further action must be taken by the parties in this matter.

Respectfully submitted,

/s/ Kevin J. McKeon

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Attorneys for Lancaster Office of the Coroner

Dated: June 14, 2024

CERTIFICATE OF SERVICE

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

VIA E-FILING and ELECTRONIC MAIL

Paula Knudsen Burke, Esq.
Reporters Committee for Freedom of the Press
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Attorneys for Lancaster Office of the Coroner

Dated: June 14, 2024

Appendix A

*Jack Panyard and LancasterOnline– LNP v. Lancaster
County, OOR Docket No. AP 2023-2662,
Final Determination dated Dec. 4, 2023*



FINAL DETERMINATION

IN THE MATTER OF

**JACK PANYARD AND
LANCASTERONLINE - LNP,
Requester**

v.

**LANCASTER COUNTY,
Respondent**

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Docket No: AP 2023-2662

FACTUAL BACKGROUND

On October 23, 2023, Jack Panyard and LancasterOnline - LNP (collectively “Requester”) submitted a request (“Request”) to Lancaster County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[T]he name of the 3-year-old who died of a gunshot wound to the head at 8:07 pm [on] [October] 20, 2023 at [address omitted] from the [C]ounty [C]oroner’s office.

On October 30, 2023, the County denied the Request, arguing that the Request was not sufficiently specific, 65 P.S. § 67.703, would identify the name of a minor, 65 P.S. § 67.708(b)(30), sought records relating to a criminal investigation, 65 P.S. § 67.708(b)(16)(ii), and sought records relating to a noncriminal investigation, 65 P.S. § 67.708(b)(17).

On November 3, 2023, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. Specifically, the Requester argues that the name, cause and manner of death are subject to release without consideration of age. The Requester further argues that the County is acting in bad faith. 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 November 16, 2023, the County submitted a position statement, reiterating its claims. Additionally, the County argues the Request does not identify records, but instead, asks a question requiring an answer and responsive records do not exist. In further support of its position, the County submitted an attestation made subject to the penalties of 28 U.S.C. § 1756, authored by Stephen Diamantoni, M.D. (“Diamantoni Attestation”), the County Coroner. At the request of the OOR, a second attestation that was also made subject to the penalties of 28 U.S.C. § 1756, and authored by Stephen Diamantoni, M.D. (“Diamantoni Supplemental Attestation”), was submitted on November 29, 2023.

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)). Likewise, “[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

1. The Request is a request for records under the RTKL

The County initially and unreasonably argues that the Request seeks an answer to a question rather than records. In order to comply with the requirements of Section 703 of the RTKL, a request must seek records, rather than answers to questions. 65 P.S. § 67.703; *see also Walker v. Pa. Ins. Dep’t*, No. 1485 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 425 at *16 (Pa. Commw. Ct. 2012) (“The RTKL is not a forum for the public to demand answers to specifically posed questions to either a Commonwealth or local agency. In fact, there is no provision in the RTKL that requires an agency to respond to questions posed in a request”); *Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at *14 (Pa. Commw. Ct. 2012) (noting that the portion of a request “set forth as a question” did not “trigger a response”). The RTKL defines a “record” as “[i]nformation, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency.” 65 P.S. § 67.102.

In *Gingrich, supra*, the Commonwealth Court held, among other things, that requests for specific pieces of information constitute requests for records under the RTKL. *Id.* at *13. (“[H]ow [can] any request that seeks information ... not [be] one that seeks records[?]”). Here, the Request seeks the “name” of a minor who died on a specific date. The OOR has previously found that a request for the name or identity of an individual is a request for a record under the RTKL. *See Bartholomew v. West Manchester Twp.*, OOR Dkt. AP 2020-0777, 2020 PA O.O.R.D. LEXIS 975 (finding that a request seeking the name of the individual that has procurement authority seeks a

record under the RTKL); *Eiland v. Dauphin County*, OOR Dkt. AP 2020-0293, 2020 PA O.O.R.D. LEXIS 718 (finding that a request seeking the names of officers who signed out or observed the return of an inmate to implicitly seek a record showing the information sought); *Melchiondo v. Pa. Game Comm'n*, OOR Dkt. AP 2016-2081, 2017 PA O.O.R.D. LEXIS 90 (finding a request seeking the names and addresses of property owners who have a license to hunt on their own properties is a request for records). Accordingly, the request for the name of an individual clearly seeks “information” and therefore, constitutes a valid request for a record under the RTKL.

2. The County has not demonstrated that a responsive record does not exist in its possession, custody or control

The County argues that a responsive record sought by the Request, i.e. the name of the minor, did not exist at the time of the Request. In response to a request for records, “an agency shall make a good faith effort to determine if ... the agency has possession, custody or control of the record[.]” 65 P.S. § 67.901. While the RTKL does not define the term “good faith effort,” in *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, the Commonwealth Court stated:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession... When records are not in an agency’s physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors ... After obtaining potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), *aff’d*, 243 A.3d 19 (Pa. 2020). An agency must show, through detailed evidence submitted in good faith from individuals with knowledge of the agency’s records, that it has conducted a search reasonably calculated to uncover all relevant documents. *See Burr v. Pa. Dep’t of Health*, OOR Dkt. AP 2021-0747, 2021 PA O.O.R.D. LEXIS 750; *see also Mollick v. Twp. of Worcester*, 32 A.3d 859, 875 (Pa. Commw. Ct. 2011).

In support of its position, the Diamantoni Attestation indicates, in relevant part, the following:

2. In my capacity as the Coroner, I am familiar with the County's past and current practices regarding the release of documents in response to [RTKL] [r]equests such as the one at issue in this matter.

3. In my capacity as the Coroner, I am aware of the various types of investigations and reports completed by the [County] Coroner's Office [("Office")], as well as the Office's record retention policies.

4. The Coroner's Office is tasked with providing medical examinations and other investigations into the cause of death of an individual and then preparing reports on those examinations and investigations.

...

10. Since February 2022, the [County] Coroner's office policy on providing autopsy reports has been to provide autopsy reports to next of kin, or authorized representatives of next of kin, insurance companies and law enforcement agencies.

11. The [County] Coroner's Office conducted an investigation into the cause of death of a three-year old minor child[,] which occurred on approximately October 20, 2023.

...

13. Based upon the [R]equest provided, I was unable to determine what report, and therefore, what fee was to be assessed.

14. At the time of the October 23, 2023 [R]equest, the [County] [Office's] investigation in to the cause of death of this minor had not yet been completed and there were no responsive records to the [R]equest.

In further support of the County's, the Diamantoni Supplemental Attestation indicates the following:

15. At the time of the October 23, 2023 [R]equest, the [County] [Office] did not have any records that contained the requested information.

Under the RTKL, an affidavit or statement made under penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa.

Commw. Ct. 2011); *Moore v. Off. of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). However, the OOR is not required to accept statements made in an affidavit or an attestation as the truth when there are countervailing factors to consider; indeed, “experienced OOR appeals officers” necessarily possess the “competency to assess the adequacy and probity of an agency affiant's characterization of the record or the credibility of its effects assessment.” *ACLU of Pa. v. Pa. State Police*, 232 A.3d 654 (Pa. 2020).

The Diamantoni Supplemental Attestation states that the Coroner’s Office “did not have any records that contained the requested information” at the time of the Request. However, there are multiple reasons to question the credibility of this statement. First, the County has unreasonably argued that the Request asks a question, thus calling into question its interpretation of the Request. *See, e.g., Mack v. Dep’t of Corr.*, No. 699 C.D. 2022, 2023 Pa. Commw. Unpub. LEXIS 393 (Pa. Commw. Ct. 2023). The Diamantoni Attestation appears to set forth an interpretation that the Request was seeking a formal report, as opposed to *any* record containing the information. Although the Diamantoni Supplemental Attestation states that the Coroner’s Office did not have “any records,” there is reason to believe that the County is treating “record” as synonymous with a “report” based upon the Diamantoni Attestation. Finally, upon view of a body, a coroner is required to “investigate the facts and circumstances concerning a death” that “occur[s] as a result of violence or trauma,” 16 P.S. § 1218-B, and is specifically required to investigate the unexplained deaths of children not more than three (3) years old, 16 P.S. § 1220-B. It strains credulity to believe that the Coroner’s Office did not possess the name of the decedent, under these circumstances, prior to the submission of the Request. Notably, there is nothing in the record indicating that the decedent was unidentified during this timeframe. For these reasons, the

evidence submitted by the County does not prove that no responsive records existed at the time of the Request.¹

Finally, the OOR would be remiss if it did not acknowledge the tragic and heartbreaking nature of this situation. However, as sad as this case is, the Legislature considered situations like this into when it declared that certain coroner records are public and are to be released. The name of the decedent is one such piece of information. Because the RTKL is clear that the name of a deceased individual is public, without consideration to the type of record the information may be contained within, 65 P.S. § 67.708(b)(20), the County is directed to provide the requested name.²

3. The OOR declines to make a finding of bad faith

The Requester presents a claim concerning the County's actions in regard to the instant Request and appeal, as well as general concerns about the denial of what the Requester feels is a public record. While the OOR may make findings of bad faith, only the courts have the authority to impose sanctions on agencies. *See generally* 65 P.S. § 67.1304(a). Under the RTKL, a finding of bad faith is appropriate where an agency refuses to comply with its statutory duties under the RTKL. *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 243 A.3d 19, 28-29 (Pa. 2020); *California Univ. of Pa. v. Bradshaw*, 210 A.3d 1134 (Pa. Commw. Unpub. 2021) *appeal denied* 2019 PA LEXIS (Pa. 2019); *Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119 (Pa. Commw. Ct. 2017).

In the instant matter, we respectfully decline to make a finding of bad faith. This is not to say that we are finding that the County has acted in good faith; instead, we defer to the judgment

¹ Notwithstanding the above, we note the County had the option to simply provide the information at any time during the appeal.

² To the extent that the County argues that the name of a deceased minor is exempt under 65 P.S. § 67.708(b)(30), we note that such an interpretation is inconsistent with the Coroner's Act, which mandates disclosure of coroner records without consideration of the decedent's age.

of a reviewing court in this instance to determine whether the facts before us, or after further development of the record, warrant a finding of bad faith. We note that the County engaged in a timely response to the Request, provided a detailed final response and fully participated on appeal, and a finding of bad faith is typically reserved only for an egregious or blatant violation of the RTKL.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is required to provide the requested information within thirty days. 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 Lancaster 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; 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.³ 65 P.S. § 67.1303. All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: December 4, 2023

/s/ Bandy L. Jarosz

BANDY L. JAROSZ, ESQ.
APPEALS OFFICER

Sent to: Jack Panyard (via portal only)
Jacquelyn E. Pfursich, Esq. (via portal only)
Tammy Bender (via portal only)

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

Appendix B

*Jack Panyard and LancasterOnline– LNP v. Lancaster
County, OOR Docket No. AP 2024-0181,
Final Determination dated Feb. 12, 2024*



FINAL DETERMINATION

IN THE MATTER OF

**JACK PANYARD AND
LANCASTERONLINE - LNP,
Requester**

v.

**LANCASTER COUNTY,
Respondent**

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Docket No: AP 2024-0181

FACTUAL BACKGROUND

On December 27, 2023, Jack Panyard and LancasterOnline - LNP (collectively “Requester”) submitted a request (“Request”) to Lancaster County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

[T]he name of the 11-year-old girl who died in a car crash on the 6000 block of Old Philadelphia Pike in Salisbury Township at 10:42 p.m., Dec[ember] 24, 2023 from the Lancaster County Coroner’s Office.

On January 10, 2024, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the County denied the Request, arguing that the requested records are exempt from public access because they would identify the name of a minor, 65 P.S. § 67.708(b)(30), and are related to a noncriminal investigation, 65 P.S. § 67.708(b)(17). The County also stated that to the

extent the Request seeks the disclosure of information and not records, the Request is moot because the requested information is already publicly available.¹

On January 16, 2024, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure. Specifically, the Requester argues that the name, cause and manner of death are subject to release without consideration of age. The Requester also argues that the County is acting in bad faith. 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 January 26, 2024, the County submitted a position statement, reiterating its reasons for denial, while also arguing that the Coroner’s Act does not make the investigative file of the Coroner subject to public disclosure under the RTKL, and that the County has not acted in bad faith. In support of its position, the County submitted an exemption log identifying six withheld records,² as well as the attestation of Stephen Diamantoni, M.D., the County Coroner.³

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

¹ To the extent the County maintains its argument on appeal, the OOR finds that as the Request seeks the name of an individual, it clearly seeks a record under the RTKL. *See* 65 P.S. § 67.102 (defining a “record”); *Bartholomew v. West Manchester Twp.*, OOR Dkt. AP 2020-0777, 2020 PA O.O.R.D. LEXIS 718 (a request for a name is a request for a record under the RTKL). Further, as the County has not provided the Requester with any responsive records, this matter cannot be considered moot. *See Kutztown Univ. of Pa. v. Bollinger*, 217 A.3d 931 (Pa. Commw. Ct. 2019) (holding that an appeal is properly dismissed as moot where no controversy remains).

² The County’s position statement and the Diamantoni Attestation both state that a total of eight records were withheld; however, the exemption log consists of six identified records.

³ The attestation was made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

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)). Likewise, “[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

The County has identified six responsive records that it argues are exempt from public disclosure as records relating to a noncriminal investigation. Section 708(b)(17) of the RTKL exempts from disclosure records of an agency “relating to a noncriminal investigation,” including “[i]nvestigative materials, notes, correspondence and reports.” 65 P.S. § 67.708(b)(17)(ii). Section 1218 of the Coroner’s Act (“Act”) provides that a county coroner, “shall investigate the facts and circumstances concerning a death that appears to have happened within the county....” 16 P.S. § 1218-B; *see also* 16 P.S. § 1219-B. The OOR has previously found that this statutory authority grants coroners the ability to conduct noncriminal investigations. *See Walbert v. Chester Cnty.*, OOR Dkt. AP 2021-1308, 2021 PA O.O.R.D. LEXIS 1367 (finding that “communications within the office and with the police constitute records related to a noncriminal investigation authorized by the ... Act”). In support of the County’s position, the Diamantoni Attestation and the County’s exemption log identify the withheld records as handwritten internal notes of the Coroner regarding the investigation, text messages between the Chief Deputy Coroner and the Coroner, as well as between the pathologist and Chief Deputy Coroner, an email between Deputy Coroners, and case management system entries. *See Diamantoni Attestation*, ¶¶ 6-7.

