

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

IN RE: JONATHAN LUNA

LNP MEDIA GROUP, INC.,  
Intervenor

No. CI-20-01310

OPINION

BY: ASHWORTH, P.J., JANUARY 13, 2021

This matter is before the Court on Motion of the Intervenor LNP Media Group, Inc. (LNP),<sup>1</sup> to Unseal Coroner Records relating to the death of Jonathan Luna, which occurred on December 4, 2003 in Brecknock Township, Lancaster County. For the reasons set forth below, this Motion will be denied.

**I. Background**

Jonathan Luna was found dead on December 4, 2003, and the Lancaster County Coroner classified the death a homicide.<sup>2</sup> The homicide remains unsolved at this time. During the coroner's investigation, an autopsy was performed by the County's forensic

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<sup>1</sup>LNP Media Group, Inc., is a print and digital news organization and publisher of the LNP newspaper, a newspaper of general circulation throughout central Pennsylvania with its principal office located at 8 West King Street, Lancaster, Pennsylvania. See LNP Motion to Intervene at ¶ 1.

<sup>2</sup>At the time of his death, Luna was an Assistant United States Attorney in Baltimore, Maryland. As a result, the U.S. Attorney's Office in Maryland, the Federal Bureau of Investigation's Baltimore field office and the U.S. Attorney's Office for the Eastern District of Pennsylvania, as well as the Pennsylvania State Police were all involved in the investigation of Luna's death. On the one-year anniversary of his death in 2004, the FBI in Baltimore announced that they had found no evidence to show that Luna met his death at the hands of any other individual. Although the statement stopped short of calling Luna's death a suicide, the FBI said the weight of the evidence suggested that Luna took his own life.

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pathologist, which resulted in an autopsy report.<sup>3</sup> On February 4, 2020, the District Attorney for Lancaster County, Heather L. Adams, Esquire, initiated this action by filing with the Prothonotary for Lancaster County a motion to seal the official coroner records, including the autopsy report, of the deceased Luna.

The Office of the Prothonotary is the depository of all "official records and papers" subject to the Coroner's Act.<sup>4</sup> Section 1236-B of the Act specifically provides that "every coroner, within 30 days after the end of each year, shall deposit all official records and papers for the preceding year in the Office of the Prothonotary for the inspection of all persons interested therein." 16 P.S. § 1236-B.<sup>5</sup> In **Penn Jersey**

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The Lancaster County Coroner in 2003, Barry D. Walp, D.O., and forensic pathologist, Wayne K. Ross, M.D., ruled that Luna died of multiple traumatic wounds and freshwater drowning, and that the manner of death was a homicide. Dr. Walp's successor, G. Gary Kirchner, M.D., refused to reverse the manner of death from homicide to suicide, as requested by federal investigators. Stephen G. Diamantoni, M.D., Dr. Kirchner's successor, and the current coroner for Lancaster County, has reaffirmed his predecessors' conclusion as to the manner of death.

LNP concurred in the forensic pathologist's and coroners' conclusion as evidenced by an editorial published by Lancaster Newspapers (now LNP) in the Lancaster Sunday News on December 10, 2006, entitled "*A Matter of Homicide*," in which the editor states: "The evidence in Jonathan Luna's death does not point to suicide. . . . His death was homicide, not suicide." The Lancaster Sunday News, Editorials, December 10, 2006.

<sup>3</sup>As explained by our Supreme Court:

[T]he Coroner's Act authorizes the county coroner to investigate certain deaths to determine their cause and manner. See 16 P.S. § 1237(a) & (b) [now § 1218-B(b)(1)] (authorizing the coroner to investigate the facts and circumstances of certain deaths for the purpose of determining 'the cause of any such death'); *id.* at § 1238 [now § 1219-B(a) & (b)] (authorizing the coroner to perform an autopsy or conduct an inquest when the coroner cannot otherwise determine the cause and manner of death);....

**Hearst Television, Inc. v. Norris**, 617 Pa. 602, 605, 54 A.3d 23, 25 (2012) (footnote omitted).

<sup>4</sup>The collection of statutory provisions commonly referred to as the Coroner's Act is contained in The County Code at 16 P.S. §§ 1201-B–1236-B.

<sup>5</sup>The Coroner's Act was amended in 2018 to add section 1236-B in place of section 1251. Section 1251 and section 1236-B contain identical language, except that section 1236-B now limits the disclosure to counties of the third, fourth, fifth, sixth, seventh, and eighth classes. Lancaster County is a county of the third class. See *The Pennsylvania Manual*, Vol. 123, at 6-11 (2017).

**Advance, Inc. v. Grim**, 599 Pa. 534, 541, 962 A.2d 632, 636-37 (2009), the Pennsylvania Supreme Court held that autopsy reports are "official records and papers" under then section 1251 (now section 1236-B) of the Act and must be deposited with the prothonotary within 30 days after the end of each year. See also **Commonwealth ex rel. District Attorney of Blair County, In re Randy Buchanan**, 583 Pa. 620, 624, 880 A.2d 568, 571 (2005).

In an opinion and order entered on August 23, 2019, the Honorable Leonard G. Brown, III, confirmed the Lancaster County Coroner's statutory obligation, pursuant to section 1236-B of the Coroner's Act, to deposit in the Office of the Prothonotary, within 30 days after the end of each year, all official records, reports and papers regarding the deaths of persons in Lancaster County for the preceding year. See **County of Lancaster v. Walker et al.**, No. CI-18-09547, slip op. at 5 (C.C.P. Lancaster Aug. 23, 2019) (citing **Penn Jersey, supra**).<sup>6</sup> Accordingly, Judge Brown ordered the Coroner of Lancaster County to deposit his official records and papers for each calendar year in

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<sup>6</sup>Two appeals were filed by the County from decisions of the Pennsylvania Office of Open Records involving requests by PennLive Group and LNP for "2017 Lancaster County coroner reports" and "all 2017 autopsy and toxicology reports." See **County of Lancaster v. Miller et al.**, No. CI-18-02915, and **County of Lancaster v. Walker et al.**, No. CI-18-09547. The two appeals were consolidated to No. CI-18-09547 and were stayed pending the filing of a separate mandamus complaint by the appellees. The mandamus action, **PA Media Group and LNP Media Group, Inc. v. Diamantonl**, filed at No. CI-19-07296, sought an order from the Court directing the Lancaster County Coroner, Dr. Diamantonl, to deposit all of his "official records and papers for the calendar years 2015, 2016 and 2017" with the Lancaster County Prothonotary. See Complaint in Mandamus, Wherefore Clause. Previously, the Coroner had annually deposited only the Coroner View Reports, which state solely the cause of death. The mandamus action was consolidated with the two Open Records appeals consolidated at No. CI-18-09547. After granting the request for mandamus, Judge Brown dismissed as moot the County's two appeals from the final determinations of the Office of Open Records regarding the 2017 coroner records. The Commonwealth was not a party to any of this litigation.

which he had occupied the office of coroner<sup>7</sup> with the Lancaster County Prothonotary within 60 days from the date of the August 23, 2019 Order. Pursuant to section 1236-B of the Coroner's Act, these deposited records would then be available "for the inspection of all persons interested therein," including the press. 16 P.S. § 1236-B.

Following Judge Brown's Order of August 23, 2019, and prior to the expiration of the 60-day period for depositing the records, the District Attorney moved to seal the official coroner records and papers of those decedents whose deaths, between 2008 and 2018, were the subject of an ongoing criminal investigation and where the release of such documents posed a threat of substantially hindering or jeopardizing the criminal investigation. Each petition to seal was separately granted by a Judge of the Court of Common Pleas for Lancaster County. See Commonwealth Motion to Seal Official Coroner Records and Papers at ¶ 3.

On or about September 27, 2019, a representative for both PA Media Group and LNP submitted a request to the Lancaster County Coroner's Office and/or the Prothonotary's Office via the Lancaster County Solicitor's Office for the disclosure of several official coroner records and papers, including those of Jonathan Luna.<sup>8</sup> Commonwealth Response to Motion of LNP to Unseal Records at ¶ 5. Based on

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<sup>7</sup>Dr. Diamantoni was elected coroner in 2007 and has served in office since 2008; accordingly, Judge Brown's order required him to deposit his official records from 2008 through 2018.

