INTRODUCTION

Carter Walker, a reporter for LNP Media Group (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 autopsy and toxicology reports from the County Coroner (“Coroner”). The County denied the Request, arguing that the records are subject to various exemptions. The Requester appealed to the Office of Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is granted, and the County is required to take further action as directed.

FACTUAL BACKGROUND

On September 10, 2018, the Request was filed, seeking copies of “all of the 2017 autopsy and toxicology reports from the Lancaster County Coroner’s office.” The Request added that it
did not seek “the Coroner’s View Reports filed with the Lancaster County Prothonotary’s office.”

On September 12, 2018, the County denied the Request, arguing that the records are autopsy records of the Coroner, 65 P.S. § 67.708(b)(20), contain an individual’s medical information, 65 P.S. § 67.708(b)(5), and relate to criminal investigations, 65 P.S. § 67.708(b)(16).

On September 26, 2018, the Requester appealed to the OOR, arguing that the records are required to be disclosed under the Coroner’s Act. 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. See 65 P.S. § 67.1101(c).

On October 5, 2018, the County submitted a position statement, accompanied by the sworn affidavits of Stephen Diamantoni, the County Coroner, and Travis Anderson, Esq., Assistant District Attorney in the Lancaster County District Attorney’s Office. The Requester did not make a submission on appeal.

**LEGAL ANALYSIS**


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.” 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.* The law also states that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. *Id.* Here, neither party requested a hearing; however, the OOR has the requisite information and evidence before it to properly adjudicate the matter.

The County is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in possession of a local agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. An agency bears the burden of proving the applicability of any cited exemptions. *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)).

1. **The records are official papers of the Coroner that are required to be deposited with the Lancaster County Prothonotary**

The County argues that autopsy and toxicology reports are exempt from disclosure under the RTKL. Section 708(b)(20) of the RTKL exempts from disclosure:
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.

65 P.S. § 67.708(b)(20). However, the exemption “shall not limit the reporting of the name of the deceased individual and the cause and manner of death.” Id.

While certain records of a coroner, such as autopsy reports, are exempt under Section 708(b)(20) of the RTKL, these records are available pursuant to the Coroner’s Act, 16 P.S. §§ 1231-1253.1 See 65 P.S. § 67.3101.1 (“If the provisions of this act regarding access to records conflict with any other … state law, the provisions of this act shall not apply”). Under the Coroner’s Act, there are two ways to access records of a coroner. First, Section 1251 of the Coroner’s Act states that “[e]very coroner, within thirty (30) days after the end of each year, shall deposit all of his official records and papers for the preceding year in the office of the prothonotary for the inspection of all persons interested therein.” 16 P.S. § 1251. The Pennsylvania Supreme Court has found that records pertaining “to a duty of a coroner in his or her official capacity,” including autopsy reports, are “official records and papers” of a coroner that are required to be deposited with the county prothonotary. See Penn Jersey Advance, Inc. v. Grim, 962 A.2d 632, 636 (Pa. 2009) (“It is clear … that conducting autopsies is one of the official duties of a coroner. It follows logically that a coroner’s resulting autopsy reports constitute ‘official records and papers’ within the meaning of Section 1251”).

In the present matter, the County argues that “it is the policy of the Coroner that the submission of the Coroner’s View Reports to the Prothonotary fulfills that office’s statutory duty

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1 The Coroner’s Act, as part of the County Code, is applicable “to all counties of the third, fourth, fifth, sixth, seventh and eighth classes.” 16 P.S. § 102(b). Therefore, because Lancaster County is a county of the third class, its Coroner is subject to the provisions of the Coroner’s Act.
under § 1251 of the Coroner’s Act to deposit its official records and papers with the Prothonotary.” However, Section 1251 does not permit a coroner to pick and choose which records he or she deposits with a prothonotary; instead, it requires coroners to “deposit all of [their] official records and papers.” 16 P.S. § 1251 (emphasis added). The Court in *Penn Jersey* held that autopsy reports are “official records and papers” of a coroner, and because toxicology reports also pertain to a coroner’s official duties, those records also constitute “official records and papers” of a coroner. *See Penn Jersey*, 962 A.2d at 636-37 (“… [T]o the extent that [there is] any room for doubt, we now hold expressly that autopsy reports are ‘official records and papers’ under Section 1251”); 16 P.S. § 1237(a)(2) (stating that a coroner “shall investigate the facts and circumstances concerning deaths which appear to have happened within the county” in situations where those deaths “occur[ed] under suspicious circumstances, including those where alcohol, drugs or other toxic substances may have had a direct bearing on the outcome”). As a result, pursuant to Section 1251, the Coroner is required to deposit autopsy and toxicology reports with the Prothonotary. *See In re Buchanan*, 880 A.2d 568, 573 (Pa. 2005) (“By its plain terms, [Section 1251] speaks to the public disclosure obligations of the county coroner with respect to ‘official records.’ And, in setting forth the duties of coroners, it is certainly written in mandatory terms, setting forth what the coroner ‘shall’ do”).

