

Overview of Access to Autopsy Records and Documentation Within the United States: Federal and State Law Survey.

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Purpose and Scope:

Autopsies are used by governmental actors, insurance companies and the court system to determine the causes of death. In order to facilitate the training of legal professionals there is a desire to use records generated during an autopsy to understand the process of the autopsy and provide a basic medical understanding as to how bodily systems relate and interact to current and future lawyers. Such understanding can facilitate the proper application of criminal and tort law.

This survey sought to examine the ability of an educator to be able to obtain the documentation created from a crime scene, as well as during and subsequent autopsies, to provide an evaluation of the ability to access and in some cases use the material in professional and post-secondary education and instruction.

The document is a collection of legal information, not legal advice. The document is intended to be a starting point for legal research to be conducted. For the user's convenience links to LexisAdvance have been included.

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Federal

Summary

In 2004, the Supreme Court Acknowledged a right to privacy of the decedent's family in addressing a Federal Freedom of Information Act (FOIA) request made by the New York Times seeking tapes from inside the Challenger Space Shuttle. Prior to 2004 the D.C. Circuit and 9th Circuit had found similar common law rights do exist. FOIA carries a specific exemption for material reasonably expected to constitute an unwarranted invasion of personal privacy. [5 U.S.C.A. § 552\(b\)\(7\)\(C\)](#).

Statute

[5 U.S.C.A. § 552](#) Public information; agency rules, opinions, orders, records, and proceedings

(b) This section does not apply to matters that are—

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information

(A) could reasonably be expected to interfere with enforcement proceedings,

(B) would deprive a person of a right to a fair trial or an impartial adjudication,

(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(F) could reasonably be expected to endanger the life or physical safety of any individual;

Case Law

Nat'l Archives & Records Admin. v. Favish, [541 U.S. 157, 170–73, 124 S. Ct. 1570, 1579–81, 158 L. Ed. 2d 319](#) (2004).

For these reasons, in agreement with the Courts of Appeals for both the District of Columbia and the Ninth Circuit, see *Accuracy in Media v. National Park Serv.*, [194 F.3d 120](#) (C.A.D.C.1999); [217 F.3d 1168](#) (C.A.9 2000), we hold that FOIA recognizes surviving family members' right to personal privacy with respect to their close relative's death-scene images. Our holding is consistent with the unanimous view of the Courts of Appeals and other lower courts that have addressed the question. See, e.g., *New York Times Co. v. *171 National Aeronautics and Space Admin.*, [782 F.Supp. 628, 631, 632](#) (D.D.C.1991) (sustaining a privacy claim under the narrower

Exemption 6 with respect to an audiotape of the Space Shuttle Challenger astronauts' last words, because “[e]xposure to the voice of a beloved family member **1580 immediately prior to that family member's death ... would cause the Challenger families pain” and inflict “a disruption [to] their peace of mind every time a portion of the tape is played within their hearing”), on remand from [920 F.2d 1002](#) (C.A.D.C.1990); *Katz v. National Archives and Records Admin.*, [862 F.Supp. 476, 485](#) (D.D.C.1994) (exempting from FOIA disclosure autopsy X-rays and photographs of President Kennedy on the ground that their release would cause “additional anguish” to the surviving family), *aff'd* on other grounds, [68 F.3d 1438](#) (C.A.D.C.1995); *Lesar v. Department of Justice*, [636 F.2d 472, 487](#) (C.A.D.C.1980) (recognizing, with respect to the assassination of Dr. Martin Luther King, Jr., his survivors' privacy interests in avoiding “annoyance or harassment”). Neither the deceased's former status as a public official, nor the fact that other pictures had been made public, detracts from the weighty privacy interests involved.

III

Our ruling that the personal privacy protected by Exemption 7(C) extends to family members who object to the disclosure of graphic details surrounding their relative's death does not end the case. Although this privacy interest is within the terms of the exemption, the statute directs nondisclosure only where the information “could reasonably be expected to constitute an unwarranted invasion” of the family's personal privacy. The term “unwarranted” requires us to balance the family's privacy interest against the public interest in disclosure. See Reporters Committee, [489 U.S., at 762, 109 S.Ct. 1468](#).

FOIA is often explained as a means for citizens to know “ ‘what their Government is up to.’ ” *Id.*, [at 773, 109 S.Ct. 1468](#). This *172 phrase should not be dismissed as a convenient formalism. It defines a structural necessity in a real democracy. The statement confirms that, as a general rule, when documents are within FOIA's disclosure provisions, citizens should not be required to explain why they seek the information. A person requesting the information needs no preconceived idea of the uses the data might serve. The information belongs to citizens to do with as they choose. Furthermore, as we have noted, the disclosure does not depend on the identity of the requester. As a general rule, if the information is subject to disclosure, it belongs to all.

When disclosure touches upon certain areas defined in the exemptions, however, the statute recognizes limitations that compete with the general interest in disclosure, and that, in appropriate cases, can overcome it. In the case of Exemption 7(C), the statute requires us to protect, in the proper degree, the personal privacy of citizens against the uncontrolled release of information compiled through the power of the State. The statutory direction that the information not be released if the invasion of personal privacy could reasonably be expected to be unwarranted requires the courts to balance the competing interests in privacy and disclosure. To effect this balance and to give practical meaning to the exemption, the usual rule that the citizen need not offer a reason for requesting the information must be inapplicable.

Where the privacy concerns addressed by Exemption 7(C) are present, the exemption requires the person requesting the information to establish a sufficient reason for the disclosure. First, the citizen must show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake. Second, the citizen must show the information is **1581 likely to advance that interest. Otherwise, the invasion of privacy is unwarranted.

We do not in this single decision attempt to define the reasons that will suffice, or the necessary nexus between the *173 requested information and the asserted public interest that would be

advanced by disclosure. On the other hand, there must be some stability with respect to both the specific category of personal privacy interests protected by the statute and the specific category of public interests that could outweigh the privacy claim. Otherwise, courts will be left to balance in an ad hoc manner with little or no real guidance. *Id.*, at 776, 109 S.Ct. 1468. In the case of photographic images and other data pertaining to an individual who died under mysterious circumstances, the justification most likely to satisfy Exemption 7(C)'s public interest requirement is that the information is necessary to show the investigative agency or other responsible officials acted negligently or otherwise improperly in the performance of their duties.

Marsh v. Cty. of San Diego, [680 F.3d 1148, 1152–55](#) (9th Cir. 2012)

A. Federal Right

Marsh claims she has a federal right to control the autopsy photographs of *1153 her child. She can't point to a federal statute guaranteeing this right, but she argues that such a right exists as a matter of substantive due process and also as a state-created liberty interest protected by procedural due process.

1. Substantive Due Process

The Supreme Court has recognized that “one aspect of the ‘liberty’ protected by the Due Process Clause of the Fourteenth Amendment is ‘a right of personal privacy, or a guarantee of certain areas or zones of privacy.’” *Carey v. Population Servs. Int'l*, [431 U.S. 678, 684, 97 S.Ct. 2010, 52 L.Ed.2d 675](#) (1977) (quoting *Roe v. Wade*, [410 U.S. 113, 152, 93 S.Ct. 705, 35 L.Ed.2d 147](#) (1973)). This right to privacy protects two kinds of interests: “One is the individual interest in avoiding disclosure of personal matters, and another is the interest in independence in making certain kinds of important decisions.” *Whalen v. Roe*, [429 U.S. 589, 599–600, 97 S.Ct. 869, 51 L.Ed.2d 64](#) (1977) (footnote omitted). With respect to the latter, we've held that the right encompasses the “most basic decisions about family and parenthood....” *California v. F.C.C.*, [75 F.3d 1350, 1361](#) (9th Cir.1996); *see also Roe*, [410 U.S. at 152–53, 93 S.Ct. 705](#) (noting that the constitutional right to privacy extends to marriage, procreation, contraception, family relationships, child rearing and education).

No court has yet held that this right encompasses the power to control images of a dead family member, but the Supreme Court has come close in a case involving the Freedom of Information Act. In *National Archives and Records Administration v. Favish*, [541 U.S. 157, 170–71, 124 S.Ct. 1570, 158 L.Ed.2d 319](#) (2004), the Court held that death scene photographs fell under an exemption to FOIA's general requirement of public access to government information, which carved out “law enforcement records or information ... [that] could reasonably be expected to constitute an unwarranted invasion of personal privacy.” [5 U.S.C. § 552\(b\)\(7\)\(C\)](#). The Court found that the right to “personal privacy” included the “surviving family members' right to personal privacy with respect to their close relative's death scene images.” [541 U.S. at 170, 124 S.Ct. 1570](#).

The Court had little difficulty “finding in our case law and traditions the right of family members to direct and control disposition of the body of the deceased and to limit attempts to exploit pictures of the deceased family member's remains for public purposes.” *Id.* at 167, [124 S.Ct. 1570](#). “Family members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to

degrade the rites and respect they seek to accord to the deceased person who was once their own.” *Id.* at 168, 124 S.Ct. 1570.¹ Finding the right grounded in the common law, the Court had no need to determine whether it is also grounded in the Constitution. See *id.* at 170, 124 S.Ct. 1570 (“It would be anomalous to hold in the instant case that the statute provides even less protection than does the common law.”).

Other courts have also recognized family members' privacy right in a decedent's death images. See *Melton v. Bd. of Cnty. Comm'rs of Hamilton Cnty.*, 267 F.Supp.2d 859, 865 (S.D. Ohio 2003) *1154 (“[F]amilies have a right not to be embarrassed or humiliated by the outrageous display or exposure to public view of the remains of a loved one.”); *Catsouras v. Dep't of Cal. Highway Patrol*, 181 Cal.App.4th 856, 874, 104 Cal.Rptr.3d 352 (2010) (recognizing a violation of a right to privacy over death images where “publicity ceases to be the giving of information to which the public is entitled, and becomes a morbid and sensational prying into private lives for its own sake, with which a reasonable member of the public, with decent standards, would say that he had no concern”) (internal citations and quotation marks omitted). However, like *Favish*, these cases described the well-established common law right, not a constitutional right. So far as we are aware, then, this is the first case to consider whether the common law right to non-interference with a family's remembrance of a decedent is so ingrained in our traditions that it is constitutionally protected. We conclude that it is.

A common law right rises to the level of a constitutional right if it is “deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty.” *Washington v. Glucksberg*, 521 U.S. 702, 720–21, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997) (internal citations and quotation marks omitted). The *Favish* Court considered our history and traditions, and found that “th[e] well-established cultural tradition acknowledging a family's control over the body and death images of the deceased has long been recognized at common law.” *Favish*, 541 U.S. at 168, 124 S.Ct. 1570. For precisely the same reasons, we conclude that this right is also protected by substantive due process.

The long-standing tradition of respecting family members' privacy in death images partakes of both types of privacy interests protected by the Fourteenth Amendment. First, the publication of death images interferes with “the individual interest in avoiding disclosure of personal matters....” *Whalen*, 429 U.S. at 599, 97 S.Ct. 869. Few things are more personal than the graphic details of a close family member's tragic death. Images of the body usually reveal a great deal about the manner of death and the decedent's suffering during his final moments—all matters of private grief not generally shared with the world at large.

Second, a parent's right to control a deceased child's remains and death images flows from the well-established substantive due process right to family integrity. See *Rosenbaum v. Washoe County*, 663 F.3d 1071, 1079 (9th Cir.2011) (“The substantive due process right to family integrity or to familial association is well established.”). The interest of parents “in the care, custody, and control of their children ... is perhaps the oldest of the fundamental liberty interests....” *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). A parent's right to choose how to care for a child in life reasonably extends to decisions dealing with death, such as whether to have an autopsy, how to dispose of the remains, whether to have a memorial service and whether to publish an obituary. Therefore, we find that the Constitution protects a parent's right to control the physical remains, memory and images of a deceased child against unwarranted public exploitation by the government.

78 To violate substantive due process, the alleged conduct must “shock[] the conscience” and “offend the community's sense of fair play and decency.” *Rochin v. California*, 342 U.S. 165, 172–73, 72 S.Ct. 205, 96 L.Ed. 183 (1952). Given that burial rites “have been respected in almost all civilizations from time immemorial” and “are a sign of the respect a society shows *1155 for

the deceased and for the surviving family members,” the *Favish* Court reasoned that unwarranted public exploitation of death images degrades the respect accorded to families in their time of grief. *Favish*, [541 U.S. at 167–68](#), [124 S.Ct. 1570](#). Mutilation of a deceased family member's body, desecration of the burial site and public display of death images are the kind of conduct that is likely to cause the family profound grief and therefore “shocks the conscience” and “offend[s] the community's sense of fair play and decency.” *Rochin*, [342 U.S. at 172–73](#), [72 S.Ct. 205](#).