<sup>8</sup>LNP argues consistently throughout its pleadings that it has been involved in protracted litigation with the Lancaster County Coroner for access to coroner records *including the coroner records of deceased federal prosecutor Jonathan Luna*, which litigation culminated on August 23, 2019, when the Honorable Leonard G. Brown, III granted LNP's mandamus and ordered the Coroner to deposit official records and papers as required by 16 P.S. § 1236-B with the Lancaster County Prothonotary, and dismissed as moot the Coroner's appeal from a Final Determination of the Office of Open Records that ordered the Coroner to disclose certain records, *including Mr. Luna's coroner records*, to LNP.

representations made by the Coroner's Office at the time, the Solicitor's Office responded to the media request on or about October 21, 2019,<sup>9</sup> that "[t]he Coroner has no records relating to Jonathan Luna, DOD, 12/4/2003, so that cannot be produced."

Commonwealth Motion to Seal Official Coroner Records at ¶ 6 n.1. *See also*

Commonwealth's Response to LNP Motion to Unseal Coroner Records at ¶ 5.

Similarly, the District Attorney's Office was informed by the Coroner that his office was not in possession of the official coroner records and papers of the deceased Luna and that it was believed that those original documents were in the possession of the FBI.<sup>10</sup>

Commonwealth Motion to Seal Official Coroner Records at ¶ 5. Relying upon those representations by the Coroner's Office, the District Attorney did not file a motion to seal the coroner records for Luna as they were not known to be in the possession of the coroner and subject to the filing requirements of section 1236-B of the Coroner's Act.

*Id.* at ¶ 6.

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*See* LNP Brief in Support of Motion to Unseal Coroner Records at 1-2 (emphasis added). *See also* LNP Motion to Intervene at ¶ 4; LNP Motion to Unseal Coroner Records at ¶ 4. According to the Amended Final Determination of the Office of Open Records issued October 24, 2018, LNP's request pursuant to the Right to Know Law, 65 P.S. §§ 67.101-67.3104, sought "all of the 2017 autopsy and toxicology reports from the Lancaster County Coroner's Office." Luna's autopsy was conducted on December 4, 2003. *See* Commonwealth Response to LNP Motion to Intervene at ¶ 4 n.1. Thus, the appeals from the Final Determinations of the Office of Open Records that were dismissed as moot by Judge Brown dealt solely with requests for the coroner records from 2017, which he ordered to be deposited with the Prothonotary as a result of the mandamus action, along with Dr. Diamantoni's official records and papers from 2008 through 2018. The record simply does not support LNP's assertion that it has been involved in "protracted litigation" for the 2003 coroner records of Luna. Moreover, LNP's assertion that Luna's 2003 coroner records were the subject of Judge Brown's Order of August 23, 2019, is false and misleading.

<sup>9</sup>LNP avers its counsel was informed on October 21, 2019. The Commonwealth contends LNP was notified on October 17, 2019. Neither party has provided proof of the notification date.

<sup>10</sup>*See* Footnote 2, *supra*.

On or about January 20, 2020, a request was made by William Buckingham<sup>11</sup> to the Lancaster County Coroner to disclose the official coroner records and papers of the deceased Luna. Commonwealth Motion to Seal Official Coroner Records at ¶ 7. This request prompted a new search for the records and on Friday, January 31, 2020, at approximately 4:00 p.m., Lancaster County's Solicitor, Christina L. Hausner, Esquire, discovered that the official coroner records and papers of Luna were being stored in the Lancaster County Archives located in the Lancaster County Government Center at 150 North Queen Street, Lancaster City. *Id.* at ¶ 8.

Upon receipt of this information from the Solicitor, the District Attorney promptly filed on Tuesday, February 4, 2020, a motion to seal Luna's newly discovered coroner records, and served a copy of the motion on Mr. Buckingham and on the representative for PA Media Group and LNP – the two individuals who had most recently requested access to the records. In the motion, the District Attorney averred that the release of Luna's coroner records posed a threat of substantially hindering or jeopardizing the ongoing criminal investigation into Luna's death. Specifically, Trooper First Class Chadwick S. Roberts of the Pennsylvania State Police verified under penalty of perjury that, "if the details of the autopsy became generally known," the investigation would be "fundamentally impaired" and "irreparabl[y] harm[ed]." Commonwealth Motion to Seal Official Coroner Records at ¶ 11(c).

Based upon the averments set forth by the District Attorney in the Motion to Seal, relief was granted on February 5, 2020, and the Prothonotary was ordered to seal from

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<sup>11</sup>William Buckingham is a York County, Pennsylvania private detective and former police officer

public inspection all official records and papers, including autopsy reports, toxicology reports, inquests and other related documents pertaining to the actions completed by the Coroner's Office for Luna. LNP filed a motion to intervene and a challenge to the sealing of the record just hours later on February 5, 2020.<sup>12</sup> The Commonwealth was unopposed to LNP's motion to intervene but maintained that the coroner records must remain sealed.

An order was entered on March 2, 2020, granting in part and denying in part LNP's motion. Intervenor status was granted to LNP. However, the further request to unseal Luna's coroner records was denied without prejudice to LNP filing a separate motion to unseal and to access the documents.<sup>13</sup> On March 19, 2020, LNP filed a motion to unseal Luna's coroner records, asserting "[t]he sealing of Luna's records unreasonably interferes with LNP's right to obtain coroner records as confirmed in Judge Brown's order dated August 23, 2019."<sup>14</sup> LNP Motion to Unseal Coroner Records at ¶ 15. After delays due to court closures related to the coronavirus disease

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<sup>12</sup>"In Pennsylvania, a Motion to Intervene is the proper vehicle for the press to raise a right of access question." **Commonwealth v. Long**, 592 Pa. 42, 47 n.1, 922 A.2d 892, 895 n.1 (2007) (citing **Commonwealth v. Fenstermaker**, 515 Pa. 501, 504 n.1, 530 A.2d 414, 416 n.1 (1987)).

<sup>13</sup>Our Supreme Court has explained, "Intervention of this type may properly be termed *de bene esse*, to wit, action that is provisional in nature and for the limited purpose of permitting the intervenor to file a motion, to be considered separately, requesting that access to proceedings or other matters be granted." **In re 2014 Allegheny County Investigating Grand Jury**, 181 A.3d 349, 351 (Pa. Super. 2018), *aff'd* — Pa. —, 223 A.3d 214 (2019) (quoting **Fenstermaker**, 515 Pa. at 504 n.1, 530 A.2d at 416 n.1). Thus, after having been granted intervenor status, the intervenor shall thereafter file a separate motion requesting access to proceedings or records. In this case, having had its motion to intervene granted, LNP was required to file a separate motion requesting access to the sealed documents in question.

<sup>14</sup>Judge Brown's order did not establish LNP's "right to obtain coroner records." Rather, Judge Brown's opinion and order confirmed the coroner's statutory obligation to deposit in the Office of the Prothonotary, within 30 days after the end of each calendar year, all official records, reports and papers regarding the deaths of persons in Lancaster County for the preceding year. See **County of Lancaster v. Walker**, slip op. at 5.

("COVID-19") pandemic, an order was entered on June 12, 2020, directing the Commonwealth to respond to LNP's motion to unseal Luna's coroner records within 30 days.

The Commonwealth filed its response to LNP's motion on July 13, 2020, asserting that the Commonwealth's averments in the motion to seal and the verified statement by State Trooper Roberts established that the release of the coroner records of Luna poses a threat of substantially hindering or jeopardizing the ongoing investigation. The Commonwealth, nonetheless, proposed making the coroner's report available for an *in camera* review so the Court could make findings of fact in support of its discretionary determination that the Commonwealth's averments established that the release of such records would adversely impact its investigation. An order was entered on July 15, 2020, directing the Commonwealth to produce the coroner records for an *in camera* review, and deferring LNP's request for an evidentiary hearing pending the completion of that review.<sup>15</sup>

Following the *in camera* review, an order was entered on July 28, 2020, finding that, in the event there is an ongoing investigation into the death of Jonathan Luna, the release of the coroner records poses a threat of substantially hindering or jeopardizing that investigation. A hearing was ordered for August 26, 2020, at which time the Commonwealth was to present evidence as to the existence of any criminal investigation into the death of Luna. The scheduling order limited the testimony at the

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<sup>15</sup>Our Supreme Court has approved the use of *in camera* review in cases such as this that require an appraisal of the "effect" that a disclosure would have. In *In re Buchanan*, the Court held that a trial court "may, pursuant to its broad discretionary authority, conduct an *in camera* review of [an] autopsy report" to determine whether its release "would actually substantially hinder or jeopardize" an ongoing criminal investigation. 583 Pa. at 635, 880 A.2d at 577-78.



hearing solely to the issue of the existence of such an investigation and directed there would be no further consideration of evidence related to the threat posed by the release of the coroner records to any ongoing criminal investigation.