The County further argues that a “blanket disclosure” of autopsy reports “does not allow for the determination of which autopsies are appropriate for disclosure.” Specifically, the County relies on language in *Penn Jersey*, wherein the Court noted that “trial courts are adequately equipped and authorized to protect autopsy reports from disclosure based on ‘judicial discretion and necessity’ under appropriate circumstances.” *Penn Jersey*, 962 A.2d at 637 (citing *Buchanan*, 880 A.2d at 575)). The County argues that this statement supports “a procedure where Courts
would have discretion over whether an autopsy would be made public.” However, the County ignores the context of this quote from *Penn Jersey*. The Court in *Penn Jersey* specifically stated, in full:

> In reaching [our] holding, we have not ignored the concern noted by the Commonwealth Court that, if autopsy reports are defined as “official records,” the public may be able to gain access to material such as “potentially privileged information, related to the decedent’s medical history and graphic photographs taken during the autopsy. … Although interests of privacy or potential privilege were not argued as a basis for non-disclosure in the instant matter, we note that the Commonwealth Court’s concern, while certainly legitimate, does not justify reclassifying autopsy reports from “official” records to “unofficial” ones. As we noted in *Buchanan*, trial courts are adequately equipped and authorized to protect autopsy reports from disclosure based on “judicial discretion and necessity” under appropriate circumstances.” … *This inherent power provides trial courts with the means to limit public access to autopsy reports (or portions thereof) based on privacy or privilege concerns where warranted. For example, if graphic photographs or items of information subject to a claim of privilege are included as part of an autopsy report, anyone seeking to protect an interest in such material, and having standing to do so, can seek appropriate relief from the trial court.*

962 A.2d at 637 (emphasis added) (citations omitted). Further, in *Buchanan*, the Court noted that “the power to seal is not unfettered, and we thus agree that, to warrant sealing in an instance such as this, there must be a showing by the Commonwealth ‘that the release of the report would substantially hinder an ongoing criminal investigation.’” 880 A.2d at 575. As stated above, the Pennsylvania Supreme Court has clearly and unequivocally held that autopsy reports are official papers of a coroner that are required to be deposited with the prothonotary. While the Court has acknowledged a procedure to challenge the disclosure of specific autopsy reports for limited reasons, this in no way mitigates a coroner’s obligation to deposit these records with the prothonotary.²

² Further, such a result would be illogical. If the Court in *Penn Jersey* “contemplated a procedure where Courts would have discretion over whether an autopsy would be made public,” it would not have held that autopsy reports are required to be deposited with the prothonotary, and therefore, subject to public view.
However, to the extent that the Requester challenges the Coroner’s compliance with Section 1251 the Coroner’s Act, the OOR is not the proper venue for any such challenge. The OOR lacks jurisdiction to order the Coroner to deposit records with the Prothonotary, and the appropriate remedy is an action in mandamus. See generally Penn Jersey, 962 A.2d 636 (stemming from mandamus actions to compel a coroner to deposit his “official records and papers”).

2. The records are available for a fee from the Coroner under the Coroner’s Act

The second means of accessing records under the Coroner’s Act is Section 1236.1(c), which states:

The coroner may charge and collect a fee of up to one hundred dollars ($100) for each autopsy report, up to fifty dollars ($50) for each toxicology report, up to fifty dollars ($50) for each inquisition or coroner’s report and such other fees as may be established from time to time for other reports and documents requested by nongovernmental agencies. 16 P.S. § 1236.1(c). In Penn Jersey, the Court found that “Section 1236.1 … provides a rapid means of procuring an autopsy report for those who do not wish to wait until after the end of the year, and who are also willing to pay the charges associated with procuring it.” Penn Jersey, 962 A.2d at 637. In Hearst Television, Inc. v. Norris, the Court examined the interaction between Section 708(b)(20) of the RTKL and the Coroner’s Act, and found that “the Coroner’s Act provides two methods of public access: the coroner’s year-end archiving of all ‘official records and papers’ with the prothonotary, in accord with Section 1251, or rapid access for those who do not wish to wait and are willing to pay a fee, in accord with Section 1236.1(c).” 54 A.3d 23, 33 (Pa. 2012). The Court then found that “[t]he RTKL provides the procedure for accessing those records that are available for immediate release for a fee pursuant to Section 1236.1(c).” Id. The Court further noted that “[t]here is no mention in Section 1236.1(c) of discretion”; as a result, “Section 1236.1(c)
allows the coroner to charge fees for records, but does not afford the coroner any discretion with regard to releasing such records.” 54 A.3d at 32. As a result, pursuant to Norris, the records identified in Section 1236.1(c) of the Coroner’s Act are available through the RTKL for the fees set forth in the Coroner’s Act.

Here, the Request seeks autopsy and toxicology reports, which are both available for a fee under Section 1236.1(c). As a result, if the Requester chooses to pay the fees set forth in Section 1236.1(c) – up to $100 per autopsy report and up to $50 per toxicology report – the records must be made available to the Requester pursuant to that Section.