Marsh claims that when she learned that Coulter sent her son's autopsy photograph to the press, she was “horrified; and suffered severe emotional distress, fearing the day that she would go on the Internet and find her son's hideous autopsy photos displayed there.”² Marsh's fear is not unreasonable given the viral nature of the Internet, where she might easily stumble upon photographs of her dead son on news websites, blogs or social media websites. This intrusion into the grief of a mother over her dead son—without any legitimate governmental purpose—“shocks the conscience” and therefore violates Marsh's substantive due process right.

Katz v. Nat'l Archives & Records Admin., [862 F. Supp. 476, 479](#) (D.D.C. 1994)(citing *U.S. Dep't of Justice v. Tax Analysts*, [492 U.S. 136, 143](#), [109 S. Ct. 2841, 2847](#), [106 L. Ed. 2d 112](#) (1989)), *aff'd sub nom. Katz v. Nat'l Archives & Records Admin.*, [68 F.3d 1438](#) (D.C. Cir. 1995)

A. Agency records

The Supreme Court has articulated a two-part test for determining when records are agency records. *Tax Analysts*, [492 U.S. at 143](#), [109 S.Ct. at 2847](#). *Tax Analysts* held that in order for a record to be considered an agency record subject to the FOIA, the record must both have been created or obtained by an agency and the “agency must be in control of the requested materials at the time the FOIA request is made.” *Id.*, [492 U.S. at 143–46](#), [109 S.Ct. at 2847–48](#). An agency has “control” over records if the agency came into possession of the records “in the legitimate conduct of its official duties.” *Id.*

U.S. Dep't of Justice v. Tax Analysts, [492 U.S. 136, 144–46](#), [109 S. Ct. 2841, 2848](#), [106 L. Ed. 2d 112](#) (1989)

Two requirements emerge from *Kissinger* and *Forsham*, each of which must be satisfied for requested materials to qualify as “agency records.” First, an agency must “either create or obtain” the requested materials “as a prerequisite to its becoming an ‘agency record’ within the meaning of the FOIA.” *Id.*, [at 182](#), [100 S.Ct., at 985](#). In performing their official duties, agencies routinely avail themselves of studies, trade journal reports, and other materials produced outside the agencies both by private and governmental organizations. See *Chrysler Corp. v. Brown*, [441 U.S. 281, 292](#), [99 S.Ct. 1705, 1712](#), [60 L.Ed.2d 208](#) (1979). To restrict the term “agency records” to materials generated internally would frustrate Congress' desire to put within public reach the information available to an agency in its decision-making processes. See *id.*, [at 290](#), n. 10, [99 S.Ct., at 1712](#), n. 10. As we noted in *Forsham*, “The legislative history of the FOIA abounds with *145 ... references to records *acquired* by an agency.” [445 U.S., at 184, 100 S.Ct., at 986](#) (emphasis added).⁴

Second, the agency must be in control of the requested materials at the time the FOIA request is made. By control we mean that the materials have come into the agency's possession in the legitimate conduct of its official duties. This requirement accords with *Kissinger's* teaching that the term “agency records” is not so broad as to include personal materials in an employee's possession, even though the materials may be physically located at the agency. See [445 U.S., at 157, 100 S.Ct., at 972](#). This requirement is suggested by *Forsham* as well, [445 U.S., at 183, 100](#)

[S.Ct., at 985](#), where we looked to the definition of agency records in the Records Disposal Act, [44 U.S.C. § 3301](#). Under that definition, agency records include “all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government *under Federal law or in connection with the transaction of public business ...*” *Ibid.* (emphasis added).⁵ Furthermore, the requirement that the materials *146 be in the agency's control at the time the request is made accords with our statement in *Forsham* that the FOIA does not cover “information in the abstract.” [445 U.S., at 185, 100 S.Ct., at 987](#).

Alabama

Summary

Coroner scope varies by county. Attorney General wrote a 2006 opinion affirming the view that autopsy records are public records. There is also case law from 1984 on the subject matter of autopsies being regarded as inexpensive public records, in examining their applicability under the rules of evidence.

Statutes

[Ala. Code § 41-13-1](#)

§ 41-13-1. Public records defined.

As used in this article, the term “public records” shall include all written, typed or printed books, papers, letters, documents and maps made or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business and shall also include any record authorized to be made by any law of this state belonging or pertaining to any court of record or any other public record authorized by law or any paper, pleading, exhibit or other writing filed with, in or by any such court, office or officer.

[Ala. Code § 36-18-2](#)

§ 36-18-2. Duties generally; maintenance, inspection, and copying of reports of investigations of Director of Forensic Sciences; police authority of Director of Forensic Sciences and assistants.

The duties of the director shall be to make such investigations, including any necessary autopsy, to be performed by physicians licensed to practice medicine in Alabama and recognized and trained in forensic medicine and pathology; provided, however, that the director may waive this requirement temporarily whenever a medical examiner vacancy exists which he is seeking to fill. Said investigations of unlawful, suspicious or unnatural deaths and crimes as are ordered by the Governor, the Attorney General, any circuit judge, or any district attorney in the State of Alabama, and the director and his staff shall cooperate with the coroners, sheriffs and other police officers in Alabama in their investigations of crimes and deaths from unlawful, suspicious or unnatural causes. The director shall within his discretion visit the scene of any crime in the state for the purpose of securing evidence for the state. The director shall furnish a certified copy of his report of any investigation that the department conducts to the person or persons who ordered the investigation conducted. The director shall keep the original reports of all investigations that he conducts in his office; provided, that the director shall be authorized to photograph or microphotograph any record, document or photograph two years old or older currently maintained or acquired, received or produced in the future as a result of his duties as prescribed by law. Such photographs, microfilms or prints made therefrom, when duly authenticated, shall have the same force and effect at law as the original record or of a record made by any other legally authorized means and may be offered in like manner and shall be received in evidence in any court where such original record or record made by other legally authorized means could have been so introduced and received. In like manner, reproductions made from such records by photographic or like process, when otherwise in compliance with applicable statutes, rules and regulations, shall be received and treated in any court of this state as fully as would a transcription or reproduction of such records made by any

other means or process. All original records, documents, and photographs two years old or older currently maintained and acquired in the future may be destroyed at the discretion of the director, provided photographed or microphotographed reproductions of the destroyed material are maintained. The director shall furnish a certified copy in the form of reproductions from the photographed or microphotographed reports of any investigation that he conducts to the person or persons who ordered the investigation conducted. The director shall keep photographed or microphotographed reproductions of original reports of all investigations that he conducts in his office. Reproductions of such materials shall be public records and shall be open to public inspection at all reasonable times. Any person desiring reproductions of original reports shall be furnished same upon payment of the fee now prescribed by law.

It shall be the further duty of the director to cooperate with the Commissioner of Agriculture and Industries and the State Veterinarian in their investigations of deaths of domestic animals in cases of suspected criminal poisoning of such animals. The director shall perform such other duties as are prescribed by the Governor or the Attorney General of Alabama.

The director and his designated assistants shall exercise the same police authority as any deputy sheriff or state trooper in the State of Alabama.

Administrative Code

[Ala. Code § 36-12-40](#)

§ 36-12-40. Rights of citizens to inspect and copy public writings; exceptions.

Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute. Provided however, registration and circulation records and information concerning the use of the public, public school or college and university libraries of this state shall be exempted from this section. Provided further, any parent of a minor child shall have the right to inspect the registration and circulation records of any school or public library that pertain to his or her child. Notwithstanding the foregoing, records concerning security plans, procedures, assessments, measures, or systems, and any other records relating to, or having an impact upon, the security or safety of persons, structures, facilities, or other infrastructures, including without limitation information concerning critical infrastructure (as defined at [42 U.S.C. § 5195c](#) (e) as amended) and critical energy infrastructure information (as defined at [18 C.F.R. § 388.113](#) (c)(1) as amended) the public disclosure of which could reasonably be expected to be detrimental to the public safety or welfare, and records the disclosure of which would otherwise be detrimental to the best interests of the public shall be exempted from this section. Any public officer who receives a request for records that may appear to relate to critical infrastructure or critical energy infrastructure information, shall notify the owner of such infrastructure in writing of the request and provide the owner an opportunity to comment on the request and on the threats to public safety or welfare that could reasonably be expected from public disclosure on the records.

Case Law

Baker v. State, [473 So. 2d 1127, 1129](#) (Ala. Crim. App. 1984)

“... over appellant's objection, the autopsy reports were received into evidence. Another ground for such an objection was that the reports were the subject matter of a motion to produce, and

that the state failed to produce them. These autopsy reports, being public records, were equally available to the appellant and to the state. While the state invites and solicits reversal each time it fails to comply with a lawful order of a Circuit Court granting a motion to produce, we will not here reverse. In the case of autopsy reports or other public records, whose existence is known or reasonably inferred, available inexpensively from a public agency to any member of the public, failure on the part of the state to produce copies does not constitute reversible error.”

Attorney General Opinion

Ala. Op. Att'y Gen. No. 2007-015 (Dec. 4, 2006)

Generally, autopsy reports of coroners are public records open to inspection by the public. If, however, there is a pending criminal investigation and the disclosure of the information will compromise the investigation, the report or the compromising information should not be disclosed.

Alaska

Summary

Public records statute included. Administrative Code has a fee schedule for autopsy documents.

Statutes

[Alaska Stat. § 40.25.120](#)

Sec. 40.25.120. Public records; exceptions; certified copies

(a) Every person has a right to inspect a public record in the state, including public records in recorders' offices, except

- (1) records of vital statistics and adoption proceedings, which shall be treated in the manner required by AS 18.50;
- (2) records pertaining to juveniles unless disclosure is authorized by law;
- (3) medical and related public health records;
- (4) records required to be kept confidential by a federal law or regulation or by state law;
- (5) to the extent the records are required to be kept confidential under [20 U.S.C. 1232g](#) and the regulations adopted under [20 U.S.C. 1232g](#) in order to secure or retain federal assistance;
- (6) records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information
 - (A) could reasonably be expected to interfere with enforcement proceedings;
 - (B) would deprive a person of a right to a fair trial or an impartial adjudication;
 - (C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness;
 - (D) could reasonably be expected to disclose the identity of a confidential source;
 - (E) would disclose confidential techniques and procedures for law enforcement investigations or prosecutions;
 - (F) would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law; or
 - (G) could reasonably be expected to endanger the life or physical safety of an individual;
- (7) names, addresses, and other information identifying a person as a participant in the Alaska Higher Education Savings Trust under [AS 14.40.802](#) or the advance college tuition savings program under [AS 14.40.803](#) -- 14.40.817;
- (8) public records containing information that would disclose or might lead to the disclosure of a component in the process used to execute or adopt an electronic signature if the disclosure would or might cause the electronic signature to cease being under the sole control of the person using it;

(9) reports submitted under [AS 05.25.030](#) concerning certain collisions, accidents, or other casualties involving boats;

(10) records or information pertaining to a plan, program, or procedures for establishing, maintaining, or restoring security in the state, or to a detailed description or evaluation of systems, facilities, or infrastructure in the state, but only to the extent that the production of the records or information

(A) could reasonably be expected to interfere with the implementation or enforcement of the security plan, program, or procedures;

(B) would disclose confidential guidelines for investigations or enforcement and the disclosure could reasonably be expected to risk circumvention of the law; or

(C) could reasonably be expected to endanger the life or physical safety of an individual or to present a real and substantial risk to the public health and welfare;

(11) the written notification regarding a proposed regulation provided under [AS 24.20.105](#) to the Department of Law and the affected state agency and communications between the Legislative Affairs Agency, the Department of Law, and the affected state agency under [AS 24.20.105](#);

(12) records that are

(A) proprietary, privileged, or a trade secret in accordance with [AS 43.90.150](#) or 43.90.220(e);

(B) applications that are received under AS 43.90 until notice is published under [AS 43.90.160](#);

(13) information of the Alaska Gasline Development Corporation created under [AS 31.25.010](#) or a subsidiary of the Alaska Gasline Development Corporation that is confidential by law or under a valid confidentiality agreement;

(14) information under [AS 38.05.020\(b\)\(11\)](#) that is subject to a confidentiality agreement under [AS 38.05.020\(b\)\(12\)](#).(b) Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the fees under [AS 40.25.110](#) -- 40.25.115 a certified copy of the record, and the copy shall in all cases be evidence of the original.