Nonetheless, on September 3, 2020, LNP filed a motion to permit additional testimony at the hearing relative to whether the release of the information would substantially hinder any ongoing investigation. LNP claimed that details regarding Luna's death have been reported on publicly by local and national print and broadcast media outlets, "thus calling into question just how much of an adverse impact or hinderance[ ] release of the Coroner records would pose, thus going directly to the credibility and/or weight of testimony presented by the [District Attorney's] Office." LNP Motion to Permit Additional Testimony at ¶¶ 7, 9. An order was entered on September 9, 2020, denying LNP's motion to permit testimony on the nature and extent of the reporting and public release of details and information concerning Luna's death.<sup>16</sup>

At the request of LNP, the hearing originally scheduled for August 26, 2020, was continued until September 14, 2020, and then continued again until October 14, 2020, due to my unavailability. At that time, State Trooper Roberts was the sole witness for the Commonwealth. LNP offered no direct testimony.

At the conclusion of the evidentiary hearing, I granted the request of LNP's counsel to file a brief on the issues of (1) what constitutes an "ongoing" investigation, (2) the authority of the Court to release redacted versions of the records requested, and (3)

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<sup>16</sup>LNP further sought to present testimony both by means of cross-examination and by direct testimony on "the 'discovery' of the Coroner's records in order to provide the Court with complete information relevant to any claimed ongoing investigation issue." LNP Motion to Permit Additional Testimony at ¶ 13. The purpose of the hearing was to establish the existence of an investigation, so LNP's proffered testimony on this issue was appropriate and did not require a motion. No such testimony, however, was presented by LNP at the October 14, 2020 hearing.

whether the Court could impose a temporal limit on the current order sealing the coroner records at issue. LNP's brief was timely filed on November 20, 2020. The Commonwealth filed its response on December 24, 2020. This matter is now ripe for disposition.

## II. Discussion

### A. "Open, Active, and Ongoing" Investigation

The first issue raised by LNP is whether the investigation into Jonathan Luna's death is presently active and ongoing. LNP Post Hearing Brief at 3. Whether an investigation is open, active, and ongoing is by necessity a question of fact to be determined on a case-by-case basis. See **Penn Jersey**, 599 Pa. at 542, 962 A.2d at 637.

Our Supreme Court has held that a district attorney has the right and ability to preserve the integrity of a homicide investigation by seeking an order from the courts to prevent the release of coroner records to the general public when the Commonwealth can demonstrate that such release will adversely affect an ongoing, unsolved homicide investigation.<sup>17</sup> See **In re Buchanan**, 583 Pa. at 631, 880 A.2d at 575. Although

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<sup>17</sup>The authority of the district attorney to act in criminal investigations is well settled and undisputed. "[T]he district attorney shall be the chief law enforcement officer for the county in which he [or she] is elected," 71 P.S. § 732-206(a), and is statutorily authorized to "conduct all criminal and other prosecutions, in the name of the Commonwealth, ... which arise in the county for which the district attorney is elected." 16 P.S. § 1402(a). See **Miller v. County of Centre**, 643 Pa. 560, 580, 173 A.3d 1162, 1174 (2017); **In re Dauphin County Fourth Investigating Grand Jury**, 596 Pa. 378, 393, 943 A.2d 929, 938 (2007). See also **Commonwealth ex rel. Spector v. Bauer**, 437 Pa. 37, 41, 261 A.2d 573, 575 (1970) ("district attorneys in this Commonwealth have the power -- and the duty -- to represent the Commonwealth's interests in the enforcement of its criminal laws"). "It is in the capacity as the Commonwealth's attorney that

section 1236-B of the Coroner's Act provides for the routine release of the coroner's "official records and papers" for public inspection, our Supreme Court has determined that this statutory provision may not be viewed as a prophylactic rule from which no exception can arise. Rather, the Court noted in **In re Buchanan** that there are "circumstances where the Commonwealth can demonstrate that the release of [an autopsy] report would substantially hinder an ongoing criminal investigation," and then the "common pleas courts have the inherent power to seal [the] report." *Id.* at 623, 880 A.2d at 570.

Later, the Supreme Court reiterated in **Penn Jersey** that "trial courts are adequately equipped and authorized to protect autopsy reports from disclosure based on 'judicial discretion and necessity' under appropriate circumstances" when a party has standing to assert such a privilege or concern. 599 Pa. at 542, 962 A.2d at 637 (*citing In Re Buchanan*, 583 Pa. at 631, 880 A.2d at 575). Thus, on a case-by-case basis, the courts may review the circumstances presented to determine if restricted "public access" is warranted. *Id.* When an adverse impact to a criminal homicide investigation can be averred and demonstrated by the Commonwealth, as here, trial courts have the "traditional and inherent authority" to grant protective relief to avoid premature disclosure of investigative information contained within the coroner records. **In re Buchanan**, 583 Pa. at 631, 880 A.2d at 575.

In the instant case, I found that the record supported the Commonwealth's request to protect from release the coroner records for Jonathan Luna. LNP argued the

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the district attorney fulfills the obligation to *investigate* and prosecute crime." **Commonwealth v. Jury**, 431 Pa. Super. 129, 142, 636 A.2d 164, 171 (1993) (*emphasis added*).

affidavits filed by the District Attorney's Office in support of sealing the records were "conclusory, boilerplate, and insufficient as a matter of law to justify sealing said records in whole or in part." See LNP Motion to Intervene at ¶ 11. Recognizing that there is no "bright-line" test, the Superior Court in *In re Buchanan* noted that the Commonwealth must, at a minimum, "make a specific showing that the release of the report would have a substantial negative impact on its investigation -- for example, by keeping witnesses from coming forth or preventing investigators from verifying information that they receive from informants." 823 A.2d at 153.

Here, the District Attorney averred in the motion to seal that "release of the autopsy report for the Decedent poses a threat to substantially hinder or jeopardize the ongoing investigation." Motion to Seal at ¶ 11(c). In support of this claim, Trooper Roberts gave examples of potential losses that the investigative team would suffer if details of the autopsy report<sup>18</sup> were released including: (1) "the investigative team's ability to accurately assess the credibility of any future information provided by witnesses, suspects, or informants that referenced information related to the autopsy report would be compromised"; (2) the Commonwealth's "ability to seek and obtain search warrants relevant to the investigation" would be impaired; and (3) "the investigation would be fundamentally impaired in that suspects in the investigation and,

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<sup>18</sup>Trooper Roberts identified the following such details:

the condition of the scene of the death, including where the body was located, the positioning of the body, the presence or absence of certain physical evidence, as well as extremely detailed information that the pathologist discovered during the autopsy, including the cause and manner of death and detailed observations on each section of the body.

Motion to Seal at ¶ 11(c).

ultimately, the perpetrator would be alerted to the details known by the investigative team through the autopsy report.” *Id.*

From the record, I determined that the public's interest in disclosure of the details of the Luna homicide contained in the coroner records is outweighed by the need to protect any ongoing criminal investigation from the irreparable harm that would result from the release of the information. See *In re Buchanan*, 583 Pa. at 635, 880 A.2d at 577-78. LNP contends, however, that the Commonwealth has failed to properly establish the existence of an active, ongoing homicide investigation that warrants the sealing of the coroner records in this case. LNP's position is that “a common understanding of an open investigation likely would encompass some type of active, systemic, continuous inquiry in an attempt to solve the matter,” and that once the police declare a death a “cold case,” such as in the death of Mr. Luna, there is no longer an active examination of witnesses, evidence, or leads occurring.” LNP Post Hearing Brief at 4.

Trooper Roberts testified at the hearing on behalf of the Commonwealth regarding the nature of the investigation into Luna's death. Trooper Roberts is the criminal investigative analysis (CIA) officer for Troop J Lancaster. Notes of Testimony, October 14, 2020 Hearing (N.T.) at 5. As the CIA officer, his responsibilities include reviewing all non-traffic deaths in Troop J's jurisdiction, whether they be suicide, homicide, accidental, suspicious, or “equivocal,” *i.e.*, where the manner of death is undetermined officially. *Id.* at 5, 20, 37. Trooper Roberts is also charged with overseeing all “cold cases” for his Troop. *Id.* at 6.