While Section 1252-B of the Act provides that autopsy, toxicology, inquisition and coroner’s reports are available upon payment of fees, Dr. Diamantoni attests that no official reports

existed at the time of the Request. *See* 16 P.S. § 1252-B; Diamantoni Attestation, ¶ 5. Rather, records possessed by the County Coroner include communications and notes that are related to the County Coroner’s investigation into the cause and manner of death of the child who is the subject of the Request. The Act does not provide for access to communications and investigative notes. *See Morgan v. Chester Cnty.*, OOR Dkt. AP 2023-1105, 2023 PA O.O.R.D. 1572 (communications are not available for a fee under the Act). Therefore, internal investigation notes and communications need not be provided under Section 708(b)(17) of the RTKL.⁴ 65 P.S. § 67.708(a)(1); *see also Campbell v. Pa. Interscholastic Athletic Ass’n*, 268 A.3d 502 (Pa. Commw. Ct. 2021) (noting that an agency need only meet its burden by a preponderance of the evidence, the lowest evidentiary standard, which is tantamount to a “more likely than not” inquiry), *appeal partially granted*, 280 A.3d 870 (Pa. 2022).

However, the Request does not actually seek the above-referenced records, but instead seeks a specific piece of information, a name. The RTKL contemplates that a coroner will report “the name of the deceased individual,” no matter where that piece of information is ultimately contained. 65 P.S. § 67.708(b)(20). In a similar case, the OOR held that “the name of a deceased individual is public, without consideration to the type of record the information may be contained within.” *Panyard and LancasterOnline – LNP v. Lancaster Cnty.*, OOR Dkt. AP 2023-2662, 2023 PA O.O.R.D. LEXIS 2836. Otherwise, a coroner can simply withhold a name, without any time limitations, due to its relationship to the coroner’s noncriminal investigation and its inclusion within investigative records.

⁴ The Requester seeks a finding of bad faith, asserting that the County withheld records that the Requester believes are public. Under the RTKL, a finding of bad faith is appropriate where an agency refuses to comply with its statutory duties under the RTKL. *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 243 A.3d 19, 28-29 (Pa. 2020); *California Univ. of Pa. v. Bradshaw*, 210 A.3d 1134 (Pa. Commw. Unpub. 2021) *appeal denied* 2019 PA LEXIS (Pa. 2019); *Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119 (Pa. Commw. Ct. 2017). In this matter, the County identified records and timely responded to the Request. While the OOR is partially granting the appeal, the OOR declines to make a finding of bad faith.

CONCLUSION

For the foregoing reasons, the appeal is **granted**, and the County is directed to provide the requested name. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal or petition for review to the Lancaster 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 according to court rules 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.⁵ All documents or communications following the issuance of this Final Determination shall be sent to oor-postfd@pa.gov. This Final Determination shall be placed on the website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: February 12, 2024

/s/ Kathleen A. Higgins

KATHLEEN A. HIGGINS
DEPUTY CHIEF COUNSEL

Sent via OOR portal to: Jack Panyard;
 Kevin J. McKeon, Esq.;
 Tammy L. Bender, AORO

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

Appendix C

Referenced OOR Final Determinations in:

- (1) Walbert v. Chester Cnty., OOR Dkt. AP 2021-1308,
Final Determination dated Aug. 5, 2021; and*
- (2) Morgan v. Chester Cnty., OOR Dkt. AP 2023-1105,
Final Determination dated July 17, 2023*



FINAL DETERMINATION

IN THE MATTER OF

**JAMES WALBERT,
Requester**

v.

**CHESTER COUNTY,
Respondent**

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Docket No.: AP 2021-1308

INTRODUCTION

James Walbert (“Requester”) submitted a request (“Request”) to Chester County (“County”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking coroner records related to the death of an identified individual. The County denied the Request, arguing that some of the records could be obtained through another process and that the others relate to a noncriminal investigation. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted in part** and **denied in part**, and the County is required to take further action as directed.

FACTUAL BACKGROUND

On May 26, 2021, the Request was filed, seeking:

1. [A]ll records/notes from [coroner’s] office in reference to the death of Ian Walbert [] in accordance I am NOK relationship-Brother
2. [U]nofficial toxicology report

3. [U]nofficial death certificate
4. [N]ames of all [C]ounty employees involved in this case at the [coroner's] office
5. [A]ll communication between [C]ounty employees at the [coroner's] office in reference to this case [i.e.] - emails texts recorded calls recorded notes
6. [A]ll communication between [C]ounty employees at the [coroner's] office and North Coventry Township Police dept. in reference to this case

On July 5, 2021, following a thirty-day extension, 65 P.S. § 67.901, the County denied the Request, arguing that Items 2 and 3 should be sought with a “Next of Kin” report request from the coroner’s office and that Items 1, 4, 5, and 6 relate to a noncriminal investigation. 65 P.S. § 67.708(b)(17).

On July 7 2021, the Requester appealed to the OOR, challenging the denial and providing reasons for disclosure. The OOR invited the parties to supplement the record and directed the County to notify third parties of their ability to participate in the appeal. *See* 65 P.S. § 67.1101(c).

On July 19, 2021, the County submitted a position statement arguing that the records responsive to Items 1, 5, and 6 of the Request were collected during a noncriminal investigation and are exempt from access, 65 P.S. § 67.708(b)(17), contain personal medical information, 65 P.S. § 67.708(b)(5), and internal, predecisional, and deliberative information. 65 P.S. § 67.708(b)(10)(i)(A). The County also argued that it had properly directed the Requester to an alternate method of obtaining records under the Coroner’s Act, 16 P.S. § 1201-B *et seq.*, and that the County does not possess or maintain Death Certificates. Finally, the County noted that it had no records reflecting the names of every employee who had worked on the specific case. In support of these arguments, the County submitted the verifications of Colleen Frens, Esq., the County’s Assistant Solicitor, and Christina VandePol, the County’s Coroner, who attest that the records are related to an investigation and some must be provided under a separate process.

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party requested a hearing.

The County is a local agency subject to the RTKL that is required to disclose public records. 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. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and to respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemption(s). *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a

record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a). 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)). Likewise, “[t]he burden of proving a record does not exist ... is placed on the agency responding to the right-to-know request.” *Hodges v. Pa. Dep’t of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).

1. Official records and papers of the coroner must be provided

The County argues that the records of the coroner’s office must be provided through a request to the coroner. Under the Coroner’s Act, there are two ways to access records of a coroner. First, Section 1236-B of the Coroner’s Act requires coroners of the third, fourth, fifth, sixth, seventh and eight classes to deposit their records with the Prothonotary, 16 P.S. § 1236-B. Chester County is a county of the third class and is therefore governed by Section 1236-B of the Coroner’s Act. In this case, the County acknowledges this rule, but notes that it has not yet deposited the coroner’s official records with the Prothonotary because the records were generated in the past year.

However, there is a second means of accessing records under the Coroner’s Act directly from the coroner under Section 1252-B, which states:

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

16 P.S. § 1252-B. The Pennsylvania Supreme Court analyzed this section in *Hearst Television, Inc. v. Norris*, finding that “[t]he RTKL provides the procedure for accessing those records that are available for immediate release for a fee pursuant to Section [1252-B].” 54 A.3d 23, 33 (Pa. 2012). The Court further noted that there was no mention of discretion when charging or collecting these fees; as a result, Section 1252-B “allows the coroner to charge fees for records but does not afford the coroner any discretion with regard to releasing such records.” *Id.* at 32 (emphasis added). Although the General Assembly updated the Coroner’s Act in 2018, the OOR has found that there was no substantial change to the operative language governing these releases, and therefore *Hearst* controls in Coroner’s Act cases. *Hailer v. Allegheny Cnty. Medical Examiner*, OOR Dkt. AP 2021-0117, 2021 PA O.O.R.D. LEXIS 491.

Here, Item 1 of the Request seeks “all records” of the coroner’s office relating to a specific decedent, and Item 2 of the Request specifically seeks a toxicology report. The County notes that the unofficial toxicology report and autopsy report can be obtained by next-of-kin at no charge by filing on the coroner’s website, and official copies may be had for the fees set at Section 1252-B of the Coroner’s act. 16 P.S. § 1252-B. Further, the County argues that Section 1252-B constitutes a method of provision conflicting with the RTKL, and, therefore, the records cannot be provided under the RTKL. 65 P.S. § 67.3101.1. While the OOR appreciates that the County is attempting to provide the records sought in the ordinary course of business, the court’s holding in *Hearst* is clear - the RTKL provides the procedure to access records made public by the Coroner’s Act, and “all official records and papers” which would be archived with the prothonotary must be provided in response to a RTKL request, upon payment of the relevant fees.¹ Therefore, the County is

¹ Section 1252-B of the Coroner’s Act only establishes a few records as “official records and papers”- autopsy reports, toxicology reports, inquisition reports, coroner’s reports, and cremation or disposition authorizations. These records

required to provide the records responsive to Items 1 and 2 of the Request in accordance with the fee schedule set by Section 1252-B of the Coroner's Act.

2. The County has demonstrated that certain records do not exist in the County's possession, custody, or control

The County argues that it does not possess any records responsive to Items 3 or 4 of the Request. In support of this argument, the County submitted the affidavit of Assistant Solicitor Frens, who attests that:²

6. On May 27, 2021, I had a phone conversation with Ms. Garcia-Jackson and the Coroner of Chester County, Dr. Christina VandePol, M.D., regarding this [R]equest. Dr. VandePol informed me that [the Requester] was the Next-of-Kin of [the decedent].

7. Dr. VandePol informed me that any "communications between [C]ounty employees at the coroner's office" [] are contained within the Coroner's electronic case management system. I determined that there are no communications of any other type between [C]ounty employees.

9. I confirmed that neither the [County] nor the Coroner possess death certificates, but that they can be obtained from the Pennsylvania Department of Health's Office of Vital Statistics.

10. Finally, I confirmed with Dr. VandePol that there is no record that exists that contains the names of all [C]ounty employees that exist in this case.

Under the RTKL, a verification made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the County has acted in bad faith, "the averments in [the verification] should be accepted as true." *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382-83 (Pa.

are expressly public under the terms of the Coroner's Act and the Pennsylvania Supreme Court's holding in *Hearst*, but other records the coroner may possess are not necessarily subject to production under the Coroner's Act. *Say v. Lehigh County*, OOR Dkt. AP 2019-0123, 2019 PA O.O.R.D. LEXIS 342 ("To the extent the [r]equest seeks any other 'official papers and records,' there is no precedent for applying Section [1236-B] to records other than those explicitly listed in the Coroner's Act.")

² As referenced later in this Final Determination, the coroner also conducted a search of her office's records while locating other responsive documents.

Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). Here, the County has submitted evidence that it contacted the coroner, who conducted a search of her office's records and determined that the office is not responsible for creating or maintaining death certificates, and that the office did not possess any single record listing each County employee who engaged with the responsive decedent's case. Therefore, the County has demonstrated that it does not possess any records responsive to Items 3 or 4 of the Request. *Hodges*, 29 A.3d at 1192.

3. Items 5 and 6 of the Request seek records of a noncriminal investigation

The County argues that the communications between the coroner's office and police department constitute records related to a noncriminal investigation. Section 708(b)(17) of the RTKL exempts from disclosure records of an agency "relating to a noncriminal investigation," including "[i]nvestigative materials, notes, correspondence and reports." 65 P.S. § 67.708(b)(17)(ii). For this exemption to apply, an agency must demonstrate that "a systematic or searching inquiry, a detailed examination, or an official probe" was conducted regarding a noncriminal matter. *See Pa. Dep't of Health v. Office of Open Records*, 4 A.3d 803, 810-11 (Pa. Commw. Ct. 2010). Further, the inquiry, examination, or probe must be "conducted as part of an agency's official duties." *Id.* at 814; *see also Johnson v. Pa. Convention Ctr. Auth.*, 49 A.3d 920 (Pa. Commw. Ct. 2012). An official probe only applies to noncriminal investigations conducted by agencies acting within their legislatively granted fact-finding and investigative powers. *Pa. Dep't of Pub. Welf. v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014). To hold otherwise would "craft a gaping exemption under which any governmental information-gathering could be shielded from disclosure." *Id.* at 259.

In support of this argument, the County submitted the verification of Coroner Christina VandePol, M.D., who attests that:

1. I am the Coroner of Chester County. My office employs investigators who utilize a case management system to gather information relative to any death falling within the jurisdiction of the Chester County Coroner's Office. The death of Ian Walbert is being investigated and has been investigated by my investigating officers, staff and consultants and constitutes a non-criminal investigation exempt from disclosure under the Right to Know Law.

The County also submitted the verification of Assistant Solicitor Frens, who attests that:

15. The records I obtained from the Coroner included (1) email communications between the Coroner's office and the North Coventry police department regarding the investigation of Ian Walbert's death, (2) email communications between Coroner employees regarding the investigation of Ian Walbert's death and the resulting autopsy, and (3) communications contained within the Coroner's electronic case management system regarding the investigation of Ian Walbert's death and the resulting autopsy. Some or all of these records also contain information about Ian Walbert's medical history and status.

16. I determined that the records obtained from the Coroner's office on or about July 2 contained information that is exempted under the RTKL pursuant to 708(b)(5) as personal, identifiable medical information, (b)(10) as predecisional, deliberative communications, and (b)(17) as records of a noncriminal investigation.

As noted above, under the RTKL, an affidavit may serve as sufficient evidentiary support to withhold responsive records. *See Sherry*, 20 A.3d at 520-21; *Moore*, 992 A.2d at 909. Section 1218 of the Coroner's Act provides that:

(a) Duty. The coroner having a view of the body shall investigate the facts and circumstances concerning a death that appears to have happened within the county, notwithstanding where the cause of the death may have occurred, for the purpose of determining whether or not an autopsy or inquest should be conducted [...]³

(b) Purpose. The purpose of an investigation under subsection (a) shall be to determine:

(1) The cause and manner of the death.

³ The coroner's deputized employees share the same powers and duties as the coroner. 16 P.S. § 1211-B.

(2) Whether or not there is sufficient reason for the coroner to believe that the death may have resulted from a criminal act or criminal neglect of a person other than the deceased.

16 P.S. § 1218-B. Furthermore, where additional investigation is necessary, Section 1219 of the Act provides that:

(a) Autopsy. If, after investigation, the coroner is unable to determine the cause and manner of death, the coroner shall perform or order an autopsy on the body.