(c) Recorders shall permit memoranda, transcripts, and copies of the public records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants, subject to reasonable rules and regulations as are necessary for the protection of the records and to prevent interference with the regular discharge of the duties of the recorders and their employees.

Administrative Code

Alaska Admin. Code tit. 7, § 35.200

[7 AAC 35.200](#). Fees.

(a) Except as provided in (c) and (d) of this section, the following fees apply to the provision of autopsy reports and photographs under this chapter:

- (1) autopsy reports, without photographs, 15 cents a page or the actual cost of copying, whichever is higher;
- (2) autopsy photographs, \$5 a picture or the actual cost of photographic reproduction, whichever is higher.

(b) Except as provided in (d) of this section, the department will charge the following fees, if the state medical examiner provides personal testimony on an autopsy report in the state medical examiner's official capacity:

- (1) an hourly fee to recover the actual salary and benefit costs of the state medical examiner;
- (2) the actual costs of travel, per diem, and related expenses to testify.

(c) The department will not charge fees to the following persons requesting copies of autopsy reports, without photographs:

- (1) federal, state, or local government agency;
- (2) a defendant in a criminal proceeding arising from the decedent's death;
- (3) the decedent's immediate family;
- (4) the person making final disposition of the decedent's body;
- (5) legal representatives of the persons specified under (1) - (4) of this subsection;
- (6) any other person, if the department determines that it is in the public interest to waive the fee.

(d) The department will not charge fees to the following persons for autopsy photographs or the state medical examiner's personal testimony:

- (1) federal, state, or local government agency;
- (2) a defendant in a criminal proceeding arising from the decedent's death.

Arizona

Summary

On their face statutes appear to allow for access to autopsy reports however, a state court of appeals acknowledged a competing privacy interest that may in future cases provide grounds for withholding all autopsy documents from public view.

Statutes

[Ariz. Rev. Stat. Ann. § 11-594](#) Powers and duties of county medical examiner

A. The county medical examiner or alternate medical examiner shall direct a death investigation and on a determination that the circumstances of the death provide jurisdiction pursuant to § 11-593, subsection A shall:

1. Take charge of the dead body.
2. Determine if an autopsy is required.

[Ariz. Rev. Stat. Ann. § 11-597](#) Autopsies; reports; exemption from liability

E. If an autopsy is performed, a full record or report of the facts developed by the autopsy in the findings of the person performing the autopsy shall be properly made and filed in the office of the county medical examiner or the board of supervisors. If the person performing the autopsy determines that the report should be forwarded to the county where the death occurred or the county in which any injury contributing to or causing the death was sustained, the report shall be forwarded to the county attorney.

[Ariz. Rev. Stat. § 39-121.01](#) Definitions; maintenance of records; copies, printouts or photographs of public records; examination by mail; index

A. In this article, unless the context otherwise requires:

1. "Officer" means any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body.
2. "Public body" means this state, any county, city, town, school district, political subdivision or tax-supported district in this state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by monies from this state or any political subdivision of this state, or expending monies provided by this state or any political subdivision of this state.

B. All officers and public bodies shall maintain all records, including records as defined in section 41-151.18, reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from this state or any political subdivision of this state.

C. Each public body shall be responsible for the preservation, maintenance and care of that body's public records, and each officer shall be responsible for the preservation, maintenance and care of that officer's public records. It shall be the duty of each such body to carefully

secure, protect and preserve public records from deterioration, mutilation, loss or destruction, unless disposed of pursuant to sections 41-151.15 and 41-151.19.

D. Subject to section 39-121.03:

1. Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours or may request that the custodian mail a copy of any public record not otherwise available on the public body's website to the requesting person. The custodian may require any person requesting that the custodian mail a copy of any public record to pay in advance for any copying and postage charges. The custodian of such records shall promptly furnish such copies, printouts or photographs and may charge a fee if the facilities are available, except that public records for purposes listed in section 39-122 or 39-127 shall be furnished without charge.

2. If requested, the custodian of the records of an agency shall also furnish an index of records or categories of records that have been withheld and the reasons the records or categories of records have been withheld from the requesting person. The custodian shall not include in the index information that is expressly made privileged or confidential in statute or a court order. This paragraph shall not be construed by an administrative tribunal or a court of competent jurisdiction to prevent or require an order compelling a public body other than an agency to furnish an index. For the purposes of this paragraph, "agency" has the same meaning prescribed in section 41-1001, but does not include the department of public safety, the department of transportation motor vehicle division, the department of juvenile corrections and the state department of corrections.

3. If the custodian of a public record does not have facilities for making copies, printouts or photographs of a public record which a person has a right to inspect, such person shall be granted access to the public record for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the public record is in the possession, custody and control of the custodian of the public record and shall be subject to the supervision of such custodian.

E. Access to a public record is deemed denied if a custodian fails to promptly respond to a request for production of a public record or fails to provide to the requesting person an index of any record or categories of records that are withheld from production pursuant to subsection D, paragraph 2 of this section.

Case Law

Schoeneweis v. Hamner, [223 Ariz. 169, 175, 221 P.3d 48, 54](#) (Ct. App. 2009)

A. The Autopsy Report and Investigative Records Are "Public Records."

Pursuant to [A.R.S. § 11-594\(A\)\(2\)](#) (Supp. 2008), a county medical examiner is required to direct a death investigation, certify the cause and manner of death following the investigation, and "reduce the findings to writing and promptly make a full report on forms prescribed for that purpose." In the event that an autopsy is performed, [A.R.S. § 11-597\(E\)](#) (Supp. 2008) requires "a full record or report of the facts developed by the autopsy in the findings of the person performing the autopsy shall be properly made and filed in the office of the county medical

examiner or the board of supervisors." Because a medical examiner or other qualified person performing the autopsy is statutorily required to memorialize the findings derived from the autopsy, the report filed with the county medical examiner pursuant to [A.R.S. § 11-597](#) is therefore a public record.

Because a determination of the cause of death is not made for the purposes of diagnosis or treatment, we hold that an autopsy report is not statutorily privileged for purposes of the Public Records Law. Cf. *Catrone v. Miles*, [215 Ariz. 446, 452](#), PP 14-15, [160 P.3d 1204, 1210](#) (App. 2007) (holding the medical privilege for medical records inapplicable because the "formulation of an educational plan for students with disabilities in a school setting is not the same as the diagnosis and treatment of a person with disabilities in a medical setting."). Accordingly, we conclude that no statutory privilege bars the release of the autopsy records.

The Public Records Law serves the primary purpose of ensuring that the people are able to monitor the activities of their government, not the lives of their fellow citizens. See *Lake v. City of Phoenix*, 1 CA-CV-09-0036, [222 Ariz. 547, 218 P.3d 1004, 2009 Ariz. LEXIS 257, 2009 WL 3461304](#), slip op. at 2, P 7 (Ariz. Oct. 29, 2009). Therefore, when the performance of important government functions is implicated, the interest in disclosure is strong and privacy interests must often yield. But when records of government action are merely incidental to an otherwise private matter, including the death of an individual, privacy interests weigh more heavily. This case involves a death and potential injuries to another that occurred as a result of potential or apparent unlawful conduct, and the government's response to that situation merits public scrutiny. Many cases involve no such concerns, and in those cases privacy interests might well justify the withholding of all autopsy documents from public view.

Arkansas

Summary

Statutes are from the Title 28. Wills, Estates, and Fiduciary Relationships and probate code.

Statutes

[Ark. Code Ann. § 28-1-119](#)

§ 28-1-119. Access to decedent's autopsy records

(a) As used in this section, "healthcare provider" means a person, corporation, facility, or institution licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.

(b) A healthcare provider who, in good faith, releases copies of a decedent's autopsy records upon the authorization of any of the individuals listed under § 28-1-102(19)(B) shall not be held liable under any criminal law or held civilly liable to the deceased patient's estate or to any other person.

[Ark. Code Ann. § 28-1-102](#)

(a) As used in the Probate Code:

(19)

(A) "Personal representative" means an executor or administrator.

(B) However, for purposes of obtaining autopsy results that are in the medical records, the personal representative is the first of the following individuals or category of individuals who exists when the request for a copy of the autopsy results maintained in the medical records is made:

- (i) The executor or administrator;
- (ii) The decedent's spouse;
- (iii) A parent of the decedent; or
- (iv) An adult child of the decedent; and

(20) "Will" includes codicil.

California

Summary

California case law also acknowledges an immediate family right to privacy, and extends to crime scene photos. Civil Procedure rules of state limit access, however a specific exemption does exist for "medical or scientific education or research".

Additionally, there is pending legislation, that attempts to clarify access to the material and make obtaining materials easier for lawyers to obtain and review for state or civil action. Lexis Bill tracker expects bill to proceed. Bill Text and History included below.

Rules of Civil Procedure

[Cal. Civ. Proc. Code § 129](#) (Deering, Lexis Advance through Chapter 117, of the 2016 Regular Session and Chapter 8 of the 2015-16 2nd Extraordinary Session, and ballot measures approved by the electorate at the June 7, 2016, Presidential Primary Election)

§ 129. Prohibition against copying photographs or video tapes of deceased person's body taken by coroner; Exceptions; Application; Liability

(a) Notwithstanding any other law, a copy, reproduction, or facsimile of any kind of a photograph, negative, or print, including instant photographs and video recordings, of the body, or any portion of the body, of a deceased person, taken by or for the coroner at the scene of death or in the course of a post mortem examination or autopsy, shall not be made or disseminated except as follows:

(1) For use in a criminal action or proceeding in this state that relates to the death of that person.

(2) As a court of this state permits, by order after good cause has been shown and after written notification of the request for the court order has been served, at least five days before the order is made, upon the district attorney of the county in which the post mortem examination or autopsy has been made or caused to be made.

(b) This section shall not apply to the making or dissemination of a copy, reproduction, or facsimile for use in the field of forensic pathology, in medical or scientific education or research, or by a coroner or any law enforcement agency in the United States for investigative purposes, including identification and identification confirmation.

(c) This section shall apply to a copy, reproduction, or facsimile, and to a photograph, negative, or print, regardless of when it was made.

(d) A coroner is not personally liable for monetary damages in a civil action for any act or omission in compliance with this section.

§ 130. Sealing of autopsy report and evidence relating to examination of deceased child victim; Exceptions; Opposition; Removal

(a) Subject to the provisions of this section, when a child who is under 18 years of age is killed as a result of a criminal act and a person has been convicted and sentenced for the commission of that criminal act, or a person has been found to have committed that offense by the juvenile court and adjudged a ward of the juvenile court, upon the request of a qualifying family member of the deceased child, the autopsy report and evidence associated with the examination of the victim in the possession of a public agency, as defined in Section 6252 of the Government Code, shall be sealed and not disclosed, except that an autopsy report and evidence associated with the examination of the victim which has been sealed pursuant to this section may be disclosed, as follows:

- (1) To law enforcement, prosecutorial agencies and experts hired by those agencies, public social service agencies, child death review teams, or the hospital that treated the child immediately prior to death, to be used solely for investigative, prosecutorial, or review purposes, and may not be disseminated further.
 - (2) To the defendant and the defense team in the course of criminal proceedings or related habeas proceedings, to be used solely for investigative, criminal defense, and review purposes, including review for the purpose of initiating any criminal proceeding or related habeas proceeding, and may not be disseminated further. The "defense team" includes, but is not limited to, all of the following: attorneys, investigators, experts, paralegals, support staff, interns, students, and state and privately funded legal assistance projects hired or consulted for the purposes of investigation, defense, appeal, or writ of habeas corpus on behalf of the person accused of killing the deceased child victim.
 - (3) To civil litigants in a cause of action related to the victim's death with a court order upon a showing of good cause and proper notice under Section 129, to be used solely to pursue the cause of action, and may not be disseminated further.
- (b) Nothing in this section shall prohibit the use of autopsy reports and evidence in relation to court proceedings.
- (c) Nothing in this section shall abrogate the rights of victims, their authorized representatives, or insurance carriers to request the release of information pursuant to subdivision (f) of Section 6254 of the Government Code. However, if a seal has been requested, an insurance carrier receiving items pursuant to a request under that subdivision is prohibited from disclosing the requested items except as necessary in the normal course of business. An insurance carrier shall not, under any circumstances, disclose to the general public items received pursuant to subdivision (f) of Section 6254 of the Government Code.
- (d) This section may not be invoked by a qualifying family member who has been charged with or convicted of any act in furtherance of the victim's death. Upon the filing of those charges against a qualifying family member, any seal maintained at the request of that qualifying family member under this section shall be removed.
- (e) A coroner or medical examiner shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this section.
- (f) If sealing of the autopsy report has been requested by a qualifying family member and another qualifying family member opposes sealing, the opposing party may request a hearing in the superior court in the county with jurisdiction over the crime leading to the child's death for a determination of whether the sealing should be maintained. The opposing party shall notify all other qualifying family members, the medical examiner's office that conducted the autopsy, and the district attorney's office with jurisdiction over the crime at least 10 court days in advance of the hearing. At the hearing, the court shall consider the interests of all qualifying family members, the protection of the memory of the deceased child, any evidence that the qualifying family member requesting the seal was involved in the crime that resulted in the death of the child, the public interest in scrutiny of the autopsy report or the performance of the medical examiner, any impact that unsealing would have on pending investigations or pending litigation, and any other relevant factors. Official information in the possession of a public agency necessary to the determination of the hearing shall be received in camera upon a proper showing. In its discretion, the court may, to the extent allowable by law and with good cause shown, restrict the dissemination of an autopsy report or evidence associated with the examination of a victim. This section shall not apply if a public agency has independently determined that the autopsy report may not be disclosed pursuant to subdivision (f) of Section

6254 of the Government Code because it is an investigative file. In that instance, nothing in this section shall preclude the application of Sections 6258 and 6259 of the Government Code.