Trooper Roberts explained that an "open case" is a case (1) which has not been solved, (2) for which the statute of limitations has not run, and (3) where there has been some recent activity. N.T. at 8. A "cold case" is one which is two plus years old, the investigation following the crime has been "exhausted," and it is still "open," *i.e.*, the statute of limitations has not run. *Id.* at 8-10, 54. Trooper Roberts identified the Luna case as a "cold case."<sup>19</sup> *Id.* at 54-55. Presently, there exist 40 such cold cases that remain open in Lancaster County dating back to the 1940's, *Id.* at 6, 19-20, 55, and 541 cold cases statewide. *Id.* at 21.

Trooper Roberts testified that all cold cases are reviewed annually by the State Police, and remain "open" investigations. N.T. at 6-7, 10, 22-23. He noted that the lack of new developments or lack of progress in a cold case investigation does not change the designation or classification of a cold case from being an "open, ongoing investigation." *Id.* at 10, 15, 23.

Trooper Roberts took over the Luna case in 2013 after becoming the CIA officer for Troop J.<sup>20</sup> N.T. at 30, 45. He initially reviewed the entire case file, which was extensive due to the multiple-agency investigation. *Id.* at 31. While Luna's case has not had fresh leads or new evidence since 2015, when a fingerprint match uncovered a potential lead, *Id.* at 32-35, the case is being actively worked on by Trooper Roberts. *Id.* at 42. He testified unequivocally that the Luna case is "an open, ongoing investigation,"

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<sup>19</sup>Trooper Roberts confirmed that there is no statute of limitations for homicide. N.T. at 7. See 42 Pa.C.S.A. § 5551 ("A prosecution ... may be commenced *at any time* [for] Murder...." (emphasis added)).

<sup>20</sup>Trooper Roberts was involved in the initial investigation into Luna's death in 2003. N.T. at 31. He was the second trooper on the scene the morning of December 4, 2003 and was familiar with the case prior to taking responsibility for it as the CIA officer in 2013. *Id.*

despite the lack of progress in the last several years. *Id.* at 31-32, 42, 67. Trooper Roberts further confirmed in early 2020 that a special agent in the FBI Baltimore field office is presently assigned to the Luna case and that the case also remains open for the FBI as a murder investigation.<sup>21</sup> *Id.* at 42, 60, 66-67.

As an open murder investigation, the Luna case is specifically and individually reviewed annually every December. *N.T.* at 35-36, 46. "There's always something that can be done to progress the case," Trooper Roberts stated. *Id.* at 12. That work includes following up on any leads that have come in, checking for hits on the national DNA database CODIS (Combined DNA Index System),<sup>22</sup> the national fingerprint database AFIS (Automated Fingerprint Identification System), and the NamUs (National Missing and Unidentified Persons System) database relating to missing and unidentified decedent cases maintained by the University of North Texas Center for Human Identification. *Id.* at 12-14, 18. The annual review also involves scouring the FBI's

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<sup>21</sup>This is contrary to previous news reports from the Justice Department and FBI. In 2013 April Brooks, then special agent in charge of the criminal division in the FBI's New York City field office and the former supervisory special agent in the Baltimore field office responsible for the investigation involving the death of Luna, was interviewed by the Washington Post. She reported that the Luna case was closed "administratively," and that federal authorities believed his death was a suicide. See Cheryl W. Thompson, "A decade later, prosecutor Luna's death still a mystery," *Washington Post Magazine*, December 12, 2013, [https://www.washingtonpost.com/lifestyle/magazine/a-decade-later-prosecutor-lunas-death-still-a-mystery/2013/12/10/211e2ab8-f563-11e2-aa2e-4088616498b4\\_story.html](https://www.washingtonpost.com/lifestyle/magazine/a-decade-later-prosecutor-lunas-death-still-a-mystery/2013/12/10/211e2ab8-f563-11e2-aa2e-4088616498b4_story.html). See also Chris Francescani, "Veteran FBI crime-fighter says 'The Wire' rings true," Reuters, August 29, 2012, <https://www.reuters.com/article/us-usa-security-fbi/veteran-fbi-crime-fighter-says-the-wire-rings-true-idUSBRE87S0U520120829> (wherein Special Agent Brooks stated, "The FBI has since closed the case, without determination.... There's no evidence to show that he met his death at the hands of any other individual.").

<sup>22</sup>"The CODIS is a computer software program that operates local, state, and national databases of DNA profiles of convicted offenders." **Commonwealth v. Houck**, 596 Pa. 883, 886 n.2, 948 A.2d 780, 782 n.2 (2008). Investigators use the CODIS database to generate a "cold hit" of a suspect's DNA on the samples on file. **Commonwealth v. Wallace**, No. 324 MDA 2015 2016, WL 6417183 (Pa. Super. Aug. 16, 2016) A search of CODIS yielded the forensic lead in 2015 that Trooper Roberts followed up on by conducting interviews. *N.T.* at 32-35.

ViCAP (Violent Criminal Apprehension Program) system – a national database that pairs criminal acts based on their similarities. *Id.* at 36, 51. Trooper Roberts referred to the ViCAP database as an “initiative to have information sharing on cases between police departments, but yet in a secured manner so as not to leak information that could jeopardize cases.” *Id.* at 51.

Trooper Roberts pointed to two Lancaster County “cold cases” that were recently solved as a result of these annual reviews after years of little progress, leads or evidence being developed. The murder of Christy Mirack in 1992 resulted in a conviction 27 years later, after a DNA profile was obtained via genetic genealogy analysis. Raymond Rowe pleaded guilty to first-degree murder and other charges and is serving life in prison. *N.T.* at 25-26. A serial rapist, who attacked women in 2000 and 2001, was charged earlier this year after a fresh look at the case. The construction of a “person of interest” spreadsheet led to DNA matching and charges against Charles E. Musser.<sup>23</sup> *Id.* at 24-25. If such cases were not ongoing, they would never have had the opportunity to be solved.

These decades-old, solved cases referenced by Trooper Roberts refute LNP’s argument that “[i]t is inconsistent with the spirit of **Buchanan** for the Commonwealth to seal records and prevent disclosure simply because a case has not been closed in the filing system.” LNP Post Hearing Brief at 5. Unsolved homicides are never “closed in the filing system.”<sup>24</sup> The lack of a statute of limitations for murder clearly reflects both

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<sup>23</sup>Trooper Roberts testified regarding several other cold cases in the Commonwealth that were solved after 20 and 30 years. See *N.T.* at 28-29.

<sup>24</sup>There are several examples of “cold case” homicides being solved after a fresh look at the evidence. See, for example, **Commonwealth v. Russell**, 938 A.2d 1082 (Pa. Super. 2007) (detective re-interviewed witness to a 24-year-old arson resulting in the deaths of two children



the seriousness of the crime and the desire that prosecutions should not be barred by the mere passage of time. See 42 Pa.C.S.A. § 5551. Nor should homicide investigations be impeded and compromised by the release of vital information simply because of the number of years removed from the killing.

The age of the case, in fact, is irrelevant, as is the recency of developments that progress the matter. One never knows when or how a cold case will be solved. No one knows which fact, piece of evidence, witness or circumstance may trigger the case to be solved. (N.T. pp. 17-18). In fact, the argument that no recent leads or progress somehow renders the investigation no longer ongoing, reflects a complete lack of understanding of – and appreciation for – how cold cases are investigated and solved. Not every investigative method is an overt, proactive technique initiated by an investigator, but rather can be an inert process – like forensic science – that is most likely used to solve cold cases. That an investigative technique is more inert than active, does not make it less effective and, in turn, makes it no less ongoing. It is not the age of the case, the investigative techniques used or the recency of developments that dictates whether an investigation is ongoing. (N.T. pp. 14-15; 18-19).

Commonwealth's Response to Post Hearing Brief of LNP at 2-3. LNP's bare assertion that the release of autopsy records could not imaginably hinder the "minimal, annual review" of cold cases by the State Police, see LNP Post Hearing Brief at 5, is both disingenuous and naïve. "Confessions, developments in technology, grand jury investigations, and a reassessment of the evidence by a new investigator are all specific and real examples of ways that a cold case can be solved even after years of few developments or progress." Commonwealth's Response to Post Hearing Brief of LNP at 3.