(b) Inquest. If the coroner is unable to determine the cause and manner of death following an autopsy, the coroner may conduct an inquest upon a view of the body as provided by law. At the inquest, the coroner's duty shall be to:

(1) Ascertain the cause of death.

(2) Determine whether an individual other than the deceased was criminally responsible by act or neglect and the identity of the individual who may be responsible.

(3) Examine further evidence and witnesses regarding the cause of death.

16 P.S. § 1219-B. Here, the coroner attests that she and her deputized employees have exchanged communications internally and with the police in furtherance of this statutory mandate to ascertain the cause of death and determine whether another individual is responsible for the death. Furthermore, the coroner attests that her investigation is ongoing. Therefore, the County has demonstrated that the communications within the office and with the police constitute records related to a noncriminal investigation authorized by the Coroners Act, and Items 5 and 6 of the Request must be denied.

CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted in part** and **denied in part**, and the County is required to produce all of the coroner's official records and papers, subject to payment of applicable fees, within thirty days. 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 Chester 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 according to court rules as per Section 1303 of the RTKL. 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.⁴ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

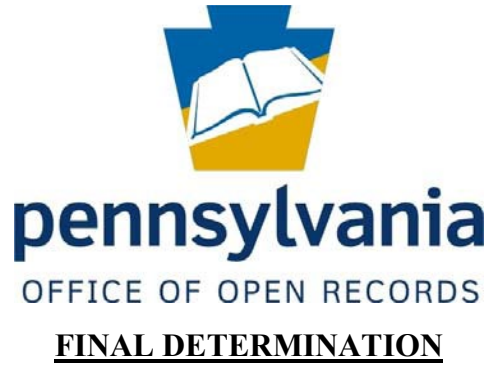
FINAL DETERMINATION ISSUED AND MAILED: August 5, 2021

/s/ Jordan C. Davis

Jordan C. Davis, Esq.
Appeals Officer

Sent to: James Walbert (via email);
Faith Mattox-Baldini, Esq. (via email)

⁴ See *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).



IN THE MATTER OF

**STACEY MORGAN,
Requester**

v.

**CHESTER COUNTY,
Respondent**

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Docket No.: AP 2023-1105

FACTUAL BACKGROUND

On March 27, 2023, Stacey Morgan (“Requester”) submitted a request (“Request”) to Chester County (“County”)¹ pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking “[a]ny [and] all paperwork available and related to Theodore S. Morgan for the timeframe of 2/1/2023 thru 3/1/2023. T.S. Morgan died on 2/9/2023.”

On May 3, 2023, after extending its time to respond by thirty days, *see* 65 P.S. § 67.902(b)(2), the County denied the Request, asserting that the sole responsive record, the Coroner’s Comprehensive Report (“Report”), is exempt from public access because it relates to a noncriminal investigation. 65 P.S. § 67.708(b)(17).

¹ The Request was originally submitted to the County Coroner’s Office, which then forwarded it to the Open Records Officer for the County.

On May 17, 2023, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.² 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 May 26, 2023, the County submitted a position statement reiterating its grounds for denial. The County further asserts that the Requester is attempting to modify the Request on appeal. In support of its arguments, the County submitted the attestations of Lauren Remaley (“Remaley Attestation”), the County’s Open Records Officer, and Sophia Garcia-Jackson (“Garcia-Jackson Attestation”), the County’s Coroner.

On May 27, 2023, the Requester made several submissions, including providing a copy of the Death Certificate for Theodore S. Morgan (“Mr. Morgan”) and submitting a copy of a police incident report relating to his death.³

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

² The Requester granted the OOR a thirty-day extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

³ The Requester’s submissions were received after the record closed; however, to develop the record, the submissions were considered. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute”).

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)).

1. The Requester did not attempt to modify the Request on appeal, and the County’s interpretation of the Request is too narrow

As a preliminary matter, the County claims that the Requester altered the Request on appeal. Neither the requester nor the OOR is permitted to alter a request on appeal. *See, e.g., Madison v. Pa. Bd. of Prob. & Parole*, 212 A.3d 560, 564 (Pa. Commw. Ct. 2019); *McKelvey v. Office of Attorney Gen.*, 172 A.3d 122, 125 (Pa. Commw. Ct. 2017) (“Once a RTKL request is submitted, the requester may not expand or modify the request on appeal”) (citations omitted); *see also Pa. State Police v. Office of Open Records*, 995 A.2d 515 (Pa. Commw. Ct. 2010); *Staley v. Pittsburgh Water & Sewer Auth.*, OOR Dkt. AP 2010-0275, 2010 PA O.O.R.D. LEXIS 256 (stating that “a requester may not modify the original request as the denial, if any, is premised upon the original request as written”).

Here, the Request sought “[a]ny [and] all paperwork available and related to Theodore S. Morgan for the timeframe of 2/1/2023 thru 3/1/2023....” On appeal, the Requester states, in part, that “[n]umerous emails and phone calls were exchanged throughout the 2 weeks the coroner was in control of [the Requester’s] father’s remains. Threats of eminent cremation and his body being declared ‘unclaimed’ were issued. Records exist somewhere about all of this[.]”

The County contends that on appeal, “the Requester is modifying her [R]equest to now include records of communications (emails and records of phone calls).” However, the OOR views the Requester’s statement on appeal as a simple reiteration of her original Request, which sought “[a]ny [and] all paperwork” related to the Requester’s father, which would include emails and records of phone calls. The OOR has consistently held that an agency may interpret the

meaning of a request for records, but that interpretation must be reasonable. *See Spatz v. City of Reading*, OOR Dkt. AP 2013-0867, 2013 PA O.O.R.D. LEXIS 513; *Mezzacappa v. Northampton Cnty. Dist. Atty's Off.*, OOR Dkt. AP 2022-2584, 2023 PA O.O.R.D. LEXIS 80. The OOR determines the reasonableness of the agency's interpretation from the text and context of the request alone. *See McKelvey*, 172 A.3d 122. As such, based on the plain reading of the Request, the OOR finds that the Requester did not attempt to modify the Request on appeal and that the County's interpretation of the Request as not including communications was too narrow.

2. Responsive records relate to a noncriminal investigation, but the Report is accessible for a fee under the Coroner's Act

The County argues that the Report and any related communications are exempt from disclosure because they relate to a noncriminal investigation. Section 708(b)(17) of the RTKL exempts from disclosure records of an agency "relating to a noncriminal investigation," including "[i]nvestigative materials, notes, correspondence and reports" and "[a] record that, if disclosed, would...[r]eveal the institution, progress or result of an agency investigation." 65 P.S. §§ 67.708(b)(17)(ii), (vi)(A). In order for this exemption to apply, an agency must demonstrate that "a systematic or searching inquiry, a detailed examination, or an official probe" was conducted regarding a noncriminal matter. *See Pa. Dep't of Health v. Office of Open Records*, 4 A.3d 803, 810-11 (Pa. Commw. Ct. 2010). Further, the inquiry, examination, or probe must be "conducted as part of an agency's official duties." *Id.* at 814; *see also Johnson v. Pa. Convention Ctr. Auth.*, 49 A.3d 920 (Pa. Commw. Ct. 2012). An official probe only applies to noncriminal investigations conducted by agencies acting within their legislatively granted fact-finding and investigative powers. *Pa. Dep't of Pub. Welfare v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014).

Section 1218 of the Coroner's Act ("Act") provides as follows:

- a) Duty. The coroner having a view of the body shall investigate the facts and circumstances concerning a death that appears to have happened within the county, notwithstanding where the cause of the death may have occurred, for the purpose of determining whether or not an autopsy or inquest should be conducted....
- b) Purpose. The purpose of an investigation under subsection (a) shall be to determine:
 - (1) The cause and manner of the death.
 - (2) Whether or not there is sufficient reason for the coroner to believe that the death may have resulted from a criminal act or criminal neglect of a person other than the deceased.

16 P.S. § 1218-B.

Furthermore, where additional investigation is necessary, Section 1219 of the Act provides that:

- (a) Autopsy. If, after investigation, the coroner is unable to determine the cause and manner of death, the coroner shall perform or order an autopsy on the body.
- (b) Inquest. If the coroner is unable to determine the cause and manner of death following an autopsy, the coroner may conduct an inquest upon a view of the body as provided by law. At the inquest, the coroner's duty shall be to:
 - (1) Ascertain the cause of death.
 - (2) Determine whether an individual other than the deceased was criminally responsible by act or neglect and the identity of the individual who may be responsible.
 - (3) Examine further evidence and witnesses regarding the cause of death.

16 P.S. § 1219-B. The OOR has found that this statutory authority grants coroners the ability to conduct noncriminal investigations. *See Walbert v. Chester County*, OOR Dkt. AP 2021-1308, 2021 PA O.O.R.D. LEXIS 1367 (finding that “communications within the office and with the police constitute records related to a noncriminal investigation authorized by the ... Act”).

Here, the County asserts that the Report and any responsive communications are exempt because they relate to a noncriminal investigation. In support, the Remaley Attestation states, in part, as follows:

8. It was communicated to me by the Coroner's Office that after a search for responsive records was conducted, the only responsive record that was located was the Coroner's Comprehensive Report and that the Coroner's Office did not have an examination report (autopsy/external/partial), toxicology report, or photographs.
9. The Coroner's Comprehensive Report is [a] report generated from the Coroner's Office case management system. It contains all the demographics collected regarding the decedent, next of kin contact information, law enforcement or hospital reporting party information, medical and social history, medications, medical providers, location of death, date of death, time of death, cause and manner of death, and a narrative written by an investigator describing the case from start to finish.
10. The Coroner's Office is statutorily authorized to conduct investigation[s] into deaths that occur in Chester County in order to determine the cause and manner of death. The Coroner's Office is empowered to investigate the facts and circumstances concerning a death that appears to have happened within the County, for the purpose of determining whether or not an autopsy or inquest should be conducted in certain cases.
11. The Coroner's Comprehensive Report is a report that is generated pursuant to an investigation conducted by the Coroner's Office and contains information that was gathered as a result of that investigation.
12. The Coroner's Comprehensive Report is not an autopsy report nor is it a type of record that is deemed a public record under the Coroner's Act.
13. After conducting a good faith search of the Agency's files and inquiring with relevant [County] personnel, I identified all records within the [County's] possession, custody or control that are responsive to the request.

Additionally, the Garcia-Jackson Attestation states, in part, as follows:

1. I serve as the Coroner for the Chester County Coroner's Office ("Coroner's Office"). As the Coroner, I, pursuant to Coroner Statutes and Law, oversee the Coroner's Office to investigate the facts and circumstances surrounding the death to determine if an autopsy is needed and order an autopsy to be conducted by a board certified forensic pathologist to determine cause and manner of

death, make positive identification, notify next of kin, conduct an inquest, approve organ donations, and Section 1213-B Removal of Bodies to the Morgue “when the body of a deceased person is unidentified or unclaimed by a proper person found within the county, the body shall be removed to the county morgue or, in a county of the third through eighth class, to a facility serving in lieu of the county morgue.”

...

4. I conducted a search for records in possession of the Coroner’s Office.
5. The only record that I located that is responsive to the [R]equest is the Coroner’s Comprehensive Report that was generated pursuant to an official investigation into the death of Theodore S. Morgan. The Coroner’s Office does not possess an examination report (autopsy/external/partial), toxicology report, or photographs for this case.
6. The Coroner’s Comprehensive Report is a report generated from the Coroner’s Office case management system. It contains all the demographics collected regarding the decedent on case in take [sic], next of kin contact information, law enforcement/EMS or hospital reporting party information, medical and social history, medications, medical providers, location of death, date of death, time of death, cause and manner of death, and Coroner’s Investigators written narrative documentation.
7. The Coroner’s Comprehensive Report is a report that is generated pursuant to a death investigation conducted by the Coroner’s Office and contains information that was gathered as a result of that investigation.
8. If the Record was disclosed, it would reveal the Coroner’s Office progress or result of its investigation.

Under the RTKL, an attestation is generally competent evidence to sustain an agency’s burden of proof. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any competent evidence that the County acted in bad faith, “the averments in [the attestations] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

In this instance, the Coroner attests that the Report was prepared in furtherance of the statutory mandate under the Act to ascertain the cause of death of Mr. Morgan and contains

information that was gathered as a result of that investigation. Notwithstanding the investigative nature of the Report, the County does not address its accessibility under Section 1252-B of the Act, which states:

The coroner shall charge and collect a fee of \$ 500 for an autopsy report, \$ 100 for a toxicology report, \$ 100 for an inquisition or coroner's report, \$ 50 for a cremation or disposition authorization and *other fees as may be established from time to time for other reports or documents requested* by nongovernmental agencies in order to investigative 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 Pennsylvania Supreme Court analyzed this section under the prior Act in *Hearst Television, Inc. v. Norris*, finding that “[t]he RTKL provides the procedure for accessing those records that are available for immediate release for a fee pursuant to Section [1252-B].” 54 A.3d 23, 33 (Pa. 2012). The Court further noted that there was no mention of discretion when charging or collecting these fees; as a result, Section 1252-B “allows the coroner to charge fees for records *but does not afford the coroner any discretion with regard to releasing such records.*” *Id.* at 32 (emphasis added). Although the General Assembly updated the Act in 2018⁴, the OOR has found that there was no substantial change to the operative language governing these releases, and therefore, *Hearst* controls in Act cases. *Keel v. Dauphin County*, OOR Dkt. No. AP 2022-2385, 2022 PA O.O.R.D. LEXIS 2535; *Ciavaglia v. Bucks County*, OOR Dkt. AP 2020-0761, 2020 PA O.O.R.D. LEXIS 1528; *Bowen v. Indiana County*, OOR Dkt. AP 2019-2064, 2019 PA O.O.R.D. LEXIS 2068.

⁴ Prior to 2018, the 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).

Recently, in *Allegheny County v. Hailer*, No. 1469 C.D. 2021 (Pa. Commw. Ct. 2023), the Commonwealth Court found that Section 1252-B of the Act “is, essentially, a fee schedule that establishes the costs to be collected for coroner reports.” Upon its review of the plain text of Section 1252-B and the legislative history thereof, the Court concluded that the Section “does not limit the receipt of coroner records to nongovernmental agencies seeking records for the purpose of investigating insurance claims or determining liability for the death of a decedent.” As a result, the Court ordered production of the autopsy and toxicology records in that case upon payment of the fees set forth in Section 1252-B of the Act.