(g) If a seal has been maintained pursuant to this section, a qualifying family member, or a biological or adoptive aunt, uncle, sibling, first cousin, child, or grandparent of the deceased child may request that the seal be removed. The request to remove the seal shall be adjudicated pursuant to subdivision (f), with the party requesting the removal of the seal being the opposing party.

(h) Nothing in this section shall limit the public access to information contained in the death certificate including: name, age, gender, race, date, time and location of death, the name of a physician reporting a death in a hospital, the name of the certifying pathologist, date of certification, burial information, and cause of death.

(i) When a medical examiner declines a request to provide a copy of an autopsy report that has been sealed pursuant to this section, the examiner shall cite this section as the reason for declining to provide a copy of the report.

(j) For purposes of this section:

(1) A "child who is under 18 years of age" does not include any child who comes within either of the following descriptions:

(A) He or she was a dependent child of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code at the time of his or her death, or, pursuant to subdivision (b) of Section 10850.4 of the Welfare and Institutions Code, abuse or neglect is determined to have led to his or her death.

(B) He or she was residing in a state or county juvenile facility, or a private facility under contract with the state or county for the placement of juveniles, as a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code at the time of his or her death.

(2) "Evidence associated with the examination of a victim" means any object, writing, diagram, recording, computer file, photograph, video, DVD, CD, film, digital device, or other item that was collected during, or serves to document, the autopsy of a deceased child.

(3) "Qualifying family member" means the biological or adoptive parent, spouse, or legal guardian.

(k) Nothing in this section shall limit the discovery provisions set forth in Chapter 10 (commencing with Section 1054) of Title 6 of the Penal Code.

(l) Nothing in this section shall be construed to limit the authority of the court to seal records or restrict the dissemination of an autopsy report or evidence associated with the examination of a victim under case law, other statutory law, or the rules of court.

(m) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Case Law

Marsh v. Cnty. of San Diego, [680 F.3d 1148, 1160](#) (9th Cir. 2012)

Marsh has a constitutionally protected right to privacy over her child's death images. But, because Coulter wasn't acting under color of state law when he sent the autopsy photograph to the press, that claim must be dismissed. And, because there was no "clearly established" law to

inform him that any of his earlier conduct was unlawful, Coulter is entitled to qualified immunity.

A common law right rises to the level of a constitutional right if it is "deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, [521 U.S. 702, 720-21, 117 S. Ct. 2258, 117 S. Ct. 2302, 138 L. Ed. 2d 772](#) (1997) (internal citations and quotation marks omitted). The Favish Court considered our history and traditions, and found that "th[e] well-established cultural tradition acknowledging a family's control over the body and death images of the deceased has long been recognized at common law." Favish, [541 U.S. at 168](#). For precisely the same reasons, we conclude that this right is also protected by substantive due process.

The long-standing tradition of respecting family members' privacy in death images partakes of both types of privacy interests protected by the Fourteenth Amendment. First, the publication of death images interferes with "the individual interest in avoiding disclosure of personal matters . . ." Whalen, [429 U.S. at 599](#). Few things are more personal than the graphic details of a close family member's tragic death. Images of the body usually reveal a great deal about the manner of death and the decedent's suffering during his final moments—all matters of private grief not generally shared with the world at large.

Second, a parent's right to control a deceased child's remains and death images flows from the well-established substantive due process right to family integrity. See *Rosenbaum v. Washoe County*, [663 F.3d 1071, 1079](#) (9th Cir. 2011) ("The substantive due process right to family integrity or to familial association is well established."). The interest of parents "in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests . . ." *Troxel v. Granville*, [530 U.S. 57, 65, 120 S. Ct. 2054, 147 L. Ed. 2d 49](#) (2000). HN6

A parent's right to choose how to care for a child in life reasonably extends to decisions dealing with death, such as whether to have an autopsy, how to dispose of the remains, whether to have a memorial service and whether to publish an obituary. Therefore, we find that the Constitution protects a parent's right to control the physical remains, memory and images of a deceased child against unwarranted public exploitation by the government.

To violate substantive due process, the alleged conduct must "shock[] the conscience" and "offend the community's sense of fair play and decency." *Rochin v. California*, [342 U.S. 165, 172-73, 72 S. Ct. 205, 96 L. Ed. 183](#) (1952). Given that burial rites "have been respected in almost all civilizations from time immemorial" and "are a sign of the respect a society shows [1155] for the deceased and for the surviving family members," the Favish Court reasoned that unwarranted public exploitation of death images degrades the respect accorded to families in their time of grief. Favish, [541 U.S. at 167-68](#). Mutilation of a deceased family member's body, desecration of the burial site and public display of death images are the kind of conduct that is likely to cause the family profound grief and therefore "shocks the conscience" and "offend[s] the community's sense of fair play and decency." *Rochin*, [342 U.S. at 172-73](#).

Marsh claims that when she learned that Coulter sent her son's autopsy photograph to the press, she was "horrified; and suffered severe emotional distress, fearing the day that she would go on the Internet and find her son's hideous autopsy photos displayed there." Marsh's fear is not unreasonable given the viral nature of the Internet, where she might easily stumble upon photographs of her dead son on news websites, blogs or social media websites. This intrusion

into the grief of a mother over her dead son—without any legitimate governmental purpose— "shocks the conscience" and therefore violates Marsh's substantive due process right.

Catsouras v. Dep't of Cal. Highway Patrol, [181 Cal. App. 4th 856, 857, 104 Cal. Rptr. 3d 352, 357](#) (2010).

"[F]amilies have a right not to be embarrassed or humiliated by the outrageous display or exposure to public view of the remains of a loved one."

Plaintiffs had a cause of action for negligent infliction of emotional distress. It was foreseeable that the public dissemination of the photographs would cause devastating trauma to plaintiffs.

Pending Legislation

*****Pending Legislation*** [Bill Tracking CA A.B. 2427 Passed 1st Chamber, and 2nd Committee. Bill portions and history included below.](#)**

This bill would add a new exception to the general prohibition against the making of disseminating of a copy, reproduction, or facsimile of any kind of postmortem photographs, negatives, or prints, as specified, above. The new exception would be for the use or potential use in a civil action or proceeding in this state that relates to the death of that person, if either of the following applies:

- * the coroner receives written authorization from a legal heir or representative of that person, as specified below, before the action is filed or while it is pending; or
- * a subpoena is issued by a party who is a legal heir or representative of the deceased person in a pending civil action.

This bill would specify for the above purposes, that to verify the identity of the legal heir or representative, either of the following shall be provided to the coroner:

- * a declaration under penalty of perjury that the individual is a legal heir or representative of the deceased person and a valid form of identification; or
- * a certified death certificate.

This bill would add to the Civil Discovery Act a requirement that any materials or category of materials, including any electronically stored information, and any discoverable reports and writings of an expert trial witness, demanded to be produced in the deposition notice be produced no later than three business days before the deposition of the expert trial witness.

COMMENT

1. Stated need for the bill

According to the author, "AB 2427 will contribute to judicial efficiency by making litigation more productive, which will benefit litigants, lawyers and courts." Specifically, the author writes, "this bill adds two civil procedure efficiencies: the first provision involves postmortem images in civil actions (making it easier for heirs to obtain them); the second provision involves the timing of reports created by expert witnesses for a deposition (requiring them to be provided three days prior to a deposition)."

2. Bill permits heirs to receive copies of postmortem photographs

Section 129 of the Code of Civil Procedure generally prohibits the dissemination or reproduction of postmortem photographs of a body or any part of the body of a deceased person, taken by or for the coroner at the scene of death or in the course of a post mortem examination or autopsy. This bill is intended to add a new exception to this general prohibition to make it easier for legal heirs to obtain these photographs for limited purposes. Specifically, the bill would allow heirs or legal representatives of the deceased to obtain the deceased post-mortem photographs for the use or potential use in a civil action or proceeding in this state that relates to the death of that person: (1) a subpoena is issued by a party who is a legal heir or representative of the deceased person in a pending civil action; or (2) the coroner receives written authorization from a legal heir or representative of that person, as specified, before the action is filed or while the action is pending. In doing so, this bill potentially raises a question

as to what happens if multiple heirs do not agree as to the use of those photographs or wishes that they remain private. Of greater concern, however, would be the possibility of harm to the surviving family if anyone other than a legal heir is able to receive the deceased's postmortem photographs without a subpoena from the court.

Under this bill, in the absence of a subpoena from the court, for an heir to receive the deceased's postmortem photographs, the coroner would have to verify the identity of the legal heir or representative before releasing any such reproductions or copies to a person claiming to be an heir or representative. For these purposes, the bill provides that the coroner would have to be provided with either: (1) a declaration under penalty of perjury that the individual is a legal heir or representative of the deceased person and a valid form of identification; or (2) a certified death certificate, which under existing law can only be granted to certain authorized individuals. Under existing law, however, the list of "authorized" individuals who can obtain a certified death certificate is not limited to only the deceased's parent or legal guardian or a child, grandchild, sibling, spouse, domestic partner, or grandparent of the person who is the subject of the record. Authorized individuals can also include a party who is entitled to receive the record as a result of a court order; law enforcement or governmental agency personnel conducting official business; an attorney or other person empowered to act on behalf of the person who is the subject of the record; or an agent or employee of a funeral establishment who orders death certificates when acting on behalf of specified individuals. (See Health & Saf. Code Sec. 103526(c)(2).) As such, the coroner could feasibly make or disseminate a copy, reproduction, or facsimile of postmortem photographs, negatives, or prints, upon being provided written authorization from not just a victim's parents, children, or other relatives, but also from an agent or employee of a funeral establishment who orders death certificates when acting on behalf of specified individuals or written authorization by law enforcement or governmental agency personnel conducting official business.

As a practical matter, it seems unlikely that such "authorized" persons would obtain those photographs for use or potential use in a civil action or proceeding in this state that relates to the death of that person, as authorized by this bill. In other words, even if one were to use false pretenses to obtain those photos on the basis of their ability to obtain a death certificate, they could not, under this bill, lawfully use it for any other purposes themselves, and doing so would constitute an unlawful "dissemination" of the photograph. Nonetheless, assuming a violation were to occur, there could be great emotional trauma to family if the postmortem photographs of their loved one are publically shared and, given that any violation of the general prohibition on disclosure could be a violation of the family's privacy rights or a parent's fundamental right to control the body and death images of a deceased child, it is not unforeseeable that lawsuits could arise over such issues. Thus, while this bill is currently limited to "legal heirs or representatives" who present the coroner either a declaration under penalty of perjury as to their identity as a legal heir or representative of the deceased individual together with a valid form of identification, or to persons who present a certified death certificate, the following amendments are suggested to limit the bill to legal heirs and require that the individual present both of those items, to reduce the likelihood that privacy rights could be violated. The amendment would still allow for the possibility of legal representatives to obtain the same items by way of subpoena, as otherwise authorized under the bill.

Suggested amendment:

On page 3, lines 13 and 18, strike "or representative"

On page 3, line 15, strike "either of the following" and insert "both of the following"

Co-sponsor, Consumer Attorneys of California writes in support of this expanded authorization for postmortem photographs:

Currently legal heirs or representatives of a deceased individual cannot access any coroners' photographs of their deceased family member without first obtaining counsel and seeking permission from the court. Code of Civil Procedure Sec. 129.