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and got a confession); **Commonwealth v. Kelper**, No. 3261 EDA 2015, 2016 WL 6840183 (Pa. Super. Nov. 21, 2016) (1968 homicide solved after State Trooper reinterviewed witnesses in 2012 and used "modern means" to locate the murderer in Texas); **Commonwealth v. Hopkins**, No. 964 WDA 2014, 2015 WL 5970796 (Pa. Super. Aug. 31, 2015) (1979 homicide remained unsolved until 2010, when, using technology not available in 1979, the State Police found the murderer's seminal DNA on the victim's nightgown, bathrobe belt tied around her hands and a sheet that covered her body).

Based upon the evidence presented at the hearing in this matter, I find that the Luna criminal investigation to which these coroner records relate is active and ongoing so as to warrant the sealing of the records.

### **B. Redacted Records**

LNP next argues that should the Court find that there is an ongoing investigation into the death of Jonathan Luna, redacting portions of the coroner records, rather than sealing them in their entirety, would be adequate to protect the Commonwealth's interests in the investigation.<sup>25</sup> LNP Post Hearing Brief at 6. This request is consistent with the Supreme Court's suggestion in *In re Buchanan* that a trial court "is free to determine whether a less restrictive means, such as redaction, is adequate to protect the Commonwealth's interests" in the coroner records. 538 Pa. at 635, 880 A.2d at 578. See also *Penn Jersey*, 599 Pa. at 542, 962 A.2d at 637 (courts have discretion to implement "means to limit public access to autopsy reports (or portions thereof) based on privacy or privilege concerns where warranted").

As with its motion to unseal Luna's coroner records, LNP bases its alternate argument for redaction of those sealed records on the premise that the coroner records deposited with the Prothonotary are "judicial records" subject to constitutional and common law access.<sup>26</sup> LNP Post Hearing Brief at 6. Based upon this asserted right of

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<sup>25</sup>At the conclusion of the hearing, counsel for LNP made an oral motion for reconsideration of the order sealing the documents, requesting that the Court consider redaction of only those portions of the report that if released would substantially impede, obstruct, or interfere with the Commonwealth's ongoing investigation. N.T. at 70-71.

<sup>26</sup>Our [Supreme] Court has acknowledged that this principle of openness with respect to public judicial records is, in addition to common law tradition, also grounded in the Pennsylvania Constitution. . . (Article I, section 9 provides, "In all criminal prosecutions the accused hath a

access to the records as public judicial records, LNP argues the Commonwealth must make a sufficient showing that the reason to seal the records outweighs the public's right of openness and access. *Id.* at 7. See also LNP Brief in Support of Motion to Unseal Coroner Records at 5.

"The courts of this Commonwealth long have recognized that citizens have a common law right to the inspection of public documents." *Miller*, 643 Pa. at 569, 173 A.3d at 1167 (citing *Mooney v. Temple University Board of Trustees*, 448 Pa. 424, 429-430 n.10, 292 A.2d 395, 398 n.10 (1972) and *Wiley v. Woods*, 393 Pa. 341, 141 A.2d 844, 847 (1958)). Common law access rules arguably apply, however, *only* in cases that are not governed by statutory rights of access. See *Fenstermaker*, 515 Pa. at 511-12, 530 A.2d at 419-20. The instant case is subject to the Coroner's Act, which provides that coroner records deposited with the prothonotary are subject to public access, not because they are judicial records, as stated by LNP, but rather by the express terms of section 1236-B, which provides that the records will be maintained "for the inspection of all persons interested therein." See 16 P.S. § 1236-B. The coroner records become public by express operation of the Coroner's Act when they are deposited with the prothonotary. See also *Penn Jersey*, 599 Pa. at 542, 962 A.2d at 637.

Moreover, our Supreme Court has held, unequivocally, that "the General Assembly codified and clarified the common law right of public access to public records'

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right to ... a speedy public trial..." and Article I, section 11 states, "All courts shall be open.")" *Miller*, 643 Pa. at 569, 173 A.3d at 1167.

when it enacted the Right to Know Act.”<sup>27</sup> **Uniontown Newspapers, Inc. v. Roberts**, 576 Pa. 231, 238, 839 A.2d 185, 189 (2003) (citations omitted). Thus, “[i]n cases where provisions of this statute have been applied, the common law right to inspect public documents has been regarded as superseded by the provisions of the Right to Know Act, insofar as public inspection of records of agencies is concerned.”<sup>28</sup> **Fenstermaker**, 515 Pa. at 511-12, 530 A.2d at 419-20. The Coroner’s Office is subject to the Right to Know Law, see **Hearst Television**, 617 Pa. at 607, 54 A.3d at 26; therefore, common law access rules do not apply to these local agency records.

LNP argues, however, that the statutorily-mandated act of depositing the coroner records with the Office of Prothonotary transforms them from public records of a local

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<sup>27</sup> “[i]n 1957 the Pennsylvania General Assembly codified the common law right to inspect public records by enacting the RTKA [Right to Know Act] to provide public access to public records 65 P.S. §§ 66.1-66.4 (repealed); see **Wiley v. Woods**, 393 Pa. 341, 141 A.2d 844, 848 (1958) (stating that the RTKA was enacted to ‘enlarge the rights of the general public for the examination and inspection of public records.’).” **Pennsylvania State Education Association v. Commonwealth Department of Community and Economic Development**, 637 Pa. 337, 354, 48 A.3d 142, 152 (2016) Subsequently,

[i]n 2008, the General Assembly enacted the RTKL [Right to Know Law], replacing the RTKA.... The objective of the RTKL is to empower citizens by affording them access to information concerning the activities of their government, to promote openness to official government information in order to prohibit secrets, scrutinize the actions of public officials, and to make public officials accountable for their actions. The RTKL affords greater access to public records than did the RTKA, resulting in a dramatic expansion of the public’s access to government documents. . . . All records in the possession of Commonwealth and local agencies are presumed to be public records subject to disclosure, unless they are exempt under a section 708 exception, subject to a privilege, or are otherwise exempt under another state or federal law, regulation, or judicial order or decree. 65 P.S. § 67.305(a). In contrast, only financial records in the possession of a judicial agency shall be presumed to be available in accordance with the RTKL. 65 P.S. § 67.305(b).... [T]he RTKL limits the public records that judicial agencies must disclose to financial records.

**Miller**, 643 Pa. at 570-71, 173 A.3d at 1167-68 (citations, footnotes and internal quotations omitted). See also **Hearst**, 617 Pa. at 607-08, 54 A.3d at 26.

<sup>28</sup>“It is unquestioned that the right to inspect public documents was no broader at common law than it is presently under the [Right to Know] statute.” **Mooney**, 448 Pa. at 429-430 n.10, 292 A.2d at 398 n.10.

agency subject to the Right to Know Law to public "judicial records," subject to a common law and constitutional presumption of openness.<sup>29</sup> See *Miller*, 643 Pa. at 569, 173 A.3d at 1167 ("Given the importance of the need for open observation of our criminal justice system, this common law right of access [to public documents] has always extended to public judicial records.... [T]his principle of openness with respect to public judicial records is, in addition to common law tradition, also grounded in the Pennsylvania Constitution.") (citations omitted). Research has failed to disclose any published Pennsylvania case addressing the question of whether coroner records once deposited in the Office of the Prothonotary become public judicial records<sup>30</sup> subject to a common law and constitutional right of access.

In addressing this previously unanswered question, I begin my analysis by noting that our appellate Courts have conclusively established that prothonotaries are *not* judicial officers. In *In re Administrative Order No. 1-MD-2003*, 594 Pa. 346, 936 A.2d 1 (2007), the Supreme Court addressed the question of whether a prothonotary was a member of the judiciary or a county official. The Supreme Court concluded that

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<sup>29</sup>Pennsylvania courts "often use the term 'judicial records' when discussing the openness of the courts and records to which a common law right of access attaches." *Grine v. County of Centre*, 138 A.3d 88, 97 n.9 (Pa. Cmwlth. 2016) (*en banc*).