3. **The records are not exempt from disclosure under the RTKL**

However, the County argues that the records are exempt from disclosure under the RTKL. As explained above, while Section 708(b)(20) of the RTKL generally exempts from disclosure autopsy records of a coroner, the records are available from the Coroner pursuant to the Coroner’s Act. See 65 P.S. § 67.306; 65 P.S. § 67.3101.1. The County also cites Section 708(b)(5) and 708(b)(16) of the RTKL as a basis for withholding the records. See 65 P.S. § 67.708(b)(5) (medical records); 65 P.S. § 67.708(b)(16) (records related to criminal investigations). Specifically, Coroner Diamantoni attests that the reports “contain health information not suitable for release to the public” and that “[r]eports from the Coroner’s office are given to the police when there is an active criminal investigation and the police request such reports in writing.” Meanwhile, Assistant District Attorney Anderson attests that the deaths of thirteen (13) identified individuals are subject to criminal investigations; specifically, he explains that the Coroner’s Office has ruled the manner

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3 As stated above, the Coroner’s Act “does not apply to counties of the first, second A, or second classes.” See 16 P.S. § 102. 1070. Therefore, Section 708(b)(20) may still be fully applicable to these counties, along with any other agency that may be in the possession of such a report, such as a District Attorney’s office.
of death for each of these individuals as homicide, and that criminal investigations were conducted by various police agencies.

As explained in Norris, records delineated in Section 1236.1(c) of the Coroner’s Act are available to any member of the public from a coroner upon the payment of relevant fees, and “[t]he RTKL provides the procedure for accessing those records.” 54 A.3d at 32-33. The RTKL does not supersede other statutes regarding the public nature of records. 65 P.S. § 67.306; see also Beauge and PennLive v. Lycoming County Coroner’s Office, OOR Dkt. AP 2016-2040, 2017 PA O.O.R.D. LEXIS 203 (finding that “the Coroner may not redact any information from the coroner’s reports, as they are subject to access pursuant to the Coroner’s Act in their entirety”).

The cited exemptions do not apply to these records. Section 708(b)(5) of the RTKL, in addition to generally exempting from disclosure medical records and “individually identifiable health information,” specifically exempts from disclosure “results of tests, including drug tests.” 65 P.S. § 67.708(b)(5). Meanwhile, autopsy and toxicology reports are specifically delineated as records that may be obtained under Section 1236.1(c) of the Coroner’s Act, and therefore accessed from coroners subject to the Coroner’s Act and through the RTKL. The Court’s holding in Norris would create an absurd result if coroners were permitted to withhold autopsy or toxicology reports, or any other records listed in Section 1236.1(c) of the Coroner’s Act, pursuant to Section 708(b)(5) of the RTKL because they contain medical information, as the records cannot be both publicly accessible under the Coroner’s Act and exempt under the RTKL. Section 1236.1(c) of the Coroner’s Act controls. 65 P.S. § 67.306.

Likewise, Section 708(b)(16) of the RTKL exempts from disclosure records “relating to or resulting in a criminal investigation.” 65 P.S. § 67.708(b)(16). The County argues that this

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4 Further, the records are official records that are required to be deposited with the prothonotary, and thus subject to view by the public.
exemption applies to the autopsy reports of 13 deceased individuals because various law enforcement agencies are conducting or have conducted criminal investigations regarding these deaths. However, these reports exist separately, as records of the Coroner, outside of any criminal investigation. While the records may be related to criminal investigations in the hands of the District Attorney’s Office, a local police department, or the Pennsylvania State Police, and therefore exempt from disclosure under Section 708(b)(16) of the RTKL when requested from those agencies, the records are separately available from the Coroner under the Coroner’s Act. See Silver v. City of Pittsburgh, OOR Dkt. AP 2015-1925, 2016 PA O.O.R.D. LEXIS 864 (“The fact that a record becomes evidence in a criminal investigation … does not transform that record into one exemption from disclosure pursuant to Section 708(b)(16). The investigation at issue is not being conducted by the City, and as such, the records at issue were not created or compiled by the City in relate to a criminal investigation”) (citing Haynes v. Pa. Dep’t of Pub. Welfare, OOR Dkt. AP 2012-0415, 2012 PA O.O.R.D. LEXIS 530); see also Miller and The Patriot News v. Pa. State Police, OOR Dkt. AP 2015-0814, 2015 PA O.O.R.D. LEXIS 936. However, as explained above, the Court in Buchanan and Penn Jersey set forth a procedure for the Commonwealth to seal specific autopsy reports, and the Commonwealth is not prohibited from using this procedure.

CONCLUSION

For the foregoing reasons, Requester’s appeal is granted, and the County shall provide access to the records as set forth in Section 1236.1(c) of the Coroner’s Act if the Requester chooses to pay the fees 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 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. This Final Determination shall be placed on the OOR website at: http://openrecords.pa.gov.

FINAL DETERMINATION ISSUED AND MAILED: October 24, 2018

/s/ Kyle Applegate

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APPEALS OFFICER
KYLE APPLEGATE, ESQ.

Sent to: Carter Walker (via email only);
         Tammy Bender (via email only)