Consistent with the above, the responsive Report, as a coroner’s report, is thus available through the RTKL for the fees set forth in Section 1252-B of the Act. *See Keel v. Dauphin Cnty.*, OOR Dkt. AP 2022-2385, 2022 PA O.O.R.D. LEXIS 2535.

With respect to any responsive communications related to Mr. Morgan other than the Report, the County states that “[a]ny communication records that do exist would have been created pursuant to the statutorily authorized investigation of Mr. Morgan’s death. They are therefore part of the noncriminal investigation and exempt from public disclosure.” On appeal, the Requester acknowledges that various correspondence was exchanged during the time period in which the Coroner “was in control of [Mr. Morgan’s] remains.” Moreover, the Requester does not challenge the presence of a noncriminal investigation in this instance. *See Pa. Game Comm’n v. Fennell*, 149 A.3d 101 (Pa. Commw. Ct. 2016) (holding that the OOR must consider uncontradicted statements in the appeal filing when construing exemptions); *see also Office of the Governor v. Davis*, 122 A.3d 1185, 1192 (Pa. Commw. Ct. 2015) (*en banc*) (holding that an affidavit may be unnecessary when an exemption is clear from the face of the record). Therefore, under the circumstances of this case, the County has met its burden of proving that any other responsive

records related to Mr. Morgan would be exempt from disclosure under Section 708(b)(17). 65 P.S. § 67.708(a); *see also Campbell v. Pa. Interscholastic Athletic Ass'n*, 268 A.3d 502 (Pa. Commw. Ct. 2021) (noting that an agency need only meet its burden by a preponderance of the evidence, the lowest evidentiary standard, which is tantamount to a “more likely than not” inquiry), *appeal partially granted*, 280 A.3d 870 (Pa. 2022). Unlike the Report, the communications are not available for a fee under the Act.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part** and **denied in part**, and the County is required produce a copy of the Report under 16 P.S. § 1252-B, upon receipt of the fees as set forth in that Section. 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 Chester 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.⁵ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: July 17, 2023

/s/ Magdalene C. Zeppos-Brown
MAGDALENE C. ZEPPOS-BROWN, ESQ.
DEPUTY CHIEF COUNSEL

Sent via OOR e-file portal to: Stacey Morgan; Lauren Remaley, AORO; and Colleen Frens, Esq.

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

Appendix D

Petitioner's Reproduced Record

TABLE OF CONTENTS***OOR Docket No. AP 2024-0181 (Panyard II)***

<u>Title of Document</u>	<u>Page</u>
Jack Panyard and LancasterOnline-LNP's (Requester) request to the Coroner's Office, dated Dec. 27, 2023	2a
Lancaster County's response to Requester's RTKL request extending time to respond, dated Jan. 4, 2024	4a
Lancaster County Office of the Coroner's (Coroner's Office) denial of Requester's RTKL request, dated Jan. 10, 2024	5a
Requester's appeal, filed with the Office of Open Records (OOR) on Jan. 15, 2024	6a
OOR Notice of Appeal, dated Jan. 17, 2024.....	11a
Coroner's Office Position Statement submitted to OOR on Jan. 26, 2024	20a
<i>Exhibit A:</i> Affidavit of Stephen Diamantoni, M.D.	30a
<i>Exhibit B:</i> Exemption Log	33a

OOR Docket No. AP 2023-2662 (Panyard I)

<u>Title of Document</u>	<u>Page</u>
Requester's request to the Coroner's Office, dated Oct. 23, 2023	36a
Lancaster County's denial of Requester's RTKL request, dated Oct. 30, 2023	38a
Requester's appeal, filed with OOR on Nov. 3, 2023	40a
OOR Notice of Appeal, dated Nov. 6, 2023	46a
Lancaster County's Position Statement submitted to OOR on Nov. 16, 2023	54a
<i>Exhibit A:</i> Request (reproduced at 36a)	
<i>Exhibit B:</i> County's denial of Requester's request (reproduced at 38a)	
<i>Exhibit C:</i> Affidavit of Stephen Diamantoni, M.D.	57a
OOR's request for clarification, dated Nov. 21, 2023	59a
Supplemental Affidavit of Stephen Diamantoni, M.D., dated Nov. 28, 2023	60a

OOR Docket No. AP 2024-0181
(*Panyard II*)

Panyard, Jack

From: noreply@civicplus.com
Sent: Wednesday, December 27, 2023 12:19 PM
To: Panyard, Jack
Subject: Online Form Submittal: County of Lancaster Open Records Request Form

Follow Up Flag: Follow up
Flag Status: Flagged

You don't often get email from noreply@civicplus.com. [Learn why this is important](#)

County of Lancaster Open Records Request Form

Request submitted by:	Web form
Requestor's First Name	Jack
Requestor's Last Name	Panyard
Requestor's Address1	101 N. Queen Street
Requestor's Address2	Floor 2
Requestor's City	Lancaster
Requestor's State	Pennsylvania
Requestor's Zip	17603
Requestor's Phone Number	7178473993
Requestor's Fax Number	<i>Field not completed.</i>
Requestor's Email Address	jpanyard@lnpnews.com
Records Requested:	<p>I am requesting the name of the 11-year-old girl who died in a car crash on the 6000 block of Old Philadelphia Pike in Salisbury Township at 10:42 p.m., Dec. 24, 2023 from the Lancaster County Coroner's Office.</p> <p>I want to note I submitted a similar request to the county Oct. 23, 2023, for the name of a 3-year-old who died of a gunshot wound to the head Oct. 20 in Martic Township that the coroner did not provide. I was denied and appealed to the Office of Open Records, which ruled in my favor on Dec. 4, 2023. (Jack Panyard and LancasterOnline - LNP v. Lancaster County - Docket No: AP 2023-2662).</p>

Please check one of the following boxes:

I am only requesting access to the documents identified above.

If you are requesting a copy of the documents identified above, please check one of the following boxes:

Other format (please specify below)

Specify format requested - if something other than paper

A digital copy over email.

Acknowledgement

I agree

MESSAGE FROM THE LNP/STEINMAN EMAIL SERVER: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.



County Commissioners

Joshua G. Parsons
Ray D'Agostino
Alice Yoder

Open Records Officer

Tammy L Bender

Open Records Office

150 North Queen Street
Suite #714
Lancaster, PA 17603
Phone: 717-735-1584
Fax: 717-824-8520
www.co.lancaster.pa.us

January 4, 2024

VIA EMAIL ONLY TO:

jpanyard@lnpnews.com

Jack Panyard
101 N. Queen Street
Floor 2
Lancaster, PA 17603

Re: County of Lancaster Right to Know Request 575-2023

Dear Mr. Panyard:

Thank you for writing to the County of Lancaster with your request for information pursuant to the Pennsylvania Right to Know Law.

On December 27, 2023, the County of Lancaster received your request for the name of the 11-year old girl who died in a car crash on the 6000 block of Old Philadelphia Pike in Salisbury Township at 10:42 p.m. December 24, 2023 from the Lancaster County Coroner's Office.

The County is invoking a time extension until February 2, 2024 to review and respond to your request in accordance with Section 902(a)(7) of the Pennsylvania Right to Know Law. Specifically, the extent or nature of your request precludes the County from providing a response within five business days.

Sincerely,

Tammy L. Bender
Open Records Officer
County of Lancaster





Office of the Coroner

2080 Spring Valley Rd

Lancaster, PA 17601

Phone: 717-735-2123

Fax: 717-735-2138

email: coroner@co.lancaster.pa.us

January 10, 2024

Stephen G. Diamantoni, M.D.
Coroner

Eric S. Bieber, F-ABMDI
Chief Deputy Coroner

VIA EMAIL:

Jack Panyard
101 N. Queen St.
Lancaster, PA 17602
jpanyard@lnpnews.com

Re: Right to Know Request Number #575-2023

Dear Mr. Panyard:

On December 27, 2023, the County of Lancaster Office of Open Records received your request pursuant to the Pennsylvania Right to Know Law ("RTKL") seeking records in possession of the Lancaster County Office of the Coroner ("Coroner's Office") containing the name of the 11-year-old girl who died in a car crash on the 6000 block of Old Philadelphia Pike in Salisbury Township at 10:42 p.m., Dec. 24, 2023.

Your request is denied because records responsive to your request are exempt from disclosure under the RTKL on the bases that the responsive records:

1. Identify the name, home address or date of birth of a child 17 years of age or younger, which are exempt from public disclosure by RTKL, Section 708(b)(30); and
2. Are investigative records related to the Coroner's Office's noncriminal investigation into the death of a minor, which are exempt from public disclosure by RTKL, Section 708(b)(17).

Note that your request has been interpreted by this office as seeking records containing the information requested. To the extent the request seeks disclosure of information, not records, the request is moot as seeking information that is already publicly available and known to Requester.

You have a right to appeal this denial in writing to Elizabeth Gerloff Wagenseller, Executive Director, Office of Open Records, 333 Market Street, 16th Floor, Harrisburg, PA 17126-0333. If you choose to file an appeal, you must do so within 15 business days of the mailing date of this letter, as outlined in Section 1101 of the Right to Know Law. An appeal must be submitted in writing either by mail, fax (717-425-5343), or email (openrecords@pa.gov). The appeal must include a copy of your original request and this response letter and must state the grounds upon which you assert that the record is a public record and must address any grounds stated by the agency for denying the request.

Please be advised this correspondence will serve to close this record with our office as permitted by law.

Sincerely,

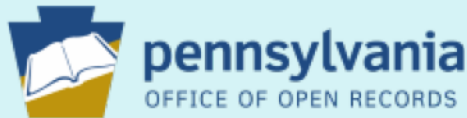
Dr. Stephen Diamantoni
Lancaster County Coroner's Office and Forensic Center
2080 Spring Valley Road
Lancaster, PA 17601

Cc: Tammy Bender (Lancaster County Open Records Officer)



From: no-reply@openrecordspennsylvania.com
To: jpanyard@lnpnews.com
Subject: [External] PA Office of Open Records - Appeal Confirmation
Date: Monday, January 15, 2024 2:56:08 PM
Attachments: [oor_logo_email.png](#)

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook.](#)



You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Jack Panyard
Company:	LancasterOnline - LNP
Address 1:	101 N. Queen Street
Address 2:	Floor 2
City:	Lancaster
State:	Pennsylvania
Zip:	17603
Phone:	717-847-3993
Email:	jpanyard@lnpnews.com
Email2:	jpanyard@lnpnews.com
Agency (typed):	Lancaster County Coroner's Office and Forensic Center
Agency Address 1:	2080 Spring Valley Road
Agency Address 2:	
Agency City:	Lancaster
Agency State:	Pennsylvania

Agency Zip:	17601
Agency Phone:	717-735-2123
Agency Email:	coroner@co.lancaster.pa.us
Records at Issue in this Appeal:	I am requesting the name of the 11-year-old girl who died in a car crash on the 6000 block of Old Philadelphia Pike in Salisbury Township at 10:42 p.m., Dec. 24, 2023 from the Lancaster County Coroner's Office.
Request Submitted to Agency Via:	web form
Request Date:	12/27/2023
Response Date:	01/10/2024
Deemed Denied:	No
Agency Open Records Officer:	Dr. Stephen Diamantoni
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	Yes
Agree to permit the OOR additional time to issue a final determination:	No
Interested in resolving this issue through OOR mediation:	No
Attachments:	<ul style="list-style-type: none"> • 12-27-23 RTK 11 yr old death.pdf • 1.11.24 RTK denial 11 yr old death.pdf • 1.4.24 notice of extension 11 yr old death.pdf

OOB appeal Panyard 11 yr old death.docx

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

333 Market Street, 16th Floor | Harrisburg, PA 17101-2234 | 717.346.9903 | F 717.425.5343 | openrecords.pa.gov

To: Office of Open Records

From: Jack Panyard, Reporter at LNP | LancasterOnline

Re: Appeal of December 27, 2023 Right to Know Law

Denial Date: Jan. 10, 2023

On December 27, 2023 I submitted a Right to Know Law request to the County of Lancaster ("County") seeking records from the county coroner's office that would show the name of a 11-year-old who died in a car crash at 10:42 p.m. on December 24, 2023, on the 6000 block of Old Philadelphia Pike in Salisbury Township.

On January 10, 2024, I received a denial from the County. I am now appealing that denial and below address the basis of each reason for denial in turn.

1. Section 708(b)(30) denial

The County denied my request based upon 708(b)(30) and stated that I was not entitled to the record because it identified the name, home address or date of birth of a child 17 years of age or younger. Section 708(b)(20), which addresses accessibility of autopsy records, does not contain any age limits. Furthermore, the OOR just last year issued an advisory opinion stating that name, cause and manner of death are subject to RTKL release, "without consideration of age." The OOR specifically reviewed Sec. 708(b)(30) and found it "does not apply when dealing with the names of deceased minors in coroner records." See Nov. 1, 2022, "Advisory Opinion on Autopsy Records," available at https://www.openrecords.pa.gov/Documents/2022-11-01_Dennis_AdvisoryOpinion.pdf The OOR has also issued several final determinations requiring coroners to disclose the name of a minors. See Michael Jones and the Observer-Reporter v. Fayette County (Request sought the name of a minor killed in a fire, along with the date, time, cause and manner of death. The Agency did not prove that the deceased minor's name is exempt from public access or that the records relate to a criminal investigation of the Agency. Granted. AP 2023-0021) and James Halpin and the Citizen's Voice v. Monroe County Coroner's Office (Request sought the name, manner and cause of death of a minor killed in an automobile accident. This information is expressly public under Section 708(b)(20) of the RTKL, and because the County Code also makes such information public, the exemption for information identifying minors contained in Section 708(b)(30) of the RTKL does not apply. Granted. AP 2023-0530). The OOR also addressed this issue in John Beauge and PennLive v. Lycoming County Coroner's Office, AP 2016-2040, where the OOR required access to the name of minor deceased under the prior, but substantively identical provisions of the County Code that mandate public access to coroner records. See Allegheny Cty. v. Hailer, 298 A.3d 476 (Pa. Cmwlth. 2023). Moreover, the RTKL exemptions do not apply because the County Code Coroners Act controls. 65 P.S. § 67.306, 16 P.S. § 1252-B; see also Hearst TV, Inc. v. Norris, 54 A.3d 23, 33 (Pa. 2012).