<sup>30</sup>The terms "judicial records" and "judicial documents" have never been conclusively defined by our courts or by statute. The Supreme Court in *Miller*, *supra*, noted that while never "carefully ... define[d]," the term "public judicial documents" clearly includes, at a minimum, "[d]ocuments that are filed with the court, and in particular, those that are used by the judge in rendering a decision" 643 Pa. at 569, 173 A.3d at 1167. Decades earlier, in *Delco Ice Mfg. Co. v. Frick Co.*, 318 Pa. 337, 340, 178 A. 135, 137 (1935), our Supreme Court cautioned that a distinction exists between a "judicial record" and a record made pursuant to a statute in a court-related office. See also *In re G.J.K. & Sons, LLC*, 175 A.3d 1033, 1037 (Pa. Super. 2017) (*citing Delco*). This case precisely involves the latter type of record, that is, documents deposited with the Office of the Prothonotary pursuant to a statute – the Coroner's Act. Moreover, coroner records are generally not "used by the judge in rendering a decision" in a pending civil or criminal case.

prothonotaries have no power to act in a judicial capacity:

It is 'well settled' . . . that the role of the prothonotary of the court of common pleas, while vitally important, is purely ministerial. . . . As a purely ministerial office, any authority exercised by the prothonotary must derive from either statute or rule of court. . . . Further, as '[t]he prothonotary is merely the clerk of the court of Common Pleas[,] [h]e has no judicial powers'. . . .

*Id.* at 360-61, 936 A.2d at 9 (citations omitted). Without judicial powers, a prothonotary is simply not a judicial officer.

Based on the Supreme Court's decision in **Administrative Order**, and the plain language of the Pennsylvania Constitution, our Commonwealth Court rejected in **Olenginski v. County of Luzerne**, 24 A.3d 1103 (Pa. Cmwlth. 2011), *appeal denied* 615 Pa. 787, 42 A.3d 1061 (2012), the appellant's argument that prothonotaries are part of the judiciary: "[N]owhere in the Pennsylvania Constitution is it stated that prothonotaries are part of the judiciary," nor does the Constitution "provide[] that the judiciary supervises the office of the prothonotary." *Id.* at 1106. To the contrary, county prothonotaries are expressly listed as "county officers" under Article IX, Section 4 of the Constitution: "*County officers shall consist of* commissioners, controllers or auditors, district attorneys, public defenders, treasurers, sheriffs, registers of wills, recorders of deeds, *prothonotaries*, clerks of courts, and such others as may from time to time be provided by law." Pa. Const. art. IX, § 4 (emphasis added). Our Commonwealth Court interpreted this provision to conclude that a prothonotary is not a member of the judiciary but rather a county official under the Pennsylvania Constitution. **Olenginski**, 24 A.3d at 1105, 1106. See **Pennsylvania State Association of Jury Commissioners v. Commonwealth**, 621 Pa. 360, 386 n.16, 78 A.3d 1020, 1035 n.10

(2013) (finding the holding in **Olenginski** persuasive in finding jury commissioners are also not part of the judicial system).

The case law is thus clear that a county prothonotary is not a judicial officer. The next question to address is whether the Office of the Prothonotary nevertheless qualifies as a "judicial agency" such that coroner records, upon deposit in that office, become "judicial records" or "records of a judicial agency."<sup>31</sup>

The Right to Know Law defines "judicial agency" as "[a] court of the Commonwealth or *any other entity or office of the unified judicial system.*"<sup>32</sup> 65 P.S. § 67.102 (emphasis added). Our Supreme Court recently addressed the precise question of what constitutes a "judicial agency" for purposes of the Right to Know Law:

The 'unified judicial system' is defined by the Judicial Code and by the Supreme Court's Rules of Judicial Administration. In particular, the term 'personnel of the system' includes '[j]udicial officers, personal staff, administrative staff and central staff.' 42 Pa.C.S. § 102; see Pa.R.J.A. 102. The term 'related staff' is defined as '[a]ll individuals employed at public expense who serve the unified judicial system, but the term does not include personnel of the system.' 42 Pa.C.S. § 102; Pa.R.J.A. 102. The term 'system and related personnel' is defined to include . . .  
. . . district attorneys, public defenders, sheriffs and other officers serving process or enforcing orders, registers of wills, *prothonotaries*, clerks of the courts, clerks of the orphans' court division, coroners, jury commissioners, probation officials, and the personnel of all of the foregoing.

42 Pa.C.S. § 102; see also Pa.R.J.A. 102;<sup>6</sup> **Rosenwald [v. Barbieri]**, 501

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<sup>31</sup>Our Commonwealth Court, in noting that the term "judicial records" is not defined in the Right to Know Law, and is used in "few other statutory and common law contexts," has recently decided to "recast this phrase as 'records of a judicial agency.'" **Grine**, 138 A.3d at 97. See also **Philadelphia District Attorney's Office v. Stover**, 176 A.3d 1024, 1026 n 2 (Pa. Cmwlth. 2017) (relying on **Grine** to use the terms "judicial records" and "records of a judicial agency" interchangeably).

<sup>32</sup>The 1968 amendments to the Pennsylvania Constitution created the unified judicial system. Article V, section 1 provides: "The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal and traffic courts in the City of Philadelphia, such other courts as may be provided by law and justices of the peace. All courts and justices of the peace and their jurisdiction shall be in this unified judicial system."

Pa. 563, 569], 462 A.2d [644,] 647 [(1983)] ('These definitions[ ] clearly distinguish between "personnel of the system" and "related staff." ').

[N.6: The Rules of Judicial Administration define '[s]ystem and related personnel' as follows:

Personnel of the system and related staff. The term includes district attorneys, public defenders, sheriffs and other officers serving process or enforcing orders, registers of wills, *prothonotaries*, excluding prothonotaries of the Supreme Court, Superior Court and the Commonwealth Court of Pennsylvania, clerks of the courts, clerks of the orphans' court division, prison and correctional officials, and the personnel of all of the foregoing.

Pa.R.J.A. 102.]

Because district attorneys [and registers of wills, prothonotaries, clerks of the courts, and clerks of the orphans' court division, among others] are 'system and related personnel,' but are not 'personnel of the unified judicial system,' it follows that they are 'related staff.' 'Related staff' expressly are not 'personnel of the system.' *A fortiori*, such staff cannot be personnel or entities or offices of the unified judicial system. Rather, '*related staff*' are '*those whose function aids the judicial process but who are not supervised by the courts.*' *Id.* Under the plain language of the RTKL, the Judicial Code, and the Rules of Judicial Administration, district attorneys (like public defenders, sheriffs, and others identified as 'system and related personnel') are not 'judicial agencies.' Accordingly, [the District Attorney] cannot invoke the protections for judicial agencies provided by the RTKL.

**Miller**, 643 Pa. at 572-73, 173 A.3d at 1169 (emphasis added). Our Supreme Court concluded:

The inclusion of district attorneys within the definition of 'system and related personnel' in the Judicial Code and Rules of Judicial Administration does not transform district attorneys into members of the unified judicial system. For this reason, we conclude that [the district attorney] and her office are not 'judicial agencies' under the RTKL.

*Id.* at 573-74, 173 A.3d at 1169-70.

Similarly, the inclusion of "prothonotaries" within the definition of "system and related personnel" in the Judicial Code and Rules of Judicial Administration does not



convert prothonotaries into members of the unified judicial system.<sup>33</sup> Rather, prothonotaries are county officials who serve but are not personnel of the unified judicial system. *Miller*, 643 Pa. at 573, 173 A.3d at 1169. Again, this is consistent with the plain language of Pennsylvania Constitution Article IX, Section 4, which states that “[c]ounty officers shall consist of . . . prothonotaries. . . .” Pa. Const. art. IX, § 4. See *Olenginski*, 24 A.3d at 1106.

Accordingly, I must conclude that the Office of the Prothonotary is not a “judicial agency” for purposes of the Right to Know Law and for our purposes here, by analogy. The coroner records upon deposit in the Office of the Prothonotary, therefore, do not become “records of a judicial agency” or “judicial records” subject to a common law and constitutional right of access in the context of this proceeding.