Currently a deceased person's next of kin cannot view these photographs prior to determining whether or not they deem it necessary to seek legal representation. Instead, legal heirs and representatives must incur the expense to retain an attorney and obtain a court order. Only then can they access the coroner's photographs and based on that information decide how to proceed. AB 2427 ensures that identify is verified by either providing a declaration under penalty of perjury and valid identification, or a copy of a certified death certificate, which is only issued to specific surviving family members.

3. Production of expert witness materials

Under California law, the Civil Discovery Act, a party may depose any person, including another party's expert witness. Generally, in addition to depositions, after the setting of the initial trial date for the action, any party obtain discovery by demanding that all parties simultaneously exchange information concerning each other's expert trial witnesses, as specified. (Code Civ. Proc. Sec. 2034.210.) Unless the party doesn't intend to offer testimony of any expert witness, this exchange of information includes the name and address of the expert witness and a signed declaration of the expert witness, under penalty of perjury, which includes, for example, brief narrative statements of the expert's qualifications and the general substance of the expert's anticipated testimony. (See Code Civ. Proc. Sec. 2034.260.) if a demand for an exchange of information concerning expert trial witnesses includes a demand for production of reports and writing, all parties must produce and exchange, at a place and a date specified in the demand, all discoverable reports and writings, if any, made by the designated expert witness. (Code Civ. Proc. Sec. 2034.270.)

Co-sponsor, California Defense Counsel (CDC) writes that "w hile current law permits counsel to request production of materials, reports and writings that will be relied upon by experts in their depositions, the law does not provide an express time requirement for the production of the expert's file. In many cases these expert files are not produced until the deposition actually begins, providing no time for the lawyer conducting the deposition to become familiar with the contents. Depositions are less productive as a result." Thus, this bill would now provide that any materials or category of materials, including any electronically stored information, and any discoverable reports and writings of an expert trial witness, demanded to be produced in the deposition notice must be produced no later than three business days before the deposition of the expert witness. As stated by CDC, "AB 2427 is part of the continuing effort by the plaintiff's and defense bar to create efficiencies in civil litigation, to the benefit of litigants, lawyers, and courts. More meaningful, productive depositions will save time and money for litigants and lawyers, and may reduce the need for judicial intervention in the discovery process."

4. Opposition to post-mortem photographs provision

In opposition, the California State Sheriffs' Association (CSSA) writes that "existing law strikes the appropriate balance among appropriate access to postmortem photographs via court order family privacy and coroner workload." CSSA is concerned that allowing access to these records prior to the filing of an action and without consideration of a judge will result in increased workload and fishing expeditions for wrongful death actions that may never ultimately be filed.

In response, the author writes that "a lthough existing law allows families to obtain postmortem images through a court order for civil cases, it is reasonable to allow families to obtain postmortem to help those families determine for themselves whether they should pursue litigation. Indeed, to the extent that families receive images and decide not to pursue a wrongful death claim, this bill would reduce burdens on the court and the county coroner who might have been subpoenaed to testify on the postmortem images. Additionally, the bill has been amended to provide privacy safeguards to ensure that only legal heirs and representatives may obtain a copy of the images."

02/19/2016 INTRODUCED.
03/08/2016 To ASSEMBLY Committee on JUDICIARY.
04/12/2016 From ASSEMBLY Committee on JUDICIARY with author's amendments.
04/12/2016 In ASSEMBLY. Read second time and amended. Re-referred to Committee on JUDICIARY.
05/03/2016 From ASSEMBLY Committee on JUDICIARY: Do pass as amended.
05/04/2016 In ASSEMBLY. Read second time and amended. To second reading.
05/05/2016 In ASSEMBLY. Read second time. To third reading.
05/05/2016 Re-referred to ASSEMBLY Committee on APPROPRIATIONS.
05/18/2016 From ASSEMBLY Committee on APPROPRIATIONS: Do pass. To Consent Calendar.
05/19/2016 In ASSEMBLY. Read second time. To Consent Calendar.
05/27/2016 In ASSEMBLY. From Consent Calendar. To third reading.
05/31/2016 In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE.
06/09/2016 To SENATE Committee on JUDICIARY.
06/21/2016 From SENATE Committee on JUDICIARY: Do pass as amended to Committee on APPROPRIATIONS.
06/28/2016 In SENATE. Read second time and amended. Re-referred to Committee on APPROPRIATIONS.

Colorado

Statute

[Colo. Rev. Stat. Ann. § 24-72-204](#)

(6)(a) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection or if the official custodian is unable, in good faith, after exercising reasonable diligence, and after reasonable inquiry, to determine if disclosure of the public record is prohibited pursuant to this part 2, the official custodian may apply to the district court of the district in which such record is located for an order permitting him or her to restrict such disclosure or for the court to determine if disclosure is prohibited. Hearing on such application shall be held at the earliest practical time. In the case of a record that is otherwise available to public inspection pursuant to this part 2, after a hearing, the court may, upon a finding that disclosure would cause substantial injury to the public interest, issue an order authorizing the official custodian to restrict disclosure. In the case of a record that may be prohibited from disclosure pursuant to this part 2, after a hearing, the court may, upon a finding that disclosure of the record is prohibited, issue an order directing the official custodian not to disclose the record to the public. In an action brought pursuant to this paragraph (a), the burden of proof shall be upon the custodian. The person seeking permission to examine the record shall have notice of said hearing served upon him or her in the manner provided for service of process by the Colorado rules of civil procedure and shall have the right to appear and be heard. The attorney fees provision of subsection (5) of this section shall not apply in cases brought pursuant to this paragraph (a) by an official custodian who is unable to determine if disclosure of a public record is prohibited under this part 2 if the official custodian proves and the court finds that the custodian, in good faith, after exercising reasonable diligence, and after making reasonable inquiry, was unable to determine if disclosure of the public record was prohibited without a ruling by the court.

[Colo. Rev. Stat. Ann. § 30-10-606](#)

(6)

(a) Notwithstanding sections 12-43-218 and 13-90-107(1)(d) or (1)(g), C.R.S., the coroner holding an inquest or investigation pursuant to this section has the authority to request and receive a copy of:

(I) Any autopsy report or medical information from any pathologist, physician, dentist, hospital, or health care provider or institution if such report or information is relevant to the inquest or investigation; and

(II) Any information, record, or report related to treatment, consultation, counseling, or therapy services from any licensed psychologist, professional counselor, marriage and family therapist, social worker, or addiction counselor, certified addiction counselor, registered psychotherapist, psychologist candidate registered pursuant to section 12-43-304(7), C.R.S., marriage and family therapist candidate registered pursuant to section 12-43-504(5), C.R.S., licensed professional counselor candidate registered pursuant to

section 12-43-603(5), C.R.S., or person described in section 12-43-215, C.R.S., if the report, record, or information is relevant to the inquest or investigation.

(b) The coroner or his or her designee shall, at the request of the district attorney or attorney general, release to the district attorney or attorney general any autopsy report or medical information described in subparagraph (I) of paragraph (a) of this subsection (6) that the coroner obtains pursuant to paragraph (a) of this subsection (6).

(c) The coroner or his or her designee shall not release to any party any information, record, or report described in subparagraph (II) of paragraph (a) of this subsection (6) that the coroner obtains pursuant to paragraph (a) of this subsection (6).

(d) Any person who complies with a request from a coroner or his or her designee pursuant to paragraph (a) of this subsection (6) shall be immune from any civil or criminal liability that might otherwise be incurred or imposed with respect to the disclosure of confidential patient or client information.

Amended by Laws 1981, H.B.1164, §§ 2, 3, eff. June 4, 1981; Laws 1989, H.B.1134, § 3, eff. April 18, 1989; Laws 1996, S.B.96-49, § 15, eff. April 17, 1996; Laws 2000, Ch. 48, § 1, eff. Aug. 2, 2000; Laws 2001, Ch. 217, § 5, eff. July 1, 2001; Laws 2002, Ch. 269, § 56, eff. June 1, 2002; Laws 2004, Ch. 197, § 3, eff. Aug. 4, 2004; Laws 2011, Ch. 137, § 2, eff. May 4, 2011; Laws 2011, Ch. 285, § 76, eff. July 1, 2011; Laws 2013, Ch. 77, § 7, eff. Aug. 7, 2013; Laws 2013, Ch. 95, § 3, eff. April 4, 2013; Laws 2013, Ch. 372, § 3, eff. July 1, 2013.

Case Law

Bodelson v. Denver Pub. Co., [5 P.3d 373, 379–80 \(Colo. App. 2000\)](#)

C.

Alternatively, the Post contends that the harm that would result from publication of “graphic details” contained in the autopsy reports is not a particularly unique or extraordinary basis for denying access to public records. We reject this contention.

We note in this regard that the trial court found, with record support, that this multiple homicide is perhaps the most extraordinary event in the history of this community. It also found that:

The public interest in this matter is demonstrated by the unprecedented outpouring of grieving shown by the public at large. This is demonstrated by the memorial service that was held shortly after the event, which was attended by the Governor of this State, the Vice President of the United States, and many state, local, and national dignitaries. There were estimates that the crowd attending this event was 70,000 or more people.

The grief that's present –the public grief that's present here is also demonstrated by the fact that the President of the United States chose to come here to meet with many of the victims and to attend an additional memorial service.

The Court also takes judicial notice of the memorial that was established in Clement Park. That memorial was created by literally thousands of persons who brought remembrances to that site. And thousands more visited that site as a way to seek solace for their grief.

Although the trial court noted the coroner's testimony regarding graphic details, it focused primarily on the extraordinary circumstances leading to the filing of the petition.

The Post further contends that the trial court erred when it ruled that a party seeking access to autopsy reports must present evidence to establish that there is a public interest in obtaining access to a particular type of record, and that it erred in attempting to balance competing interests. We perceive no error.

We do not view the court's order as requiring the Post to present evidence or as misallocating the burden of proof as to disclosure. The custodians and plaintiffs alleged that release of the autopsy reports would serve no useful purpose and also presented evidence and argument to that effect. While the Post presented arguments against this position, a fair reading of the court's order is that it was rejecting those arguments and that it viewed the burden of proof to be the responsibility of the custodians and plaintiffs.

In *Denver Publishing Co. v. Dreyfus*, *supra*, plaintiff requested the autopsy reports of 14 persons who had died as a result of encounters with the police or had committed suicide while incarcerated in jail. The trial court directed the custodian to make all autopsy reports available except three. Although plaintiff did not cross appeal as to the three reports to which access was denied, the supreme court noted that the trial court properly relied upon the exception at issue here to deny plaintiff's application for inspection of those reports.

*380 Further, a similar analysis has been used to determine whether disclosure of certain public records would cause substantial injury to the public interest in cases involving liberty and privacy interests. See *Freedom Newspapers, Inc. v. Tollefson*, *supra*; *Denver Post Corporation v. University of Colorado*, [739 P.2d 874 \(Colo.App.1987\)](#).

Here, weighing the benefits of releasing the autopsy reports against the harm that would result to the victims' families and the Columbine community was permissible as part of the inquiry necessary to determine whether disclosure of the reports would cause substantial injury to the public interest.

Connecticut

Statutes

[Conn. Gen. Stat. Ann. § 19a-411](#)

§ 19a-411. Records

(a) The Office of the Chief Medical Examiner shall keep full and complete records properly indexed, giving the name, if known, of every person whose death is investigated, the place where the body was found, the date, cause and manner of death and containing all other relevant information concerning the death and a copy of the death certificate.

The full report and detailed findings of the autopsy and toxicological and other scientific investigation, if any, shall be a part of the record in each case. The office shall promptly notify the state's attorney having jurisdiction of such death and deliver to the state's attorney copies of all pertinent records relating to every death in which further investigation may be advisable. Any state's attorney, chief of police or other law enforcement official may, upon request, secure copies of such records or other information deemed necessary by such official for the performance of his or her official duties.

(b) The report of examinations conducted by the Chief Medical Examiner, Deputy Chief Medical Examiner, an associate medical examiner or an authorized assistant medical examiner, and of the autopsy and other scientific findings may be made available to the public only through the Office of the Chief Medical Examiner and in accordance with this section, section 1-210 and the regulations of the commission. Any person may obtain copies of such records upon such conditions and payment of such fees as may be prescribed by the commission, except that no person with a legitimate interest in the records shall be denied access to such records, and no person may be denied access to records concerning a person in the custody of the state at the time of death. As used in this section, a "person in the custody of the state" is a person committed to the custody of

(1) the Commissioner of Correction for confinement in a correctional institution or facility or a community residence,

(2) the Commissioner of Children and Families, or

(3) the Commissioner of Developmental Services.