2. Section 708(b)(17)(ii)

The County denied my request by citing the non-criminal investigative exemption. Section 708(b)(17) of the RTKL exempts from disclosure public agency records "relating to a noncriminal investigation," including "complaints submitted to an agency," "investigative materials, notes, correspondence and reports," and "record[s] that, if disclosed, would . . . reveal the institution, progress or result of an agency

investigation.” 65 P.S. § 67.708(b)(17)(i)-(ii),(vi). As with all RTKL exemptions, an agency bears the burden of proving the non-criminal investigative exemption applies by a preponderance of the evidence. 65 P.S. § 67.708(a). To carry that burden, the agency must demonstrate that it conducted a “systematic or searching inquiry, a detailed examination, or an official probe” regarding a noncriminal matter. Pa. Dep’t of Health v. Off. of Open Recs., 4 A.3d 803, 811 (Pa. Commw. Ct. 2010). The investigation must be “conducted by an agency acting within its legislatively granted factfinding and investigative powers. That is, its ‘official duties.’” Johnson v. Pa. Convention Center Auth., 49 A.3d 920, 925 (Pa. Commw. Ct. 2012). These limits ensure that agencies do not retrospectively categorize records they would prefer not to release as relating to some amorphous “investigation” without much evidence as to scope or detail. The Commonwealth Court has specifically rejected broad public agency assertions of non-criminal investigations because letting agencies recharacterize normal operations as investigation-adjacent would “craft a gaping exemption under which any governmental information-gathering could be shielded from disclosure.” Pa. Dep’t of Pub. Welf. v. Chawaga, 91 A.3d 257, 259 (Pa. Commw. Ct. 2014). As with the claimed criminal investigation, the County has not provided any declaration or attestation signed under penalty of perjury that shows a purported “investigation” of any kind is underway, and even if it did, the RTKL exemptions do not apply because the County Code Coroners Act controls. 65 P.S. § 67.306, 16 P.S. § 1252-B; see also Hearst TV, Inc. v. Norris, 54 A.3d 23, 33 (Pa. 2012).

Additionally, I submitted a similar request to the county Oct. 23, 2023, for the name of a 3-year-old who died of a gunshot wound to the head Oct. 20 in Martic Township that the coroner did not provide. I was denied and appealed to the Office of Open Records, which ruled in my favor on Dec. 4, 2023. (Jack Panyard and LancasterOnline - LNP v. Lancaster County - Docket No: AP 2023-2662).

The county’s reliance on the exemptions in the RTKL is misplaced and unreasonable in light of well-settled law, thus raising issues of bad faith. The RTKL exemptions are inapplicable to the present appeal because the Coroner’s Act’s governs access, and the RTKL is clear that when a more specific law governs public access, the RTKL and its exemptions are inapplicable. 65 P.S. § 67.306. Such is the case here where the requested information is expressly public as a record the coroner required to be made public. Section 1252-B of the County Code provides “immediate access to cause and manner of death records”. Hearst TV, Inc. v. Norris, 54 A.3d 23, 33 (Pa. 2012). The RTKL’s exemptions do not apply when another law requires public access. See 65 P.S. § 67.306, 16 P.S. § 1252-B. The OOR has repeatedly affirmed the Supreme Court’s interpretation of the law in nearly identical cases, and the coroner’s failure to comply with clearly settled appellate court precedent and repeated findings of the OOR raises issues of bad faith. We respectfully request the OOR to issue a finding of bad faith to deter similar unreasonable denials by this coroner and others who deny access to clearly public name, cause, and manner of death records. We also reserve the right to pursue the issue of bad faith if an appeal to court becomes necessary.

NOTICE OF DEADLINES

Lancaster County Prothonotary E-Filed - 14 Jun 2024 10:29:45 AM

The appeal has been docketed by the OOR and its docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **February 15, 2024**.

The timeline for this RTKL appeal may be extended by the OOR during the appeal This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **January 26, 2024**.

If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.

Due to delays in U.S. mail, we urge agencies and requesters to use email or the E-File Appeal Portal for all communications with the OOR to the extent possible.

Presently, the OOR is receiving postal mail on a limited basis. Accordingly, we urge agencies and requesters to use email for all communication with the OOR to the extent possible.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.



January 17, 2024

Via E-File Portal Only:

Jack Panyard
LancasterOnline - LNP
101 N. Queen Street
Floor 2
Lancaster, PA 17603
jpanyard@lnpnews.com

Via E-File Portal Only:

Dr. Stephen Diamantoni
Agency Open Records Officer
Lancaster County Coroner's Office and
Forensic Center
2080 Spring Valley Road
Lancaster, PA 17601
coroner@co.lancaster.pa.us
openrecords@lancastercountypa.gov

RE: OFFICIAL NOTICE OF APPEAL - Panyard and LancasterOnline - LNP v. Lancaster County Coroner's Office and Forensic Center OOR Dkt. AP 2024-0181

Dear Parties:

Review this information and all enclosures carefully as they affect your legal rights.

The Office of Open Records ("OOR") received this appeal under the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101, et seq. on January 16, 2024. A binding Final Determination ("FD") will be issued pursuant to the timeline required by the RTKL, **please see the attached information for more information about deadlines.**

Notes for both parties (more information in the enclosed documents):

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal.

Sincerely,

Elizabeth Wagenseller
Executive Director

Enc.: Description of RTKL appeal process
Assigned Appeals Officer contact information
Entire appeal as filed with OOR

The Right-to-Know Law Appeal Process

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOR pursuant to the statutory timeline, subject to the notice of deadlines enclosed herein. If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents. **With limited exceptions, the Appeals Officer should be contacted through the E-File Portal.**

Submissions to the OOR

Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer. Please contact the Appeals Officer as soon as possible.

Any information provided to the OOR must be provided to all parties involved in this appeal. Information submitted to the OOR will not be considered unless it is also shared with all parties.

Include the docket number on all submissions.

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

It is strongly advised that attorneys and other party representatives **file an Entry of Appearance** by uploading an Entry of Appearance form to the E-File Portal or completing the form at: <https://www.openrecords.pa.gov/Appeals/EntryOfAppearance.cfm>.

NOTE TO AGENCIES: If an Entry of Appearance is not filed, the AORO is responsible to inform attorneys and other party representatives of all docket activity.

Generally, submissions to the OOR — other than *in camera* records — will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

Agency Must Notify Third Parties

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; or are held by a contractor or vendor, **the agency shall notify the Appeals Officer immediately.** The Appeals Officer may direct the agency to notify such parties of the appeal and provide proof of that notice.

If directed to provide notice, such notice will include: (1) A copy of all documents included with this letter; and (2) A statement advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer or completing the form at <https://www.openrecords.pa.gov/Appeals/DIPRequest.cfm>. (see 65 P.S. § 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)). **A third party's**

failure to participate in a RTKL appeal before the OOR, after receiving notice, may be construed as a waiver of objections regarding release of requested records.

If either party has questions about this requirement, they should immediately contact the Appeals Officer.

Statements of Fact & Burden of Proof

Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, openrecords.pa.gov.

Any evidence or legal arguments not submitted or made to the OOR may be waived.

Preserving Responsive Records

The agency must preserve all potentially responsive records during the RTKL appeal process, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

Mediation

The OOR offers a mediation program as an alternative to the standard appeal process. To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.



APPEALS OFFICER:

Kathleen Higgins, Esq.

CONTACT INFORMATION:

**Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234**

PHONE:

(717) 346-9903

FACSIMILE:

(717) 425-5343

**Preferred method of contact and
submission of information:**

E-FILE PORTAL

**PARTIES WITHOUT COMPUTER OR INTERNET ACCESS SHOULD PROCEED BY MAIL
OR FACSIMILE**

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.
Please include the case name and docket number on all submissions.**

You must copy the other party on everything you submit to the OOR.

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review prior final determinations involving similar records and fees that may impact this appeal.



IN THE MATTER OF

Requester

v.

Agency

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OOR Dkt. AP _____

Please accept my appearance for the _____ in the above captioned case.
(Requester/Agency)

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Attorney: _____

Firm: _____

Address: _____

Email: _____

Phone #: _____

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

REQUEST TO PARTICIPATE

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.



Kevin J. McKeon
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Direct: 717-703-0815
machapaska@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

January 26, 2024

VIA E-FILE PORTAL

Kathleen Higgins, Esquire
Appeals Officer
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

RE: Panyard and LancasterOnline – LNP v. Lancaster County Coroner's Office and
Forensic Center; OOR Docket No. AP 2024-0181

Dear Ms. Higgins:

Enclosed on behalf of the Lancaster County Office of the Coroner is our position statement, together with Exhibit A, the Affidavit of Dr. Stephen Diamantoni, and Exhibit B, an exemption log.

Thank you for your attention to this matter.

Very truly yours,

Kevin J. McKeon
Melissa A. Chapaska

*Counsel for the Lancaster County Office of
the Coroner*

KJM/jld
Enclosure
cc: Jack Panyard (via e-File Portal and electronic mail)

**BEFORE THE
PENNSYLVANIA OFFICE OF OPEN RECORDS**

IN THE MATTER OF:

JACK PANYARD and
LANCASTERONLINE- LNP,

Requester,

Docket No. AP 24-0181

VS.

LANCASTER COUNTY OFFICE OF THE
CORONER,

Respondent.

POSITION STATEMENT OF LANCASTER COUNTY OFFICE OF THE CORONER

The Lancaster County Office of the Coroner (Coroner's Office) submits this statement in support of the Coroner's Office's denial of Mr. Jack Panyard and LancasterOnline – LNP (Requester)'s Right to Know Law (RTKL) request for investigative records in possession of the Coroner's Office.

I. Background

On December 27, 2024, the Requester submitted a request (Request) seeking the release of “the name of the 11-year-old girl who died in a car crash on the 6000 block of Old Philadelphia Pike in Salisbury Township at 10:42 p.m., December 24, 2023 from the Lancaster County Coroner’s Office.” Although the time to respond to the Request was extended for thirty days until February 2, 2024, the Coroner’s Office responded on January 10, 2024. The Coroner’s Office conducted a search for responsive records and identified responsive records, as set forth in the

Affidavit of Dr. Diamantoni, attached hereto as **Exhibit A**, and the exemption log attached as **Exhibit B**. The Coroner's Office denied the Request on the basis that the Request seeks records¹ that are exempt from disclosure under Section 708(b)(17) and (b)(30) of the RTKL.

The Requester initiated this appeal on January 16, 2024, challenging the Coroner's denial of the Request, arguing that these RTKL exemptions do not apply because the Coroner's Act, 16 P.S. § 1252-B, makes such information public, and therefore controls pursuant to RTKL Sections 3101.1 and 306, 65 P.S. §§ 67.3101.1, 67.306.

II. The Coroner's Position

The facts² reveal that as of the time of the Request (the first business day after the nighttime car crash that killed the minor decedent), the only records in the possession of the Coroner that contained the information requested were internal documents and exchanges of information that were part of the Coroner's Office's noncriminal investigation file. Contrary to the Requester's contention, the Coroner's Act does not make records in the Coroner's investigative file or the information contained in those records public for purposes of the RTKL. Rather, as construed by

¹ The Coroner's Office explained in its January 10, 2024 response that the Office interpreted the Request as one seeking *records* that contain the information requested. The Coroner's Office pointed out that to the extent the Request seeks disclosure of information, not records, the Request was and is moot because it seeks information that is already publicly available and known to Requester.

² The facts are set forth in the affidavit of Dr. Stephen Diamantoni, the Lancaster County Coroner, attached hereto as **Exhibit A**, and an Exemption Log attached hereto as **Exhibit B**. Under the RTKL, a verification made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Cmwlth. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Cmwlth. 2010). In the absence of any evidence that the County has acted in bad faith, "the averments in [the verification] should be accepted as true." *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Cmwlth. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Cmwlth. 2013)).

the Commonwealth Court,³ Section 1252-B of the Coroner's Act makes a coroner's formal work product – autopsy reports, toxicology reports, inquisition or coroner's reports, and other official reports produced by the Coroner – public. At the time of the Request no such reports existed. Instead, at the time of the Request, the information requested was contained only in the Coroner's noncriminal investigative file, which is not implicated in Section 1252-B of the Coroner's Act. Accordingly, there is no conflict between the Coroner's Act and the RTKL with respect to the Request, and the exemptions from disclosure under Section 708(b)(17) and (b)(30) of the RTKL apply and control.

An exemption log setting forth the responsive records in existence at the time of the request with and as referenced in the affidavit of Dr. Diamantoni, establishes that the records at issue relate to the Coroner's investigation into the cause and manner of death of the minor described in the Request and identify the name of minor. Such records are exempt from disclosure under two separate RTKL exemptions: Section 708(b)(17), which exempts "records of an agency relating to a noncriminal investigation," including "investigative materials, notes, correspondence and reports," and Section 708(b)(30), which exempts "[a]record identifying the name ... of a child 17 years of age or younger." The appeal should be denied.

A. There is no conflict between the Coroner's Act and the RTKL with respect to the Request

Requester's position is that the Coroner's Act makes the requested information public in nature such that, as provided in Sections 306 and 3101.1 of the RTKL, the RTKL does not apply. Requester cites *Allegheny County v. Hailer*, 298 A.3d 476 (Pa. Cmwlth. 2023) for the proposition that the Coroner's Act, 16 P.S. § 1252-B, mandates public access to all Coroner records. But

³ *Allegheny County v. Hailer*, 298 A.3d 476 (Pa. Cmwlth. 2023). See n.6 *infra*.

neither that statute nor the court's interpretation and application of it extends to every record in the Coroner's possession. The statute plainly limits its focus to formal reports produced by a coroner in carrying out official coroner duties:

The coroner shall charge and collect a fee of \$500 for an autopsy report, \$100 for a toxicology report, \$100 for an inquisition or coroner's report, \$50 for a cremation or disposition authorization and other fees as may be established from time to time for other reports or documents requested by nongovernmental agencies in order to investigate a claim asserted under a policy of insurance or to determine liability for the death of the deceased. The fees collected under this section shall be accounted for and paid to the county treasurer in accordance with section 1760 and shall be used to defray the expenses involved in the county complying with the training of coroners or coroner office personnel, as may be required or authorized by this or any other act.