Even assuming, *arguendo*, that the coroner records at issue are judicial records, LNP is still not entitled to access. While there is a common law tradition of public access to public judicial records, our appellate courts have recognized that this right is not absolute and that “[trial] courts do have supervisory powers over their records and files.” *In re Buchanan*, 583 Pa. at 630, 880 A.2d at 575 (*quoting Fenstermaker*, 515 Pa. at 512-13, 530 A.2d at 420). “It is the responsibility of the trial court to determine, in

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<sup>33</sup>I recognize that this decision based upon the Supreme Court’s analysis in 2017 in *Miller* is in conflict with the position of the Commonwealth Court, which has “consistently held that a court’s filing office, such as a prothonotary’s office, [and] clerk of courts’ office . . . are included within the [Right to Know Law’s] definition of ‘judicial agency.’” *Smith v. Philadelphia Office of Judicial Records*, 2020 WL 5742871, slip op. at \*2 (Pa. Cmwlth. Sept. 25, 2020) (*quoting Nixon v. Philadelphia County Clerk of Courts* (Pa. Cmwlth., No. 706 C.D. 2016, filed Nov. 14, 2017), slip op. at 3, and *citing Faulk v. Philadelphia Clerk of Courts*, 116 A.3d 1183, 1186 (Pa. Cmwlth. 2015), and *Frazier v. Philadelphia County Office of the Prothonotary*, 58 A.3d 858, 859-60 (Pa. Cmwlth. 2012)). These decisions are based on the Commonwealth Court’s characterization of a court filing office as “an entity or office of the unified judicial system,” 65 P.S. § 67 102, which is directly contrary to the Supreme Court’s analysis in *Miller* set forth above.

the exercise of its informed discretion, whether the common law right of access will outweigh countervailing factors.” **P.G. Publishing Co. v. Commonwealth**, 389 Pa. Super. 86, 91, 566 A.2d 857, 859 (1989), *aff’d*, 532 Pa. 1, 614 A.2d 1106 (1992).

The Supreme Court in **Fenstermaker** employed the following balancing test: “Where the presumption of openness attached to a public judicial document is outweighed by circumstances warranting closure of the document to public inspection, access to the document may be denied.” 515 Pa. at 513, 530 A.2d at 420. The Court listed numerous factors that would rebut the presumption of openness in arrest warrant affidavits, including “the need of preserving the integrity of ongoing criminal investigations.” *Id.* Our Supreme Court has further observed that “the decision – the weighing of the competing factors in a balancing approach – regarding access to [judicial records] ‘is one best left to the sound discretion of a trial court.’” **In re Buchanan**, 583 Pa. 630, 880 A.2d at 575 (*quoting Fenstermaker*, 515 Pa. at 513, 530 A.2d at 420). *See also P.G. Publishing*, 389 Pa. Super. at 93, 566 A.2d at 860 (“Certainly the trial court may be best situated to gauge the vulnerability of an ongoing criminal investigation.”). Thus, our appellate courts have recognized that a balancing approach of competing interests can be used to foreclose a common law right to access public judicial records during a criminal investigation.

In the instant case, the application of this discretionary balancing test required by the common law weighs in favor of withholding the coroner records. Following an *in camera* review, I found that the presumption of openness was outweighed here by the Court’s responsibility to protect the integrity of the Commonwealth’s ongoing investigation into the murder of Jonathan Luna. *See In re Buchanan*, 583 Pa. at 631,

880 A.2d at 575. As noted above, this "balancing of interests" approach is applicable even to documents subject to the Coroner's Act. See *In re Buchanan*, 583 Pa. at 623, 631, 880 A.2d at 570, 575. See also *Penn Jersey*, 599 Pa. at 542, 962 A.2d at 637. Thus, based upon the record, it was within this Court's inherent powers to seal Luna's coroner records in their entirety.

It is important here to address the fact that, throughout these proceedings, LNP has consistently argued that my discretionary decision to seal Luna's coroner records is in direct contradiction of Judge Brown's Order of August 23, 2019, which LNP claims established its right to obtain the coroner records. At no time did Judge Brown (or any other Judge of the Court of Common Pleas of Lancaster County) order the public disclosure of the Luna records and papers As noted previously, Judge Brown's opinion and order merely confirmed the coroner's statutory obligation to deposit in the Prothonotary's Office, within 30 days after the end of each calendar year, all official records, reports, and papers regarding the deaths of persons in Lancaster County for the preceding year. See *County of Lancaster v. Walker*, slip op. at 5. Judge Brown did acknowledge, however, that, once deposited, those records may be protected from disclosure to the public "based on 'judicial discretion and necessity' under appropriate circumstances," *Id.* at 11 (*citing Penn Jersey*, 599 Pa. at 542, 962 A.2d at 637), including a district attorney's request for "a protective order where public access to a coroner's autopsy report might harm an ongoing criminal investigation." *Id.* at 13 n.10. Consistent with Judge Brown's previous order, this Court had the inherent power to limit public access to the Luna autopsy report after completing a "balancing of interests" analysis.

Having ruled that the coroner records are not public judicial records under the common law right of access, and that alternatively a balancing of interests weighs against the release of the documents, I must now consider LNP's constitutional argument.

"It is well settled that the First Amendment to the United States Constitution, and Article I, Sections 7 and 11 of the Pennsylvania Constitution secure a general right of public access to criminal proceedings, as well as to *judicial records*."<sup>34</sup>

**Commonwealth v. Curley**, 189 A.3d 467, 472 (Pa. Super. 2018) (*quoting Commonwealth v. Selenski*, 996 A.2d 494, 496-97 (Pa. Super. 2010) (emphasis added)). Like the common law right of access, the threshold question in any case is whether the material in question is a "judicial record" such that the First Amendment applies to it. See **Long**, 592 Pa. at 51-52, 922 A.2d at 898. Having determined that the coroner records for Luna are not judicial records or records of a judicial agency, they are not protected by the First Amendment right of access.

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<sup>34</sup> The First Amendment of the United States Constitution provides as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I. Section 7 of the Pennsylvania Constitution entitled, "Freedom of press and speech," provides in relevant part:

The printing press shall be free to every person who may undertake to examine the proceedings of the Legislature or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty....

Pa. Const. art. I, § 7. Section 11 of the Pennsylvania Constitution provides the following right:

All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.

Pa. Const. art. I, § 11.

Even if the coroner records were protected by the First Amendment, LNP is still not entitled to access. While there is a constitutionally protected right of public access to certain judicial proceedings and documents, it is a qualified right involving a balancing process. **Commonwealth v. Martinez**, 917 A.2d 856, 860 (Pa. Super. 2007) (*citing* **Richmond Newspapers, Inc. v. Virginia**, 448 U.S. 555 (1980) (plurality)). The law allows for a case by case balancing of interests that has been emphasized by the U.S. Supreme Court in articulating the boundaries of the First Amendment right of access.

In **Globe Newspaper Co. v. Superior Court of Norfolk County**, 457 U.S. 596 (1982), the Supreme Court articulated the test which must be complied with before judicial documents are sealed or otherwise not open to the public. That test was delineated by the Supreme Court as follows: "Where . . . the State attempts to deny the right of access in order to inhibit the disclosure of sensitive information, it must be shown that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest." *Id.* at 607. See also **In re 2014 Allegheny County Investigating Grand Jury**, --- Pa. at ---, 223 A.3d at 219 (" [E]ven when a [qualified First Amendment] right of access attaches, it is not absolute[,] as it may be overcome by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.") (*quoting* **Press-Enterprise Co. v. Superior Court**, 464 U.S. 501, 510 (1984)) Thus, a judge – after weighing competing interests and making appropriate findings – may be warranted in placing certain limitations on the public's right of access to information. See **Richmond Newspapers**, 448 U.S. at 581 (denial of access cannot be justified "absent an overriding interest articulated in findings").

The factors favoring withholding the coroner records weighed in the discussion of the common law access standard also rise to the level of compelling interests. Based upon my review of the evidence submitted at the *in camera* hearing and the arguments made by counsel, I concluded that the Commonwealth met its burden of showing compelling reasons to preclude public and press access to the Luna coroner records at this time. To permit wholesale disclosure of the contents of the documents as requested by LNP would prejudice the ongoing homicide investigation.

In conclusion, the Luna coroner records which are subject to public inspection by statute, and not by common law or constitutional law as judicial records, “may nonetheless be sealed pursuant to common law access principles on the basis of the ‘inherent right’ of the courts to limit the public’s access to public records.” *In re Buchanan*, 583 Pa. at 631, 880 A.2d at 575. Our Supreme Court explained:

There is nothing in the plain language of Section 1251 [now section 1236-B of the Coroner’s Act] that remotely suggests that the General Assembly was seeking to circumscribe the traditional and inherent authority of courts to take protective measures, including measures which would require sealing of otherwise public information, when it addressed the disclosure duty of coroners. Fidelity to the statute requires only a recognition that coroners are obliged to lodge their reports by the date certain set forth in the statute. The questions of the powers and duties of courts—which is the question we face—is a distinct one which is not addressed by the statute. Accordingly, we agree with the panel majority below that ‘our legislature [in enacting Section 1251] did not intend to eliminate [ ] [trial] courts’ inherent power to limit the public’s right of access to coroners’ records “by judicial discretion and necessity.”’ *In re Buchanan*, 823 A.2d at 151 (citations omitted).