(c) Upon application by the Chief Medical Examiner or state's attorney to the superior court for the judicial district in which the death occurred, or to any judge of the superior court in such judicial district when said court is not then sitting, said court or such judge may limit such disclosure to the extent that there is a showing by the Chief Medical Examiner or state's attorney of compelling public interest against disclosure of any particular document or documents. Public authorities, professional, medical, legal or scientific bodies or universities or similar research bodies may, in the discretion of the commission, have access to all records upon such conditions and payment of such fees as may be prescribed by the commission. Where such information is made available for scientific or research purposes, such conditions shall include a requirement that the identity of the deceased persons shall remain confidential and shall not be published.

[Conn. Gen. Stat. Ann. § 1-210](#)

§ 1-210. Access to public records. Exempt records

(a) Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to

- (1) inspect such records promptly during regular office or business hours,
- (2) copy such records in accordance with subsection (g) of section 1-212, or
- (3) receive a copy of such records in accordance with section 1-212.

Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void. Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such public agency is located or of the Secretary of the State, as the case may be. Any certified record hereunder attested as a true copy by the clerk, chief or deputy of such agency or by such other person designated or empowered by law to so act, shall be competent evidence in any court of this state of the facts contained therein.

(b) Nothing in the Freedom of Information Act shall be construed to require disclosure of:

- (1) Preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure;
- (2) Personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy;
- (3) Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of
 - (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known,
 - (B) the identity of minor witnesses,
 - (C) signed statements of witnesses,
 - (D) information to be used in a prospective law enforcement action if prejudicial to such action,
 - (E) investigatory techniques not otherwise known to the general public,
 - (F) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes,

(G) the name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, or

(H) uncorroborated allegations subject to destruction pursuant to section 1-216;

[Conn. Gen. Stat. § 1-212](#) (LexisNexis, Lexis Advance through all 2016 Public Laws)

Sec. 1-212. (Formerly Sec. 1-15). Copies and scanning of public records. Fees.

(a) Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record. The type of copy provided shall be within the discretion of the public agency, except

(1) the agency shall provide a certified copy whenever requested, and

(2) if the applicant does not have access to a computer or facsimile machine, the public agency shall not send the applicant an electronic or facsimile copy. The fee for any copy provided in accordance with the Freedom of Information Act:

(A) By an executive, administrative or legislative office of the state, a state agency or a department, institution, bureau, board, commission, authority or official of the state, including a committee of, or created by, such an office, agency, department, institution, bureau, board, commission, authority or official, and also including any judicial office, official or body or committee thereof but only in respect to its or their administrative functions, shall not exceed twenty-five cents per page; and

(B) By all other public agencies, as defined in section 1-200, shall not exceed fifty cents per page. If any copy provided in accordance with said Freedom of Information Act requires a transcription, or if any person applies for a transcription of a public record, the fee for such transcription shall not exceed the cost thereof to the public agency.

(b) The fee for any copy provided in accordance with subsection (a) of section 1-211 shall not exceed the cost thereof to the public agency. In determining such costs for a copy, other than for a printout which exists at the time that the agency responds to the request for such copy, an agency may include only:

(1) An amount equal to the hourly salary attributed to all agency employees engaged in providing the requested computer-stored public record, including their time performing the formatting or programming functions necessary to provide the copy as requested, but not including search or retrieval costs except as provided in subdivision (4) of this subsection;

(2) An amount equal to the cost to the agency of engaging an outside professional electronic copying service to provide such copying services, if such service is necessary to provide the copying as requested;

(3) The actual cost of the storage devices or media provided to the person making the request in complying with such request; and

(4) The computer time charges incurred by the agency in providing the requested computer-stored public record where another agency or contractor provides the agency with computer storage and retrieval services. Notwithstanding any other provision of this section, the fee for any copy of the names of registered voters shall not exceed three cents per name delivered or the cost thereof to the public agency, as determined pursuant to this subsection, whichever is less. The Department of Administrative Services shall provide guidelines to agencies regarding the calculation of the fees charged for copies of computer-stored public records to ensure that such fees are reasonable and consistent among agencies.

(c) A public agency may require the prepayment of any fee required or permitted under the Freedom of Information Act if such fee is estimated to be ten dollars or more. The sales tax provided in chapter 219 shall not be imposed upon any transaction for which a fee is required or permissible under this section or section 1-227.

(d) The public agency shall waive any fee provided for in this section when:

(1) The person requesting the records is an indigent individual;

(2) The records located are determined by the public agency to be exempt from disclosure under subsection (b) of section 1-210;

(3) In its judgment, compliance with the applicant's request benefits the general welfare;

(4) The person requesting the record is an elected official of a political subdivision of the state and the official (A) obtains the record from an agency of the political subdivision in which the official serves, and (B) certifies that the record pertains to the official's duties; or

(5) The person requesting the records is a member of the Division of Public Defender Services or an attorney appointed by the court as a Division of Public Defender Services assigned counsel under section 51-296 and such member or attorney certifies that the record pertains to the member's or attorney's duties.

(e) Except as otherwise provided by law, the fee for any person who has the custody of any public records or files for certifying any copy of such records or files, or certifying to any fact appearing therefrom, shall be for the first page of such certificate, or copy and certificate, one dollar; and for each additional page, fifty cents. For the purpose of computing such fee, such copy and certificate shall be deemed to be one continuous instrument.

(f) The Secretary of the State, after consulting with the chairperson of the Freedom of Information Commission, the Commissioner of Correction and a representative of the Judicial Department, shall propose a fee structure for copies of public records provided to an inmate, as defined in section 18-84, in accordance with subsection (a) of this section. The Secretary of the State shall submit such proposed fee structure to the joint standing committee of the General Assembly having cognizance of matters relating to government administration, not later than January 15, 2000.

(g) Any individual may copy a public record through the use of a hand-held scanner. A public agency may establish a fee structure not to exceed twenty dollars for an individual to pay each time the individual copies records at the agency with a hand-held scanner. As used in this

section, "hand-held scanner" means a battery operated electronic scanning device the use of which (1) leaves no mark or impression on the public record, and (2) does not unreasonably interfere with the operation of the public agency.

Delaware

Administrative Code

[Del. Code Ann. tit. 29, § 4707](#)

§ 4707. Postmortem examination; autopsy reports

(a) When the cause of death shall have been established within reasonable medical certainty by a Medical Examiner, the Medical Examiner shall prepare a written report and file it in the Division of Forensic Science within 30 days after an investigation of such death.

(b) If, however, in the opinion of the Medical Examiner an autopsy is necessary in the public interest or as shall be requested by the Attorney General, the same shall be performed by the Chief Medical Examiner, an Assistant Medical Examiner or by such other competent pathologists as may be designated by the Chief Medical Examiner.

No person who authorizes or performs an autopsy pursuant to this chapter shall be liable in any civil action for damages.

(c) A detailed report of the findings written during the progress of the autopsy, related laboratory analysis and the conclusions drawn therefrom shall be filed in the Division of Forensic Science.

(d) Promptly upon the conclusion of the postmortem examination, the body of the decedent shall be released to such person as shall be designated by a member of the decedent's immediate family, preferably the next of kin or by an appropriate representative of the decedent's estate.

(e) Upon written request the next of kin of the deceased shall receive a copy of the postmortem examination report, the autopsy report and the laboratory reports, unless there shall be a criminal prosecution pending in which case no such reports shall be released until the criminal prosecution shall have been finally concluded. The charge for completion of an insurance form for proof of death shall be \$5.

[Del. Code Ann. tit. 29, § 4710](#)

§ 4710. Records and reports; evidence

(a) The Chief Medical Examiner is to keep full and complete records of the Division of Forensic Science pertaining to the investigation of deaths and postmortem examinations. Such records shall be properly indexed, giving the name, if known, of every deceased person investigated, the place where the body was found, the date and the cause of death and all other available information relating thereto. The original report of Medical Examiners and the detailed findings of the autopsy and subsequent laboratory examinations, if any, shall be attached to the record of each case.

(b) The Chief Medical Examiner shall deliver to the Attorney General copies of all records relating to every death in which, in the judgment of the investigating Medical Examiner, further investigation may be deemed advisable.

(c) The Attorney General may obtain from the Division of Forensic Science copies of all records or other information which the Attorney General may deem necessary.

(d) The records of the Division of Forensic Science prepared by the Director of the Division of Forensic Science or by anyone under the Director's direction or supervision or a true copy thereof certified by the Director or the Chief Medical Examiner shall be received as competent evidence in any court in this State of the matters and facts therein contained.

Case Law

Lawson v. Meconi, [897 A.2d 740, 745–46](#) (Del. 2006)

Health Record Privacy Statute

The General Assembly's intention to protect the privacy of Delaware's citizens is reflected, in part, in the statutes that provide confidentiality for investigatory files,¹² autopsy reports¹³ and death certificates.¹⁴ Those privacy concerns were ratified, reinforced and enhanced with the 2002 passage of Delaware's Health Record Privacy Statute. At the time of its enactment, that legislation was described as creating "Delaware's first health record privacy statute, ensuring that health information gathered by the state about Delawareans will not be used or disclosed improperly."¹⁵ In her signing message, Governor Ruth Ann Minner stated "[t]he bill also gives Delaware residents the most privacy protection of any state in the country for their health information that is in the hands of the state."¹⁶

Section 1232 of the Health Record Privacy Statute provides that "[p]rotected health information is not public information ... and may not be disclosed without the informed consent of the individual (or the individual's lawful representative) who is the subject of the information except as expressly provided by statute."¹⁷ In relevant part, title 16, section § 1230(4) of the [Delaware Code defines](#) "protected health information" as:

any information, whether oral, written, electronic, visual, pictorial, physical or any other form, that relates to an individual's past, present or future physical or mental health status, condition, treatment, service, products purchased, or provision of care and that reveals the identity of the individual whose health care is the subject of the information

This unambiguous language protects the information contained in an autopsy report from public disclosure. In fact, the State defendants acknowledge in their Answering Brief: "It is undisputed that the medical information in Mr. Duane Lawson's autopsy report is protected health information under Del. C. § 1230(4)."

*746 The Court of Chancery determined, however, that the language of section 1232(e) "exempts what would otherwise be confidential health information from the scope of section 1232 when that information is contained in an autopsy report, death certificate or 'related documents.'" Section 1232(e) provides:

(e) Deceased individuals.—Nothing in this subchapter shall prohibit the disclosure of protected health information:

(1) In a certificate of death, autopsy report or related documents prepared under applicable laws or regulations;

(2) For the purposes of identifying a deceased individual;

(3) For the purposes of determining a deceased individual's manner of death by a medical examiner; or

(4) To provide necessary information about a deceased individual who is a donor or prospective donor of an anatomical gift.

Mrs. Lawson, as Mr. Lawson's lawful representative, argues that section 1232(e) means that information that would otherwise be unavailable as “protected health information” can be released for the purpose of creating the death certificate or autopsy report—but that the information contained in a death certificate or autopsy report, once created, otherwise remains protected. We agree. Sections 1232(e)(1) and (3) only permit disclosure of public health information in a death certificate or an autopsy report and only “[f]or the purposes of determining a deceased individual's manner of death by a medical examiner.”

Attorney General Opinion

Del. Op. Att'y Gen. 15-IB13 (2015)

III. APPLICABLE LAW

FOIA defines a “public record” as “information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes.”⁴ FOIA provides that “[a]ll public records shall be open to inspection and copying during regular business hours by the custodian of the records for the appropriate body,” and “[r]easonable access to and reasonable facilities for copying of these records shall not be denied to any citizen.”⁵

The mandate to permit inspection and copying does not apply to records that are not “public records.” Records that fall within one of the express exemptions set forth in section 10002(1) are not public records and need not be disclosed. Relevant to this matter is the exemption for investigatory files:

*2 For purposes of this chapter, the following records shall not be deemed public:

(3) Investigatory files compiled for civil or criminal law-enforcement purposes including pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue[.]⁶

IV. ANALYSIS

We agree with your apparent conclusion - and we determine here - that DDFS did not violate FOIA when it denied your request for the “examination report or autopsy findings” in the case. The ME's post-mortem report falls within FOIA's exemption for investigatory files.⁷ With this, we have satisfied our mandate, and our letter could end here.