16 P.S. § 1252-B.

Interpreting this provision in *Allegheny County v. Hailer* in the context of a newspaper's RTKL request for autopsy and toxicology reports, the Commonwealth Court reversed the trial court's decision that such reports are only available to nongovernmental agencies seeking information for purposes of investigating insurance or liability claims. Observing that "Section 1252-B is, essentially, a fee schedule that establishes the costs to be collected for *coroner reports*," *id.* at 481 (emphasis added), the court concluded that such reports are available generally in exchange for a fee, and that availability is not limited to nongovernmental agencies seeking information for purposes of investigating insurance or liability claims. As support for its conclusion that all such reports are public, the court also relied on Section 1236-B of the Coroner's Act, which requires that coroners in third through eighth class counties⁴ must deposit all of their "official records" for the preceding year with the county prothonotary within 30 days of the year end. *Id.* at 481-482. A coroner's noncriminal investigative file is not part of the "official record"

⁴ Lancaster County is a second-class A county, so is not subject to Section 1236-B's requirements.

that is deposited with the county prothonotary under Section 1236-B of the Coroner's Act, as Dr. Diamantoni explains in his Affidavit.

Requester's position does not withstand scrutiny. Nothing in Section 1252-B, Section 1236-B, or *Allegheny County v. Hailer* states or even implies that a coroner's entire noncriminal investigation file is a "report" or an "official record." The holding of *Allegheny County v. Hailer* is that autopsy and toxicology reports are publicly available pursuant to Section 1252-B of the Coroner's Act, such that the provisions of the RTKL that say otherwise do not apply. Neither its holding nor its reasoning are applicable here. To be sure, under the current state of the law as articulated in *Allegheny County v. Hailer*,⁵ to the extent the 11-year-old decedent's name at issue here appears in an autopsy, toxicology, or other report or "official record" of the Lancaster County Coroner, the name will be considered "public" and the cited RTKL exemptions will not apply. But as of the time of the Request, no such reports or official records were in existence; the name appeared only in the Coroner's investigative file, and it is exempt from disclosure under Section 708(b)(17) and (b)(30) of the RTKL.

B. The Responsive Records are exempt under RTKL Section 708(b)(17)

RTKL Section 708(b)(17) exempts "records of an agency relating to a noncriminal investigation," including "investigative materials, notes, correspondence and reports." 65 P.S. § 67.708(b)(17). For Section 708(b)(17) to apply, an agency must demonstrate that (1) "a systematic or searching inquiry, a detailed examination, or an official probe" was "conducted as part of an agency's official duties" and (2) that the records claimed exempt relate to such investigation. *Id.* The

⁵ The Coroner disagrees with the holding of *Allegheny County v. Hailer* and reserves his right to challenge it to the extent OOR or a reviewing court relies on its conclusion that Section 1252-B makes autopsy and toxicology reports generally available to the public upon payment of the required fee. However, because no such reports are at issue here, the case is inapposite.

Coroner's official responsibilities with respect to circumstances of the death of the 11-year old decedent at issue here satisfy this requirement.

Section 1218 of the Coroner's Act provides that:

(a) Duty. The coroner having a view of the body shall investigate the facts and circumstances concerning a death that appears to have happened within the county, notwithstanding where the cause of the death may have occurred, for the purpose of determining whether or not an autopsy or inquest should be conducted [...]

(b) Purpose. The purpose of an investigation under subsection (a) shall be to determine:

(1) The cause and manner of the death.

(2) Whether or not there is sufficient reason for the coroner to believe that the death may have resulted from a criminal act or criminal neglect of a person other than the deceased.

16 P.S. § 1218-B. Furthermore, where additional investigation is necessary, Section 1219 of the Act provides that:

(a) Autopsy. If, after investigation, the coroner is unable to determine the cause and manner of death, the coroner shall perform or order an autopsy on the body.

(b) Inquest. If the coroner is unable to determine the cause and manner of death following an autopsy, the coroner may conduct an inquest upon a view of the body as provided by law. At the inquest, the coroner's duty shall be to:

(1) Ascertain the cause of death.

(2) Determine whether an individual other than the deceased was criminally responsible by act or neglect and the identity of the individual who may be responsible.

(3) Examine further evidence and witnesses regarding the cause of death.

16 P.S. § 1219-B. R has previously held that a Coroner's statutorily mandated investigation into the cause and manner of death is in fact "a systematic or searching inquiry, a detailed examination, or an official probe" that is "conducted as part of an agency's official duties." *See, e.g., Walbert v. Chester County*, OOR Dkt. AP-2021-1308 (holding that records in possession of the county coroner related to the coroner's investigation into the cause of death of the individual are noncriminal investigative records exempt from disclosure under RTKL Section 708(b)(17))

(internal citations omitted). Here, Dr. Diamantoni's affidavit confirms that his investigation into the death of the 11-year old decedent at issue was such a systematic and searching inquiry that was conducted as part of his official duties. Disclosing specifics of investigations or revealing the direct linkage between exempt documents and investigations is not required in order to support the noncriminal investigation exemption. *See, e.g., Pennsylvania Public Utility Commission v. Gilbert*, 40 A.3d 755 (Pa. Cmwlth. 2012); *Dep't of Health v. Office of Open Records*, 4 A.3d 803 (Pa. Cmwlth. 2010). Dr. Diamantoni's Affidavit is sufficient to show that the records at issue reflect internal notes and correspondence related to the Coroner's noncriminal investigation into the cause and manner of death of the 11-year old minor whose name is the subject of the Request. Diamantoni Affidavit ¶ 6 ("Based on a thorough search of records in possession of the Coroner's Office containing the name of the minor described in the request, I identified 8 Responsive Records consisting of handwritten notes, emails, voicemails, texts, and Case Management System data entries contained within the Coroner's Office's investigative files pertaining to the Coroner's investigation into the cause and manner of death of the minor described in the request ("Responsive Records").

As Dr. Diamantoni's affidavit and exemption log demonstrate, the only responsive records as of the time of the request were records that were part of the Coroner's noncriminal investigative file. Therefore, the Section 708(b)(17) noncriminal investigation exemption is an independent and complete basis for denial of the Request.

C. The Responsive Records are exempt under RTKL Section 708(b)(30)

The plain language of Section 708(b)(30) of the RTKL exempts from public disclosure records which identify the name of a child 17 years of age or younger: "(30) A record identifying the name, home address or date of birth of a child 17 years of age or younger." 65 P.S. §

67.708(b)(30). Accordingly, even if the Coroner's investigative records that were in existence at the time of the request somehow failed to qualify as records protected from disclosure under the Section 708(b)(17) noncriminal investigation exemption, Section 708(b)(30) would exempt from disclosure those portions of those records that contain the information requested – the 11-year-old decedent's name.

OOR's "Advisory Opinion on Autopsy Records" issued November 1, 2022, is not to the contrary. The Advisory Opinion, which addresses autopsy reports covered under RTKL Section 708(b)(20), concludes that the proviso in Section 708(b)(20) that permits disclosure of the name of the decedent in an autopsy report without consideration of age overrides the exemption in Section 708(b)(30). Whatever the merit of that conclusion, it does not apply here, because no autopsy report or other official Coroner report or action was in existence at the time of the Request; the only responsive records at the time of the Request were the Coroner's investigative records. For the same reason, neither RTKL Section 708(b)(20)'s proviso allowing release of a decedent's name nor Section 1252-B of the Coroner's Act make the responsive noncriminal investigation records public (such that Section 708(b)(30) of the RTKL would not apply), because none of the records in existence at the time of the Request are the type of formal coroner reports (including autopsy, toxicology, inquisition, coroner, or other reports) addressed in those statutes. Rather, the responsive records here are "early days" investigative records – notes and internal emails -- which contain the name of an 11-year-old decedent and that for that reason plainly are exempt under Section 708(b)(30).⁶

⁶ Requester cites three OOR Final Determinations as support for the claim that the minor decedent's name must be disclosed. All are either unpersuasive or distinguishable. In *Jones v. Fayette County*, Docket No. AP 2023-0021, OOR relied on *Hearst TV, Inc. v. Norris*, 54 A.3d 23 (Pa. 2012) for the proposition that RTKL Section 708(b)(20) provides that even though autopsy reports are exempt, the exemption does not limit the reporting of the name of the deceased

D. No basis for bad faith

Agencies have a mandatory duty to conduct a good faith search for records sought pursuant to a RTKL request. Section 901 of the RTKL states:

Upon receipt of a written request for access to a record, an agency shall make a good faith effort to determine if the record requested is a public record, legislative record or financial record and whether the agency has possession, custody or control of the identified record, and to respond as promptly as possible under the circumstances existing at the time of the request.

65 P.S. § 67.901. An agency's denial of records and defenses asserted before OOR must be based on a reasonable interpretation of the law.

Requester asserts that the denial of the Request was made in bad faith because the law is settled that the requested records must be disclosed. But as the preceding discussion explains, to the extent the law is settled as to public access to a coroner's noncriminal investigative file that includes the name of a minor decedent under the age of 17, the law is clear that the name is protected from disclosure. To the extent it could be argued that the law is unsettled, the Coroner's denial of the request is plainly not made in bad faith because there is a reasonable—indeed, compelling—basis for the Coroner's interpretation on which the denial is based. The record is clear that the Coroner conducted a good faith search for responsive documents, and reasonably concluded that all records containing the requested information were part of an exempt noncriminal investigation under Section 708(b)(17), and that the requested information is

individual, such that Section 708(b)(30)'s exemption is overridden. However, both *Hearst* and Section 708(b)(20) involve official coroner records, not the coroner's noncriminal investigation records. In *Halpin v. Monroe County Coroner's Office*, Docket No. AP 2023-0530, the coroner never raised the noncriminal investigation exemption at all, and OOR similarly misapplied *Hearst*, which only involved Section 707(b)(20)'s proviso concerning formal autopsy reports. Finally, in *Beague v. Lycoming County Coroner's Office*, Docket No. AP 2016-2040, the coroner provided its formal reports but redacted the minors' names; here, there were no formal reports at the time of the Request, only noncriminal investigation records.

expressly exempted under Section 708(b)(30). Indeed, even OOR's "Advisory Opinion on Autopsy Records" issued November 1, 2022 acknowledges that there is no controlling court precedent on this issue. In short, there is no basis for the Requester's assertion of bad faith.

III. Conclusion

For the reasons stated above, the Lancaster County Office of the Coroner's denial of the Request should be affirmed.

Respectfully submitted,

/s/ Kevin J. McKeon

Kevin J. McKeon, Esq. (PA ID No. 30428)

Melissa A. Chapaska, Esq. (PA ID No. 319449)

Hawke, McKeon & Sniscak LLP

100 North Tenth Street

Harrisburg, PA 17101

Tel: (717) 236-1300

kjmckeon@hmslegal.com

machapaska@hmslegal.com

Attorneys for Lancaster Office of the Coroner

Dated: January 26, 2024

**BEFORE THE
PENNSYLVANIA OFFICE OF OPEN RECORDS**

IN THE MATTER OF:

JACK PANYARD and
LANCASTERONLINE- LNP,

Requester,

vs.

LANCASTER COUNTY OFFICE OF THE
CORONER,

Respondent.

Docket No. AP 24-0181

AFFIDAVIT OF STEPHEN DIAMANTONI, M.D.

I, Stephen Diamantoni, M.D., being of full age, hereby states:

1. I am currently the Coroner for the County of Lancaster Office of the Coroner and have held that position since January 2008.
2. For most of my tenure as Coroner, Lancaster County was a Third Class County; Lancaster County became a Second Class A County effective January 1, 2022.
3. In my capacity as the Coroner, I am aware of the various types of investigations and reports completed by the Coroner's Office, as well as the Coroner's Office's record retention policies.
4. I received and am aware of the December 27, 2023 request seeking "the name of the 11-year-old girl who died in a car crash on the 6000 block of Old Philadelphia Pike in Salisbury Township at 10:42 p.m., Dec. 24, 2023 from the Lancaster County Coroner's Office."

5. At the time of the request, the Lancaster County Coroner's Office's had commenced an investigation into the cause of death of this minor but the investigation had not yet been completed and no reports or other official documents had been prepared. Accordingly, I determined that the request did not implicate any autopsy, toxicology, or other reports, which are created by the Coroner's Office after the completion of an investigation and available from the Coroner's Office for a fee.

6. Based on a thorough search of records in possession of the Coroner's Office containing the name of the minor described in the request, I identified 8 Responsive Records consisting of handwritten notes, emails, voicemails, texts, and Case Management System data entries contained within the Coroner's Office's investigative files pertaining to the Coroner's investigation into the cause and manner of death of the minor described in the request ("Responsive Records").

7. Each of the Responsive Records in existence as of the time of the request is identified and described in the Exemption Log prepared under my supervision and control that is attached to my Office's Position Statement filed with the Office of Open Records as **Exhibit B**.

8. I determined that all of the Responsive Records are non-criminal investigative records exempt from disclosure under Section 708(b)(17) of the RTKL because the records consist of documents in the form of investigatory notes and communications that were created, received, and/or maintained by myself and employees of the Coroner's Office's for the purpose of my Office's investigation into the cause and manner of death of the child described in the request.

9. I additionally determined that because release of the Responsive Records would identify the name of a minor under the age of 17, the Responsive Records are exempt from disclosure under Section 708(b)(30) of the RTKL.

10. During my years as Coroner when Lancaster was a Third Class County and subject to the requirement now contained in Section 1236-B of the Coroner's Act, requiring the coroner to deposit all official records and papers for the preceding year in the Office of the Prothonotary within 30 days of the close of that year, I never deposited investigative files that contained the types of records set forth in the Exemption Log with the County Prothonotary, because I never considered the investigative file for a decedent to be part of the Coroner's Office's official records and papers.

VERIFICATION

I, Stephen Diamantoni, M.D., hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 1/25/2024



Stephen Diamantoni, M.D.