*Id.* Under the circumstances of this case, the Court has properly exercised its broad discretionary authority to protect the Commonwealth’s interests in the Luna homicide investigation by sealing the coroner records.

The remaining question is whether the redaction of the coroner records would meet the compelling concerns raised by the Commonwealth. LNP claims that “because information contained in the autopsy report can be separated between information that could and could not be used to assess witness credibility or factual versus analytical analyses, there are less restrictive means by which the Court can protect the Commonwealth’s interest in its investigation.” LNP Post Hearing Brief at 9. It is LNP’s contention that “it is possible for the Court [to] redact only the portions of the report that plausibly relate to any witness interviewing in the future or that could alert a perpetrator to details known to law enforcement relating to suspect information.” *Id.*

The Commonwealth counters that “[b]ecause no one can possibly predict which portion of the autopsy report may be relevant to solve the case depending on the unknown fact, observation, comment, analysis and/or technology that may trigger such a development, the Court is simply not in a position to adequately and meaningfully redact the autopsy report.” Commonwealth’s Response to Post Hearing Brief of LNP at 4. To predict the unpredictable would be an impossible task for this Court, and the sure result would be a compromised homicide investigation:

The further proposition that “[d]isclosure of the requested records and their reporting to the public may help spark the receipt of new information or encourage persons having relevant knowledge to come forward and assist law enforcement,” thus “helping” rather than “hindering,” LNP Post Hearing Brief at 8, is illogical and inconsistent with the investigative process. If the release of autopsy reports was proven to be an aid in solving cold case murders, the Commonwealth would advocate for such action. Clearly, it does not.

LNP has failed to establish that the redaction of Luna's coroner records would meet the compelling concerns raised by the Commonwealth. Accordingly, the entirety of the records shall remain sealed at this time.

### **C. Sealing for a Limited Time**

Lastly, LNP argues that, if the Court denies its request to unseal the records, in whole or in part, the Court should limit the amount of time the records remain sealed and, in a reasonable period of time, revisit whether the investigation continues to be ongoing.<sup>35</sup> LNP Post Hearing Brief at 9. LNP suggests that a six-month review is "a reasonable period in the circumstances." *Id.* at 9-10.

The Supreme Court in *In re Buchanan* noted that, "if appropriate," the trial court has discretion to impose a reasonable time limit on the continued sealing of autopsy reports. 583 Pa. at 635, 880 A.2d at 578. Given my determination that the criminal investigation into the death of Jonathan Luna is open, active and ongoing and will remain so as long as the murder case is unsolved, and that release of the Luna coroner records would substantially jeopardize that homicide investigation, it is not appropriate and, in fact, would be a waste of resources, to require a six-month or even annual review of the decision to seal the records. Accordingly, unless and until the Pennsylvania State Police concludes its investigation into the death of Jonathan Luna or determines that no further investigation is warranted, the coroner records will remain sealed.

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<sup>35</sup>At the hearing, counsel for LNP made an oral motion for the Court to impose a "temporal limit" on the sealing of the coroner records in this case. N.T. at 68. Counsel specifically requested that the Court unseal the records at a particular point in time, 90 days to 6 months, or alternatively, do a review as to the "ongoing nature of this investigation." *Id.* at 68-70.



#### D. Procedural Due Process Challenges

While not raised as an issue to be briefed by LNP following the hearing in this case, claims have been made by LNP throughout the court filings that certain procedural due process rights were violated in this case. Specifically, LNP has averred that it was error for the District Attorney to file the motion to seal without advance notice to LNP,<sup>36</sup> for the Court to rule on that motion without a hearing, and for the Court to enter its order without notice to LNP.<sup>37</sup> See LNP Motion to Unseal Coroner Records at ¶¶ 9, 13, 18, 25<sup>38</sup>; LNP Motion to Intervene at ¶ 10. Relying on **Commonwealth v. Buehl**, 316 Pa. Super. 215, 462 A.2d 1316 (1983), LNP contends this Court violated federal and state constitutional law and the common law when it denied access to the coroner records for Luna without giving any notice to the public that it was about to do so, and without holding a hearing.

It is correct that the Pennsylvania Superior Court has a long-established procedure for the lower courts to follow when confronted with a request to seal judicial records. Before restricting the public's right of access to judicial proceedings and records, the court is obligated to provide public notice of the request for sealing, provide

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<sup>36</sup>LNP was included on the Commonwealth's distribution list, and a copy of the motion to seal was timely served on counsel for LNP. See **Commonwealth Response to LNP Motion to Seal** at ¶9. Therefore, while LNP claims it was error for the Commonwealth to file the motion without notice to LNP, what LNP really asserts is that it was error for the Commonwealth to not give it advance notice that such a motion would be filed in the near future.

<sup>37</sup>Again, LNP was included on the Court's distribution list and received a copy of the Order of February 5, 2020.

<sup>38</sup>LNP averred it "did not receive notice or opportunity to object to the District Attorney's motion to seal *in spite of Judge Brown's prior order.*" LNP Motion to Unseal Coroner Records at ¶ 25 (emphasis added). The District Attorney was not a party to the litigation before Judge Brown. Moreover, as noted above, Judge Brown's Order of August 23, 2019, did not specifically relate to Luna's coroner records from 2003. See, Footnote 6, *supra*.

opportunity for members of the press and the public to object, hold a public hearing on the issue, consider alternatives to closure or seal, and state, on the public record, the explicit reasons for rejecting the alternatives. **Buehl**, 316 Pa. Super. at 225-28, 462 A.2d at 1321-23. *See also Fenstermaker*, 515 Pa. at 513, 530 A.2d at 420-21 (judicial records cannot be sealed until after the court holds a full hearing on the issue and articulates the factors taken into consideration in reaching its determination).

However, LNP's argument is premised on its errant conclusion that coroner records are judicial records. Having determined that these documents are not judicial records or records of a judicial agency subject to the constitutional and common law right of access doctrines, the procedural due process challenges are rejected. Neither the Pennsylvania Coroner's Act, 16 P.S. §§ 1201-B–1236-B, nor Pennsylvania's common law or procedural rules provide for any due process requirements, including notice or the need for a hearing, when petitioning a trial court to seal coroner records.

### **III. Conclusion**

This Court recognizes the unique and important role the media plays in ensuring the transparency of Court proceedings. However, for the reasons set forth above, including but not limited to the fact that the release of the subject records would pose a threat of substantially hindering or jeopardizing the open, active and ongoing criminal investigation into the death of Jonathan Luna, LNP's motion to unseal the Luna coroner records must be denied.

Accordingly, I enter the following:

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

IN RE: JONATHAN LUNA

No. CI-20-01310


LNP MEDIA GROUP, INC.,  
Intervenor

ENTERED AND FILED  
2021 JAN 13 PM 12:04  
PROthonotary's Office  
LANCASTER, PA

ORDER

AND NOW, this 13<sup>th</sup> day of January, 2021, upon consideration of the Motion of Intervenor LNP Media Group, Inc., to Unseal Coroner Records in the above-captioned case, and the Commonwealth of Pennsylvania's response thereto, and after a hearing in this matter, it is hereby ORDERED that said Motion is DENIED.

BY THE COURT:

  
DAVID L. ASHWORTH  
PRESIDENT JUDGE



ATTEST: 

Copies to: Heather L. Adams, District Attorney - 1-10  
Christina L. Hausner, Esquire, Lancaster County Solicitor - 1  
Craig J. Staudenmaier, Esquire, Nauman, Smith, Shissler & Hall, LLP, 200 - 1  
North Third Street, 18<sup>th</sup> Floor, P.O. Box 840, Harrisburg, PA  
17108-0840

NOTICE OF ENTRY OF ORDER OR DECREE  
PURSUANT TO PA. R.C.P. NO. 236  
NOTIFICATION - THE ATTACHED DOCUMENT  
HAS BEEN FILED IN THIS CASE  
PROTHONOTARY OF LANCASTER CO., PA  
DATE: 11-13-21 