The Petition makes a new demand, which we address in the interest of efficiency. The Petition now seeks only the Medical Examiner's conclusion regarding the “manner of death” of the decedent. In support of the request you first contend that such information used to be released by the former Office of the Chief Medical Examiner. This is not determinative. The Office of the Chief Medical Examiner was governed by a different state agency, and it has been dissolved.⁸ It is the right of the DDFS and its parent agency, the Delaware Department of Safety and Homeland Security, to adopt practices and policies that otherwise comply with governing law.⁹

The issue is whether the Medical Examiner's conclusion regarding Nathan Leppo's manner of death is a public information that must be disclosed under FOIA. We find that it is not.

The [Delaware Supreme Court has](#) addressed the status of information contained in a medical examiner's report, as distinct from the report itself.¹⁰ The Court held that where the report itself is exempt from disclosure under FOIA, the information in the report is likewise exempt.¹¹ When a record or information is not public according to section 10002(1)(3), a public body may, but need not, release the record or information.

As in Lawson, the Medical Examiner and the police both conducted investigations in to Nathan Leppo's death.¹² At least during the time of the investigations, and of the Medical Examiner's determination regarding cause and manner of death, there was a possibility that one or more persons would face criminal charges or civil claims in connection with the child's death. Accordingly, the Medical Examiner's investigation and determination of the manner of death fall squarely within FOIA's exemption for criminal or civil investigatory files.¹³ Records and information in an agency's investigative files do not become public when the investigation ends.¹⁴

V. CONCLUSION

DDFS did not violate FOIA when it declined to provide the requested records. Likewise, DDFS did not violate FOIA when it declined to disclose the manner of death of the decedent in response to the new request in the Petition. The Medical Examiner's investigation and determination are part of DDFS' investigative files and are not public records for purposes of FOIA.

Florida

Summary

Following the crash and death of race car driver Dale Earnhardt in the February 2001 Daytona 500 NASCAR race, news media outlets filed suit to obtain autopsy records and materials. The court ruled in favor of the Earnhardt family to keep the documents confidential, however the Florida legislature seeing the potential outcome acted swiftly to pass the “Dale Earnhardt Rule” [Fla. Stat. §406.135](#), specifically exempting autopsy records from Florida’s Open Records law.

A court order or consent of the family can allow public records access to the photographs, video and Audio recordings. Surviving next of kin listed in the statute have a right to be notified if there is a request for a court order.

[Fla. Stat. §406.135\(6\)](#)a-b provides cause for concern and a need to tread carefully, appears as though it may cover any audio or video recording of an autopsy, even those from other states.

There is 2003 Attorney General opinion that addresses use of materials for training in certain circumstances.

Statute

[Fla. Stat. Ann. §406.135](#) (LexisNexis, Lexis Advance through the 2016 regular session).

(1) For the purpose of this section, the term “medical examiner” means any district medical examiner, associate medical examiner, or substitute medical examiner acting pursuant to this chapter, as well as any employee, deputy, or agent of a medical examiner or any other person who may obtain possession of a photograph or audio or video recording of an autopsy in the course of assisting a medical examiner in the performance of his or her official duties.

(2) A photograph or video or audio recording of an autopsy held by a medical examiner is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that a surviving spouse may view and copy a photograph or video recording or listen to or copy an audio recording of the deceased spouse’s autopsy. If there is no surviving spouse, then the surviving parents shall have access to such records. If there is no surviving spouse or parent, then an adult child shall have access to such records.

(3)

(a) The deceased’s surviving relative, with whom authority rests to obtain such records, may designate in writing an agent to obtain such records.

(b) A local governmental entity, or a state or federal agency, in furtherance of its official duties, pursuant to a written request, may view or copy a photograph or video recording or may listen to or copy an audio recording of an autopsy, and unless otherwise required in the performance of their duties, the identity of the deceased shall remain confidential and exempt.

(c) The custodian of the record, or his or her designee, may not permit any other person, except an agent designated in writing by the deceased’s surviving relative with whom authority rests to obtain such records, to view or copy such photograph or video recording or listen to or copy an audio recording without a court order.

(4)

(a) The court, upon a showing of good cause, may issue an order authorizing any person to view or copy a photograph or video recording of an autopsy or to listen to or copy an audio recording of an autopsy and may prescribe any restrictions or stipulations that the court deems appropriate.

(b) In determining good cause, the court shall consider whether such disclosure is necessary for the public evaluation of governmental performance; the seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form.

(c) In all cases, the viewing, copying, listening to or other handling of a photograph or video or audio recording of an autopsy must be under the direct supervision of the custodian of the record or his or her designee.

(5) A surviving spouse shall be given reasonable notice of a petition filed with the court to view or copy a photograph or video recording of an autopsy or a petition to listen to or copy an audio recording, a copy of such petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter. If there is no surviving spouse, then such notice must be given to the parents of the deceased, and if the deceased has no living parent, then to the adult children of the deceased.

(6)

(a) Any custodian of a photograph or video or audio recording of an autopsy who willfully and knowingly violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, [or s. 775.084](#).

(b) Any person who willfully and knowingly violates a court order issued pursuant to this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, [or s. 775.084](#).

(7) A criminal or administrative proceeding is exempt from this section, but unless otherwise exempted, is subject to all other provisions of chapter 119, provided however that this section does not prohibit a court in a criminal or administrative proceeding upon good cause shown from restricting or otherwise controlling the disclosure of an autopsy, crime scene, or similar photograph or video or audio recordings in the manner prescribed herein.

(8) This exemption shall be given retroactive application.

Attorney General Opinion

AGO 2003-25. "The court, upon a showing of good cause, may issue an order authorizing any person to view or copy a photograph or video recording of an autopsy or to listen to or copy an audio recording of an autopsy and may prescribe any restrictions or stipulations that the court deems appropriate. In determining good cause, the court shall consider whether such disclosure is necessary for the public evaluation of governmental performance; the seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form. In all cases, the viewing, copying, listening to or other handling of a photograph or video or audio recording of an autopsy must be under the direct supervision of the custodian of the record or his or her designee."

This procedure applies in those situations where a private non-governmental entity seeks access to autopsy photographs or recordings. In instances where a petition for such access has been filed, notification of next of kin and an opportunity for such kin to be present and heard at any hearings on the subject are required.

Accordingly, it is my opinion that autopsy photographs or videotapes may be shown for training purposes to non-public agencies or associations when a court has made the appropriate finding of good cause and the family of the deceased has been provided notice and the opportunity to attend and be heard at any hearing on the matter, as prescribed in [section 406.135, Florida Statutes](#). In allowing the release of autopsy photographs or videotapes, the court may impose [8] any restrictions or stipulations that it deems appropriate.

Georgia

Statute

[Ga. Code Ann. § 45-16-27](#)

(d) Autopsy photographs shall not be subject to disclosure pursuant to Article 4 of Chapter 18 of Title 50; provided, however, that this subsection shall have no application to the disclosure of such photographs to law enforcement agencies and prosecutors for law enforcement purposes or, in closed criminal investigations, to medical schools, medical facilities, and physicians for medical purposes; to individuals who have secured a written release from the deceased's next of kin; or to the next of kin. It shall be the responsibility of the next of kin to show proof of the familial relationship. For purposes of securing a written release or when access to the photographs is requested by the next of kin, the deceased's next of kin shall be:

- (1) The spouse of the deceased if living;
- (2) If there is no living spouse of the deceased, an adult child of the deceased;
- (3) If there is no living spouse or adult child, a parent of the deceased;
- (4) If there is no living spouse, adult child, or parent, a sibling of the deceased;
- (5) If there is no living spouse, adult child, parent, or sibling of the deceased, a grandparent of the deceased;
- (6) If none of the above are living, an uncle of the deceased;
- (7) If none of the above are living, an aunt of the deceased; or
- (8) If none of the above are living, a first cousin of the deceased.

A superior court may, in closed criminal investigations, order the disclosure of such photographs upon findings in writing that disclosure is in the public interest and that it outweighs any privacy interest that may be asserted by the deceased's next of kin. In any such action, the court shall review the photographs in question in camera and may condition any disclosure on such measures as the court may deem necessary to accommodate the interests of the parties before it.

Hawaii

Summary

Exemptions to General Rule of required disclosure of public documents indicate a scope that may potentially cover autopsy records.

Statutes

§ 92F-13. Government records; exceptions to general rule

This part shall not require disclosure of:

(1) Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;

...

(4) Government records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure;

§ 841-14

[(b)] Any law to the contrary notwithstanding, the coroner's physician or medical examiner of any county (including the city and county of Honolulu) may cause to have performed an autopsy to determine cause of death upon the remains of any human body which is brought into or found within the State and which appears to have come to death under any of the circumstances set forth in section 841-3, even though such circumstances may have occurred without the State. The coroner's physician or medical examiner of any county (including the city and county of Honolulu) shall have the right to retain tissues, including fetal material, of the body removed at the time of autopsy to be used for necessary or advisable scientific investigation, including research, teaching, and therapeutic purposes.

Idaho

Summary

Section Naming update in 2015 can be found at [Idaho Code Ann. § 9-338](#)

Statutes

[Idaho Code Ann. § 19-4301D](#)

§ 19-4301D. Coroner to make reports

When the cause and manner of death is established under the provisions of this chapter the coroner shall make and file a written report of the material facts concerning the cause and manner of death in the office of the clerk of the district court. The coroner shall promptly deliver to the prosecuting attorney of each county having criminal jurisdiction over the case copies of all records relating to every death as to which further investigation may be advisable. Any prosecuting attorney or other law enforcement official may upon request secure copies of the original of such records or other documents or pertinent objects or information deemed necessary by him to the performance of his official duties.

The statutes and Constitution are current through the 2016 Second Regular Session of the 63rd Idaho Legislature.

[Idaho Code Ann. § 74-101](#)

(13) "Public record" includes, but is not limited to, any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics.

[Idaho Code Ann. § 74-124](#)

§ 74-124. Exemptions from disclosure--Confidentiality

(1) Notwithstanding any statute or rule of court to the contrary, nothing in this chapter nor chapter 10, title 59, Idaho Code, shall be construed to require disclosure of investigatory records compiled for law enforcement purposes by a law enforcement agency, but such exemption from disclosure applies only to the extent that the production of such records would:

- (a) Interfere with enforcement proceedings;
- (b) Deprive a person of a right to a fair trial or an impartial adjudication;
- (c) Constitute an unwarranted invasion of personal privacy;
- (d) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement agency in the course of a criminal investigation, confidential information furnished only by the confidential source;

- (e) Disclose investigative techniques and procedures; or
- (f) Endanger the life or physical safety of law enforcement personnel.

(2) Notwithstanding subsection (1) of this section, any person involved in a motor vehicle collision which is investigated by a law enforcement agency, that person's authorized legal representative and the insurer shall have a right to a complete, unaltered copy of the impact report, or its successors, and the final report prepared by the agency.

(3) An inactive investigatory record shall be disclosed unless the disclosure would violate the provisions of subsection (1)(a) through (f) of this section. Investigatory record as used herein means information with respect to an identifiable person or group of persons compiled by a law enforcement agency in the course of conducting an investigation of a specific act or omission and shall not include the following information:

- (a) The time, date, location, and nature and description of a reported crime, accident or incident;
- (b) The name, sex, age, and address of a person arrested, except as otherwise provided by law;
- (c) The time, date, and location of the incident and of the arrest;
- (d) The crime charged;
- (e) Documents given or required by law to be given to the person arrested;
- (f) Informations and indictments except as otherwise provided by law; and
- (g) Criminal history reports.

As used herein, the term "law enforcement agency" means the office of the attorney general, the office of the state controller, the Idaho state police, the office of any prosecuting attorney, sheriff or municipal police department.

(4) Whenever it is made to appear by verified petition to the district court of the county where the records or some part thereof are situated that certain investigative records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the investigative record or show cause why he should not do so. The court shall decide the case after examining the record in camera, papers filed by the parties, and such oral argument and additional evidence as the court may allow.

If the court finds that the public official's decision to refuse disclosure is not justified, he shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure. Any person who fails to obey the order of the court shall be cited to show cause why he is not in contempt of court. The court may, in its discretion, award costs and fees to the prevailing party.

Illinois

Summary

Federal Rules of evidence included as background to provide context for case law.

Statute

[5 Ill. Comp. Stat. Ann. 140/1](#)

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.

The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act.

This Act is not intended to cause an unwarranted invasion of personal privacy, nor to allow the requests of a commercial enterprise to unduly burden public resources, or to disrupt the duly-undertaken work of any public body independent of the fulfillment of any of the fore-mentioned rights of the people to access to information.