Exemption Log
Panyard v. Lancaster County Office of the Coroner
OOR Dkt. No. AP 2024-0181

DATE	TYPE	TO	FROM	SUBJECT	EXEMPTION
12/24/23	Handwritten notes	N/A (internal notes)	N/A	Coroner's investigation into the cause and manner of death of the minor described in the Request	RTKL, Sections 708(b)(17) and (30)
12/24/23	Text message	Chief Deputy Coroner	Coroner	Coroner's investigation into the cause and manner of death of the minor described in the Request	RTKL, Sections 708(b)(17) and (30)
12/24/23	Case Management System data entry of investigation notes	N/A (database entry)	N/A	Coroner's investigation into the cause and manner of death of the minor described in the Request	RTKL, Sections 708(b)(17) and (30)
12/25/23	Text message	Pathologist	Chief Deputy Coroner	Coroner's investigation into the cause and manner of death of the minor described in the Request	RTKL, Sections 708(b)(17) and (30)
12/26/23	Email	Deputy Coroner	Deputy Coroner	Coroner's investigation into the cause and manner of death of the minor described in the Request	RTKL, Sections 708(b)(17) and (30)
12/26/23	Case Management System entry of additional case data	N/A (database entry)	N/A	Coroner's investigation into the cause and manner of death of the minor described in the Request	RTKL, Sections 708(b)(17) and (30)

CERTIFICATE OF SERVICE

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

VIA E-PORTAL and ELECTRONIC MAIL

Jack Panyard
LancasterOnline - LNP
101 N. Queen Street
Floor 2
Lancaster, PA 17603
jpanyard@lnpnews.com

Respectfully submitted,

/s/ Kevin J. McKeon

Kevin J. McKeon, Esq. (PA ID No. 30428)
Melissa A. Chapaska, Esq. (PA ID No. 319449)
Hawke, McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
Tel: (717) 236-1300
kjmckeon@hmslegal.com
machapaska@hmslegal.com

Attorneys for Lancaster Office of the Coroner

Dated: January 26, 2024

OOR Docket No. AP 2023-2662
(*Panyard I*)

Panyard, Jack

From: noreply@civicplus.com
Sent: Monday, October 23, 2023 12:11 PM
To: Panyard, Jack
Subject: Online Form Submittal: County of Lancaster Open Records Request Form

You don't often get email from noreply@civicplus.com. [Learn why this is important](#)

County of Lancaster Open Records Request Form

Request submitted by:	Web form
Requestor's First Name	Jack
Requestor's Last Name	Panyard
Requestor's Address1	101 N. Queen Street
Requestor's Address2	Floor 2
Requestor's City	Lancaster
Requestor's State	Pennsylvania
Requestor's Zip	17603
Requestor's Phone Number	7178473993
Requestor's Fax Number	<i>Field not completed.</i>
Requestor's Email Address	jpanyard@lnpnews.com
Records Requested:	I am requesting the name of the 3-year-old who died of a gunshot wound to the head at 8:07 p.m. Oct. 20, 2023 at 917 River Road, Holtwood, Martic Township from the county coroner's office.
Please check one of the following boxes:	I am only requesting access to the documents identified above.
If you are requesting a copy of the documents identified above, please check one of the following boxes:	<i>Field not completed.</i>

Specify format requested -
if something other than
paper

Field not completed.

Acknowledgement

I agree

MESSAGE FROM THE LNP/STEINMAN EMAIL SERVER: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.



County Commissioners

Ray D'Agostino
Joshua G. Parsons
John Trescot

Open Records Officer

Tammy L. Bender

Open Records Office

150 North Queen Street
Suite #714
Lancaster, PA 17603
Phone: 717-735-1584
Fax: 717-824-8520
www.co.lancaster.pa.us

October 30, 2023

VIA EMAIL:

jpanyard@lnpnews.com

Jack Panyard

101 N. Queen St.

Lancaster, PA 17602

Re: Right to Know Request Number #412-2023

Dear Mr. Panyard:

Thank you for writing to the County of Lancaster with your request for information pursuant to the Pennsylvania Right to Know Law.

On October 23, 2023, the County of Lancaster Office of Open Records received your request for the name of the 3-year old who died of a gunshot wound to the head at 8:07 p.m. on October 20, 2023, at 917 River Road, Holtwood, Martic Township from the county coroner's office.

Your request is denied in accordance with the Pennsylvania Right to Know Law as follows:

1. Section 703 in that a request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested. By way of further response, it appears your request does not seek records, but rather is only seeking a name.
2. Section 708(b)(30) as a record identifying the name, home address or date of birth of a child 17 years of age or younger.
3. Section 708(b)(16)(ii) as a record of an agency relating to or resulting in a criminal investigation, including investigative materials, notes, correspondence, videos and reports.



4. Section 708(b)(17)(ii) record of an agency relating to a noncriminal investigation, including investigative materials, notes, correspondence and reports.

You have a right to appeal of information in writing to Elizabeth Gerloff Wagenseller, Executive Director, Office of Open Records, 333 Market Street, 16th Floor, Harrisburg, PA 17126-0333. If you choose to file an appeal, you must do so within 15 business days of the mailing date of this letter, as outlined in Section 1101 of the Right to Know Law. An appeal must be submitted in writing either by mail, fax (717-425-5343), or email (openrecords@pa.gov). The appeal must include a copy of your original request and this response letter and must state the grounds upon which you assert that the record is a public record and must address any grounds stated by the agency for denying the request.

Please be advised this correspondence will serve to close this record with our office as permitted by law.

Sincerely,



Tammy L. Bender
Open Records Officer
County of Lancaster

From: no-reply@openrecordspennsylvania.com
To: jpanyard@lnpnews.com
Subject: [External] PA Office of Open Records - Appeal Confirmation
Date: Friday, November 3, 2023 3:38:20 PM
Attachments: [oor_logo_email.png](#)

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook.](#)



pennsylvania
OFFICE OF OPEN RECORDS

You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Jack Panyard
Company:	LancasterOnline - LNP
Address 1:	101 N. Queen Street
Address 2:	Floor 2
City:	Lancaster
State:	Pennsylvania
Zip:	17603
Phone:	717-847-3993
Email:	jpanyard@lnpnews.com
Email2:	jpanyard@lnpnews.com
Agency (list):	Lancaster County
Agency Address 1:	150 North Queen Street
Agency Address 2:	Suite 714
Agency City:	Lancaster
Agency State:	Pennsylvania

Agency Zip:	17603
Agency Phone:	717-735-1584
Agency Email:	openrecords@lancastercounty.pa.gov
Records at Issue in this Appeal:	I am requesting the name of the 3-year-old who died of a gunshot wound to the head at 8:07 p.m. Oct. 20, 2023 at 917 River Road, Holtwood, Martic Township from the county coroner's office.
Request Submitted to Agency Via:	web form
Request Date:	11/23/2023
Response Date:	10/30/2023
Deemed Denied:	No
Agency Open Records Officer:	Tammy L. Bender
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	Yes
Agree to permit the OOR additional time to issue a final determination:	No
Interested in resolving this issue through OOR mediation:	No
Attachments:	<ul style="list-style-type: none">• Panyard OOR appeal submission.pdf• Panyard RTK Request.pdf• Request 412-2023 Response.pdf

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

333 Market Street, 16th Floor | Harrisburg, PA 17101-2234 | 717.346.9903 | F 717.425.5343 | openrecords.pa.gov

To: Office of Open Records
 From: Jack Panyard, Reporter at LNP|LancasterOnline
 Re: Appeal of October 23, 2023 Right to Know Law Denial
 Date: Nov. 1, 2023

On October 23, 2023 I submitted a Right to Know Law request to the County of Lancaster ("County") seeking records from the county coroner's office that would show the name of a 3-year old who died of a gunshot wound to the head at 8:07 p.m. on October 20, 2023, at 917 River Road, Holtwood, Martic Township.

On October 30, 2023, I received a denial from the County. I am now appealing that denial and below address the basis of each reason for denial in turn.

1. Section 703 denial

The County denied my request by saying I did not identify with sufficient specificity what record I wanted and that I only asked for a name. My request was extremely specific (date, time, location) and any record that contains this information should be released. RTKL, sec 708(b)(20) clearly makes the name, cause and manner of death subject to release under the RTKL.

2. Section 708(b)(30) denial

The County also denied my request based upon 708(b)(30) and stated that I was not entitled to the record because it-identified the name, home address or date of birth of a child 17 years of age or younger. Section 708(b)(20), which addresses accessibility of autopsy records, does not contain any age limits. Furthermore, the OOR just last year issued an advisory opinion stating that name, cause and manner of death are subject to RTKL release, "without consideration of age." The OOR specifically reviewed Sec. 708(b)(30) and found it "does not apply when dealing with the names of deceased minors in coroner records." See Nov. 1, 2022, "Advisory Opinion on Autopsy Records," available at https://www.openrecords.pa.gov/Documents/2022-11-01_Dennis_AdvisoryOpinion.pdf

The OOR has also issued several final determinations requiring coroners to disclose the name of a minors. See *Michael Jones and the Observer-Reporter v. Fayette County* (Request sought the name of a minor killed in a fire, along with the date, time, cause and manner of death. The Agency did not prove that the deceased minor's name is exempt from public access or that the records relate to a criminal investigation of the Agency. Granted. AP 2023-0021) and *James Halpin and the Citizen's Voice v. Monroe County Coroner's Office* (Request sought the name, manner and cause of death of a minor killed in an automobile accident. This information is expressly public under Section 708(b)(20) of the RTKL, and because the County Code also makes such information public, the exemption for information identifying minors contained in Section 708(b)(30) of the RTKL does not apply. Granted. AP 2023-0530). The OOR also addressed this issue in *John Beauge and PennLive v. Lycoming County Coroner's Office*, AP 2016-2040, where the OOR required access to the name of minor deceased under the prior, but substantively identical provisions of the County Code that mandate public access to coroner records. See *Allegheny Cty. v. Hailer*, 298 A.3d 476 (Pa. Cmwlth. 2023).

Moreover, the RTKL exemptions do not apply because the County Code Coroners Act controls. 65 P.S. § 67.306, 16 P.S. § 1252-B; see also *Hearst TV, Inc. v. Norris*, 54 A.3d 23, 33 (Pa. 2012).

3. Section 708(b)(16)(ii) denial

The County also denied my request by claiming that it is part of a criminal investigation. Under the plain meaning of the RTKL, a “criminal investigation . . . clearly and obviously refers to an official inquiry into a possible crime” which requires a “close examination and systematic inquiry” or “a systematic examination” in service of that “official inquiry.” See *Pa. State Police v. Grove*, 161 A.3d 877, 892-93 (Pa. 2012). Although Article XII-B of the County Code, otherwise known as the Coroner’s Act, authorizes county coroners and medical examiners to investigate certain deaths to determine their cause and manner, it does not, however, authorize the coroner to conduct a criminal investigation and there is no information contained within the County’s denial that establishes any such an investigation was undertaken. See 16 P.S. §§ 1218-B, 1219-B, 1220-B. If another agency is conducting a criminal investigation, such as a police department, the Coroner’s office cannot rely on that agency’s investigation to shield its own records, particularly something as basic as a deceased person’s name, which is purely factual and expressly public. Moreover, the RKTl exemptions do not apply to the records in this case because the County Code Coroners Act provisions control. 65 P.S. § 67.306; 16 P.S. § 1252-B, see also *Hearst TV, Inc. v. Norris*, 54 A.3d 23, 33 (Pa. 2012).

4. Section 708(b)(17)(ii)

The County denied my request by citing the non-criminal investigative exemption. Section 708(b)(17) of the RTKL exempts from disclosure public agency records “relating to a noncriminal investigation,” including “complaints submitted to an agency,” “investigative materials, notes, correspondence and reports,” and “record[s] that, if disclosed, would . . . reveal the institution, progress or result of an agency investigation.” 65 P.S. § 67.708(b)(17)(i)-(ii),(vi). As with all RTKL exemptions, an agency bears the burden of proving the non-criminal investigative exemption applies by a preponderance of the evidence. 65 P.S. § 67.708(a). To carry that burden, the agency must demonstrate that it conducted a “systematic or searching inquiry, a detailed examination, or an official probe” regarding a noncriminal matter. *Pa. Dep’t of Health v. Off. of Open Recs.*, 4 A.3d 803, 811 (Pa. Commw. Ct. 2010).

The investigation must be “conducted by an agency acting within its legislatively granted fact-finding and investigative powers. That is, its ‘official duties.’” *Johnson v. Pa. Convention Center Auth.*, 49 A.3d 920, 925 (Pa. Commw. Ct. 2012). These limits ensure that agencies do not retrospectively categorize records they would prefer not to release as relating to some amorphous “investigation” without much evidence as to scope or detail. The Commonwealth Court has specifically rejected broad public agency assertions of non-criminal investigations because letting agencies recharacterize normal operations as investigation-adjacent would “craft a gaping exemption under which any governmental information-gathering could be shielded from disclosure.” *Pa. Dep’t of Pub. Welf. v. Chawaga*, 91 A.3d 257, 259 (Pa. Commw. Ct. 2014).

As with the claimed criminal investigation, the County has not provided any declaration or attestation signed under penalty of perjury that shows a purported “investigation” of any kind is underway, and even if it did, the RTKL exemptions do not apply because the County Code

Coroners Act controls. 65 P.S. § 67.306, 16 P.S. § 1252-B; see also *Hearst TV, Inc. v. Norris*, 54 A.3d 23, 33 (Pa. 2012).

Finally, the county's reliance on the various exemptions in the RTKL is misplaced and unreasonable in light of well-settled law, thus raising issues of bad faith. The RTKL exemptions are inapplicable to the present appeal because the Coroner's Act's governs access, and the RTKL is clear that when a more specific law governs public access, the RTKL and its exemptions are inapplicable. 65 P.S. § 67.306. Such is the case here where the requested information is expressly public as a record the coroner required to be made public. Section 1252-B of the County Code provides "immediate access to cause and manner of death records". *Hearst TV, Inc. v. Norris*, 54 A.3d 23, 33 (Pa. 2012). The RTKL's exemptions do not apply when another law requires public access. *See* 65 P.S. § 67.306, 16 P.S. § 1252-B. The OOR has repeatedly affirmed the Supreme Court's interpretation of the law in nearly identical cases, and the coroner's failure to comply with clearly settled appellate court precedent and repeated findings of the OOR raises issues of bad faith. We respectfully request the OOR to issue a finding of bad faith to deter similar unreasonable denials by this coroner and others who deny access to clearly public name, cause, and manner of death records. We also reserve the right to pursue the issue of bad faith if an appeal to court becomes necessary.

NOTICE OF DEADLINES

Lancaster County Prothonotary E-Filed - 14 Jun 2024 10:29:45 AM

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **December 4, 2023**.

The timeline for this RTKL appeal may be extended by the OOR during the appeal This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **November 16, 2023**.

If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.

Due to delays in U.S. mail, we urge agencies and requesters to use email or the E-File Appeal Portal for all communications with the OOR to the extent possible.

Presently, the OOR is receiving postal mail on a limited basis. Accordingly, we urge agencies and requesters to use email for all communication with the OOR to the extent possible.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.



November 6, 2023

Via E-File Portal Only:

Jack Panyard
LancasterOnline - LNP
101 N. Queen Street
Floor 2
Lancaster, PA 17603
jpanyard@lnpnews.com

Via E-File Portal Only:

Tammy Bender
Agency Open Records Officer
Lancaster County
150 N. Queen Street
Suite 714
Lancaster, PA 17603
openrecords@lancastercountypa.gov
openrecords@lancastercounty.pa.gov

RE: OFFICIAL NOTICE OF APPEAL - Panyard and LancasterOnline - LNP v. Lancaster County OOR Dkt. AP 2023-2662

Dear Parties:

Review this information and all enclosures carefully as they affect your legal rights.

The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. on November 3, 2023. A binding Final Determination (“FD”) will be issued pursuant to the timeline required by the RTKL, **please see the attached information for more information about deadlines.**

Notes for both parties (more information in the enclosed documents):

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal.

Sincerely,

Elizabeth Wagenseller
Executive Director

Enc.: Description of RTKL appeal process
Assigned Appeals Officer contact information
Entire appeal as filed with OOR

The Right-to-Know Law Appeal Process

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOR pursuant to the statutory timeline, subject to the notice of deadlines enclosed herein. If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents. **With limited exceptions, the Appeals Officer should be contacted through the E-File Portal.**

Submissions to the OOR

Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer. Please contact the Appeals Officer as soon as possible.

Any information provided to the OOR must be provided to all parties involved in this appeal. Information submitted to the OOR will not be considered unless it is also shared with all parties.

Include the docket number on all submissions.

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

It is strongly advised that attorneys and other party representatives **file an Entry of Appearance** by uploading an Entry of Appearance form to the E-File Portal or completing the form at: <https://www.openrecords.pa.gov/Appeals/EntryOfAppearance.cfm>.

NOTE TO AGENCIES: If an Entry of Appearance is not filed, the AORO is responsible to inform attorneys and other party representatives of all docket activity.

Generally, submissions to the OOR — other than *in camera* records — will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

Agency Must Notify Third Parties

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; or are held by a contractor or vendor, **the agency shall notify the Appeals Officer immediately.** The Appeals Officer may direct the agency to notify such parties of the appeal and provide proof of that notice.

If directed to provide notice, such notice will include: (1) A copy of all documents included with this letter; and (2) A statement advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer or completing the form at <https://www.openrecords.pa.gov/Appeals/DIPRequest.cfm>. (see 65 P.S. § 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep’t of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)). **A third party’s**

failure to participate in a RTKL appeal before the OOR, after receiving notice, may be construed as a waiver of objections regarding release of requested records.

If either party has questions about this requirement, they should immediately contact the Appeals Officer.

Statements of Fact & Burden of Proof

Statements of fact **must** be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, openrecords.pa.gov.

Any evidence or legal arguments not submitted or made to the OOR may be waived.

Preserving Responsive Records

The agency must preserve all potentially responsive records during the RTKL appeal process, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

Mediation

The OOR offers a mediation program as an alternative to the standard appeal process. To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.



APPEALS OFFICER:

Bandy Jarosz, Esq.

CONTACT INFORMATION:

**Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234**

PHONE:

(717) 346-9903

FACSIMILE:

(717) 425-5343

**Preferred method of contact and
submission of information:**

E-FILE PORTAL

**PARTIES WITHOUT COMPUTER OR INTERNET ACCESS SHOULD PROCEED BY MAIL
OR FACSIMILE**

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.
Please include the case name and docket number on all submissions.**

You must copy the other party on everything you submit to the OOR.

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review prior final determinations involving similar records and fees that may impact this appeal.



IN THE MATTER OF

Requester

v.

Agency

:
:
:
:
:
:
:
:
:
:

OOR Dkt. AP _____

Please accept my appearance for the _____ in the above captioned case.
(Requester/Agency)

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Attorney: _____

Firm: _____

Address: _____

Email: _____

Phone #: _____

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.



Office of the Solicitor

150 North Queen Street
Suite #714
Lancaster, PA 17603
Phone: 717-735-1584
Fax: 717-293-7208
www.co.lancaster.pa.us

County Solicitor
Jacquelyn E. Pfursich, Esquire

November 16, 2023

VIA E-FILE PORTAL

Bandy Jarosz, Esquire
Appeals Officer
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

Re: Panyard and LancasterOnline - LNP vs. County of Lancaster;
Docket No. 2023-2662

Dear Attorney Jarosz:

I am in receipt of the letter from your Office dated November 6, 2023, notifying the County of Lancaster of Mr. Panyard and LancasterOnline – LNP’s (hereinafter “Panyard”) appeal in this matter. Please consider this letter and enclosures as supplemental information to assist you in issuing a Final Determination. Based on the following, the County respectfully requests that this appeal be denied.

The County received Panyard’s request under the Right-to-Know Law (RTKL) on October 23, 2023. Specifically, Panyard requested “the name of the 3-year-old who died of a gunshot wound to the head at 8:07 p.m. on October 20, 2023, at 917 River Road, Holtwood, Martic Township from the county coroner’s office.” A complete copy of the request is attached hereto as Exhibit “A.”

On October 30, 2023, the County issued its response denying the request. A complete copy of the County’s Response is attached hereto as Exhibit “B.”

The County first focuses its attention on the County’s denial under Section 703, in that a “written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” To clarify this response, Mr. Panyard’s inquiry did not include any information identifying the specific document or report that he was attempting to obtain, and the County was unable to ascertain which report or

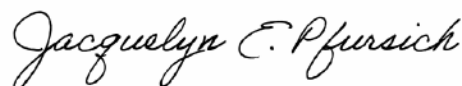


document he wanted. This is specifically important for record requests of Coroner's Office documents due to the statutorily authorized fee schedule used by the Coroner's Office. Without the request for a specific document, the County cannot ascertain which fee to assess. In support of its position, the County provides an affidavit from Lancaster County Coroner Dr. Stephen Diamantoni attached hereto as Exhibit "C." In his affidavit, Dr. Diamantoni states that he is uncertain about which of the various reports prepared by the Coroner's Office, Mr. Panyard is requesting. Furthermore, Dr. Diamantoni states that there was no report prepared at the time of the request. Mr. Panyard's request is more of a question seeking specific information rather than a request for an actual document. The Office of Open Records has previously ruled on numerous occasions that the Right to Know Law does not require agencies to answer questions, only to provide public records. *See, e.g., Harris v. Pa. Dept. of Corrections*, OOR No. AP 2009-0690; *DiPerna v. Churchill Borough*, OOR No. AP 2009-0112. In this instance, Mr. Panyard did not properly specify which document he wanted to receive.

Next, The County next focuses its attention on its denial of records based upon Section 708 (b) (17) which restricts access to records related to non-criminal investigations. To establish this exemption, an agency is required to demonstrate that a systematic or searching inquiry, a detailed examination of an official probe was conducted regarding a noncriminal matter. *Department of Health v. Office of Open Records*, 4 A.3d 803 (Pa. Commw. Ct. 2010.) In support of its position, the County again relies on the affidavit of County Coroner, Dr. Stephen Diamantoni. Dr. Diamantoni asserts in his affidavit that the Coroner's Office completes examinations and investigations into an individual's cause of death. This type of investigation and/or examination was being conducted by the Coroner's Office of a minor child at the time of the request. Furthermore, Dr. Diamantoni states that at the time of the request, the investigation was not yet complete, and the corresponding reports were not prepared. This type of investigation and examination are precisely the type of searching inquiry contemplated in Section 708(b)(17).

If you need additional information or further explanation, please contact me at your convenience. Thank you for your consideration of the County's position.

Sincerely,



Jacquelyn E. Pfursich
County Solicitor

EXHIBIT C

PENNSYLVANIA
OFFICE OF OPEN RECORDS

IN THE MATTER OF	:	
Panyard and LancasterOnline - LNP	:	
Requestor,	:	
	:	
v.	:	Docket No. AP 2023-2662
	:	
LANCASTER COUNTY	:	
Respondent	:	

AFFIDAVIT OF CORONER

I, Stephen Diamantoni, M.D., being of full age and duly sworn upon my oath, hereby deposes and says:

1. I am currently the Coroner for the County of Lancaster and have held that position since Jan. 2008.

2. In my capacity as the Coroner, I am familiar with the County's past and current practices regarding the release of documents in response to Right to Know Requests such as the one at issue in this matter.

3. In my capacity as the Coroner, I am aware of the various types of investigations and reports completed by the Lancaster County Coroner's Office, as well as the Office's record retention policies.

4. The Coroner's Office is tasked with providing medical examinations and other investigations into the cause of death of an individual and then preparing reports on those examinations and investigations.

5. In accordance with the Coroner's Act, the Lancaster County Coroner's Office established a fee schedule for autopsy, toxicology, and other reports created by the Coroner's Office after the completion of an investigation.

6. The fee schedule and the form to request a report prepared by the Coroner's Office is available to the public on the Lancaster County Coroner's website.

7. In February, 2022, Lancaster County changed from an Class 3 County to a Class 2A County.

8. The Pennsylvania Coroner's Act requires Coroners in Class 3 through 8 counties to file their official papers with the County Prothonotary's Office on an annual basis.

9. Under the Pennsylvania Coroner's Act, Class 2A counties, which, as of February 2022 includes Lancaster County, are not required to file their official papers with the County Prothonotary's Office.

10. Since February 2022, the Lancaster County Coroner's Office policy on providing autopsy reports has been to provide autopsy reports to next of kin, or authorized representatives of next of kin, insurance companies and law enforcement agencies.

11. The Lancaster County Coroner's Office conducted an investigation into the cause of death of a three-year old minor child which occurred on approximately October 20, 2023.

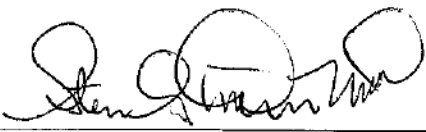
12. On October 30, 2023, the Lancaster County Right to Know Officer made me aware of a request for "the name of the 3-year-old who died of a gunshot wound to the head at 8:07 p.m. Oct. 20, 2023 at 917 River Road, Holtwood, Martic Township."

13. Based upon the request provided, I was unable to determine what report, and therefore, what fee was to be assessed.

14. At the time of the October 23, 2023 request, the Lancaster County Coroner's Office's investigation into the cause of death of this minor had not yet been completed and there were no responsive records to the request.

The above information is true and correct to the best of my information, knowledge and belief, and I am making this statement with the knowledge that it is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities;

Dated this 15 day of NOVEMBER, 2023.



Stephen Diamantoni, M.D.
Lancaster County Coroner

November 21, 2023

Via E-File Portal Only:

Jack Panyard
LancasterOnline - LNP
101 N. Queen Street
Floor 2
Lancaster, PA 17603
jpanyard@lnpnews.com

Via E-File Portal Only:

Tammy Bender
Agency Open Records Officer
Lancaster County
150 N. Queen Street
Suite 714
Lancaster, PA 17603
openrecords@lancastercountypa.gov
openrecords@lancastercounty.pa.gov

RE: Panyard and LancasterOnline - LNP v. Lancaster County OOR Dkt. AP 2023-2662

Dear Ms. Bender:

Upon review of the County's submission, the OOR requires clarification. Kindly indicate whether the County Coroner's Office has **any records** containing the name of the requested individual at the time of the Request. The attestation was silent as to this.

Please provide this information in the format of an attestation, affidavit, or in the alternative, a verification pursuant to 18 Pa.C.S. § 4904. This information should be provided to the OOR by Noon on Tuesday, November 28, 2023.

Thank you for your kind attention to this matter.

Sincerely,

/s/ Bandy Jarosz

Bandy Jarosz

PENNSYLVANIA
OFFICE OF OPEN RECORDS

IN THE MATTER OF	:
Panyard and LancasterOnline - LNP	:
Requestor,	:
	:
v.	: Docket No. AP 2023-2662
	:
LANCASTER COUNTY	:
Respondent	:

AFFIDAVIT OF CORONER

I, Stephen Diamantoni, M.D., being of full age and duly sworn upon my oath, hereby deposes and says:

1. I am currently the Coroner for the County of Lancaster and have held that position since ____.

2. In my capacity as the Coroner, I am familiar with the County's past and current practices regarding the release of documents in response to Right to Know Requests such as the one at issue in this matter.

3. In my capacity as the Coroner, I am aware of the various types of investigations and reports completed by the Lancaster County Coroner's Office, as well as the Office's record retention policies.

4. The Coroner's Office is tasked with providing medical examinations and other investigations into the cause of death of an individual and then preparing reports on those examinations and investigations.

5. In accordance with the Coroner's Act, the Lancaster County Coroner's Office established a fee schedule for autopsy, toxicology, and other reports created by the Coroner's Office after the completion of an investigation.

6. The fee schedule and the form to request a report prepared by the Coroner's Office is available to the public on the Lancaster County Coroner's website.

7. In February, 2022, Lancaster County changed from an Class 3 County to a Class 2A County.

8. The Pennsylvania Coroner's Act requires Coroners in Class 3 through 8 counties to file their official papers with the County Prothonotary's Office on an annual basis.

9. Under the Pennsylvania Coroner's Act, Class 2A counties, which, as of February 2022 includes Lancaster County, are not required to file their official papers with the County Prothonotary's Office.

10. Since February 2022, the Lancaster County Coroner's Office policy on providing autopsy reports has been to provide autopsy reports to next of kin, or authorized representatives of next of kin, insurance companies and law enforcement agencies.

11. The Lancaster County Coroner's Office conducted an investigation into the cause of death of a three-year old minor child which occurred on approximately October 20, 2023.

12. On October 30, 2023, the Lancaster County Right to Know Officer made me aware of a request for "the name of the 3-year-old who died of a gunshot wound to the head at 8:07 p.m. Oct. 20, 2023 at 917 River Road, Holtwood, Martic Township."


13. Based upon the request provided, I was unable to determine what report, and therefore, what fee was to be assessed.

14. At the time of the October 23, 2023 request, the Lancaster County Coroner's Office's investigation into the cause of death of this minor had not yet been completed and there were no responsive records to the request.

15. At the time of the October 23, 2023 request, the Lancaster County Coroner's Office did not have any records that contained the requested information.

The above information is true and correct to the best of my information, knowledge and belief, and I am making this statement with the knowledge that it is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities;

Dated this 28 day of Nov, 2023.


Stephen Diamantoni, M.D.
Lancaster County Coroner