This Act is not intended to create an obligation on the part of any public body to maintain or prepare any public record which was not maintained or prepared by such public body at the time when this Act becomes effective, except as otherwise required by applicable local, State or federal law.

Restraints on access to information, to the extent permitted by this Act, are limited exceptions to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people. The provisions of this Act shall be construed in accordance with this principle. This Act shall be construed to require disclosure of requested information as expediently and efficiently as possible and adherence to the deadlines established in this Act.

The General Assembly recognizes that this Act imposes fiscal obligations on public bodies to provide adequate staff and equipment to comply with its requirements. The General Assembly declares that providing records in compliance with the requirements of this Act is a primary duty of public bodies to the people of this State, and this Act should be construed to this end, fiscal obligations notwithstanding.

The General Assembly further recognizes that technology may advance at a rate that outpaces its ability to address those advances legislatively. To the extent that this Act may not expressly apply to those technological advances, this Act should nonetheless be interpreted to further the

declared policy of this Act that public records shall be made available upon request except when denial of access furthers the public policy underlying a specific exemption.

This Act shall be the exclusive State statute on freedom of information, except to the extent that other State statutes might create additional restrictions on disclosure of information or other laws in Illinois might create additional obligations for disclosure of information to the public.

[5 Ill. Comp. Stat. Ann. 140/2](#)

(c) "Public records" means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.

(c-5) "Private information" means unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

Administrative Regulation

[2 Ill. Adm. Code 1828.401](#)

1828.401. Claims by Submitters that Public Records are Exempt from Disclosure

- a) A claim that a public record is exempt from public disclosure pursuant to Section 1828.202 must be made at the time of submittal of the public record.
- b) A claim that a public record is exempt from public disclosure must include:
 - 1) A claim letter, stating that the public record is exempt from public disclosure pursuant to Section 1828.202, identifying all exemptions that apply, and briefly describing the public record;
 - 2) A justification for the claim, including:
 - A) If the public record is a subsequent version of a public record previously granted exempt status by the Agency, a certified statement indicating:
 - i) The date of submission of the previous public record; and
 - ii) That the previous justification remains applicable to the current submission;or
 - B) If the submittal is not a subsequent version of a public record previously granted exempt status by the Agency, the following information:
 - i) Measures taken by the submitter to prevent disclosure of the public record;

- ii) The rights of privacy, if any, that might be an unwarranted invasion of personal privacy by disclosure of the public record;
- iii) The competitive value, if any, of the public record to the submitter; and
- iv) Any other information that will support the claim for exemption from disclosure;

3) A copy of the public record, marked in accordance with the requirements of subsection (c) of this Section; and

4) If the submitter is currently a party in a proceeding before the Board or a court in which the information is relevant to the issues, the title of the proceeding, docket number, and, if applicable, identification of the court.

c) The submitter must mark a public record or portions thereof claimed exempt from disclosure as follows:

1) Where the public record is claimed to be exempt from disclosure in its entirety, mark the public record with the words "Public Record Claimed Exempt" in red ink on the face or front of the public record. If submitted in electronic format, the public record must be clearly marked in bold at the top or front of the public record with the words "Public Record Claimed Exempt"; or

2) Where less than the entire public record is claimed to be exempt from disclosure:

A) Mark the public record with the words "Public Record Claimed Exempt - in Part" in red ink on the face or front of the public record. If submitted in electronic format, the public record must be clearly marked in bold at the top or front of the public record with the words "Public Record Claimed Exempt - in Part";

B) Indicate on the face or beginning of the public record which portion of the public record is claimed to be exempt from disclosure;

C) Mark every portion of the public record which is claimed to be exempt from disclosure with the words "Public Record Claimed Exempt"; and

D) Furnish the Agency with a second copy of the public record that is marked in accordance with (A) and (B) of this subsection and from which the portion of the public record that is claimed to be exempt from disclosure is deleted.

Credits

(Source: Amended at [34 Ill. Reg. 9028](#), effective June 22, 2010)

Current through rules published in the Illinois Register Volume 40, Issue 31, July 29, 2016.

Case Law

People v. Leach, [405 Ill. App. 3d 297, 306–07, 939 N.E.2d 537, 545–46](#) (2010), aff'd on other grounds, [2012 IL 111534, 980 N.E.2d 570](#)

Embraced within the rubric of nontestimonial hearsay is the public records exception, records required by statute or authorized to be maintained by the nature of the office, evidencing matters properly required to be maintained and recorded. *People v. Hester*, [88 Ill.App.3d 391, 395, 43 Ill.Dec. 638, 410 N.E.2d 638, 640](#) (1980). Like business records, the exception is based on the assumption that public officers will perform their duties, that they lack motive to falsify, and that public inspection to which many such records are subject will disclose inaccuracies. M. Graham, Cleary & Graham's Handbook of Illinois Evidence § 803.12 (8th ed. 2004). Records of the medical examiner are a species of "public documents," generally admissible at common law even in the absence of statutory authority. *Steward v. Crissell*, [289 Ill.App.3d 66, 69, 224 Ill.Dec. 419, 681 N.E.2d 1040, 1042](#) (1997). Moreover, autopsy reports are clearly recognized under the codification of the common law exception. Section 115–5.1 of the Code of Criminal Procedure of 1963 provides:

"In any civil or criminal action the records of the coroner's medical or laboratory examiner summarizing and detailing the performance of his or her official duties in performing medical examinations upon deceased persons or autopsies, or both, and kept in the ordinary course of business of the coroner's office, duly certified by the county coroner or chief supervisory coroner's pathologist or medical examiner, shall be ***703 **546 received as competent evidence in any court of this State, to the extent permitted by this Section. These reports, specifically including but not limited to the pathologist's protocol, autopsy reports and toxicological reports, shall be public documents and thereby may be admissible as prima facie evidence of the facts, findings, opinions, diagnoses and conditions stated therein.

A duly certified coroner's protocol or autopsy report, or both, complying with the requirements of this Section may be duly admitted into evidence as an exception to the hearsay rule as prima facie proof of the cause of death of the person to whom it relates. The records referred to in this Section shall be limited to the records of the results of post-mortem examinations of the findings of autopsy and toxicological laboratory examinations." [725 ILCS 5/115–5.1](#) (West 2002).

Well prior to Crawford, Illinois courts relied upon the foregoing statute to permit presentation of the autopsy findings of a nontestifying medical examiner. *People v. Harper*, [279 Ill.App.3d 801, 812–13, 216 Ill.Dec. 414, 665 N.E.2d 474, 484](#) (1996). Because of section 115–5.1, the bar of hearsay does not apply. *Harper*, [279 Ill.App.3d at 813, 216 Ill.Dec. 414, 665 N.E.2d at 484](#). That result continues to endure, well into the post-Crawford setting. *307 *People v. Moore*, [378 Ill.App.3d 41, 50, 316 Ill.Dec. 751, 880 N.E.2d 229, 237](#) (2007) ("A plain reading of the statute governing the admissibility of the medical examiner's report as evidence leads us to conclude that an autopsy report should be treated as a business record").

We further observe that an identical result has obtained in the majority of other forums addressing this issue: (1) *United States v. Feliz*, [467 F.3d 227](#) (2d Cir.2006) (autopsy reports qualify as public records under Federal Rule of Evidence 803(8) as they are records setting forth activities of the office or matters observed pursuant to duty imposed by law as to which matters there was a duty to report); (2) *State v. Craig*, [110 Ohio St.3d 306, 2006 Ohio 4571, 853 N.E.2d 621](#) (we agree with the majority view under Crawford and conclude that autopsy records are admissible as nontestimonial business records); (3) *State v. Cutro*, [365 S.C. 366, 618 S.E.2d 890](#) (2005) (autopsy reports are not testimonial and therefore do not implicate the confrontation clause); and (4) *Campos v. State*, [256 S.W.3d 757](#) (Tex.App.2008) (an autopsy report contains a sterile recitation of fact and is nontestimonial within the meaning of Crawford).

Supplemental

[Fed. R. Evid. 803](#)

Rule 803. Exceptions to the Rule Against Hearsay--Regardless of Whether the Declarant Is Available as a Witness

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

...

(B) a record was regularly kept for a matter of that kind; and

(C) the opponent does not show that the possible source of the information or other circumstances indicate a lack of trustworthiness.

(8) Public Records. A record or statement of a public office if:

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(B) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

Indiana

Summary

Indiana has a statute specifically addressing who has access to which documents and if they can receive copies or view them.

Statute

[Ind. Code Ann. § 36-2-14-10](#)

36-2-14-10. Verdict and written report of death — Filing — Confidentiality of autopsy records.

(a) After viewing the body, hearing the evidence, and making all necessary inquiries, the coroner shall draw up and sign his verdict on the death under consideration. The coroner shall also make a written report giving an accurate description of the deceased person, his name if it can be determined, and the amount of money and other property found with the body. The verdict and the written report are subject to inspection and copying under [IC 5-14-3-3](#).

(b) Except as provided in subsections (c), (d), and (e), a photograph, video recording, or audio recording of an autopsy in the custody of a medical examiner is declared confidential for purposes of [IC 5-14-3-4\(a\)\(1\)](#).

(c) A surviving spouse may:

- (1) view and copy a photograph or video recording; and
- (2) listen to and copy an audio recording;

of the deceased spouse's autopsy. If there is no surviving spouse, the surviving parents shall have access to the records under this section. If there is no surviving spouse or parent, an adult child shall have access to the records.

(d) Upon making a written request, a unit (as defined in [IC 36-1-2-23](#)), the state, an agency of the state, the federal government, or an agency of the federal government, while in performance of their official duty, may:

- (1) view and copy a photograph or video recording; and
- (2) listen to and copy an audio recording;

of an autopsy. Unless otherwise required in the performance of official duties, the identity of the deceased must remain confidential.

(e) The coroner or the coroner's designee having custody of a photograph, a video recording, or an audio recording of an autopsy may use or allow the use of the photograph, video recording, or audio recording of the autopsy for case consultation with a pathologist or forensic scientist. The coroner or the coroner's designee having custody of a photograph, a video recording, or an audio recording of an autopsy may also use or allow the use of the photograph, video recording, or audio recording for training or educational purposes (as defined in [IC 16-39-7.1-1.5](#)) if all information that identifies the individual on whom the autopsy was performed is masked or removed from the photograph, video recording, or audio recording. For purposes of this subsection, information that identifies an individual consists of:

- (1) the name;

- (2) the address;
- (3) the Social Security number;
- (4) a full view of the face; or
- (5) identifying marks on the body that are unrelated to the medical condition or medical status;

of the deceased individual. A coroner or coroner's designee who allows the use of autopsy information under this subsection has a duty to disclose to each person to whom the coroner or coroner's designee releases it that the information is confidential and may not be used for a purpose other than the purpose for which it was originally released. Information disclosed under this subsection is confidential. A coroner or coroner's designee who fails to disclose the confidentiality restrictions of this information commits a Class A misdemeanor.

(f) Except as provided in subsection (e), the coroner or the coroner's designee having custody of a photograph, a video, or an audio recording of an autopsy may not permit a person to:

- (1) view or copy the photograph or video recording; and
 - (2) listen to or copy the audio recording;
- of an autopsy without a court order.

(g) A court, upon a showing of good cause, may issue an order authorizing a person to:

- (1) view or copy a photograph or video recording; and
- (2) listen to or copy an audio recording;

of an autopsy, and may prescribe any restrictions or stipulations that the court considers appropriate.

(h) In determining good cause under subsection (g), the court shall consider:

- (1) whether the disclosure is necessary for the public evaluation of governmental performance;
- (2) the seriousness of the intrusion into the family's right to privacy;
- (3) whether the disclosure of the photograph, video recording, or audio recording is by the least intrusive means available; and
- (4) the availability of similar information in other public records, regardless of form.

(i) In all cases, the viewing, copying, listening to, or other handling of a photograph, video recording, or audio recording of an autopsy must be under the direct supervision of the coroner, or the coroner's designee, who is the custodian of the record.

(j) A surviving spouse shall be given:

- (1) reasonable notice of the petition filed with the court to view or copy a photograph or video recording of an autopsy or a petition to listen to or copy an audio recording;
- (2) a copy of the petition filed with the court to view or copy a photograph or video recording of an autopsy or a petition to listen to or copy an audio recording; and
- (3) reasonable notice of the opportunity to be present and heard at any hearing on the matter.

(k) If there is no surviving spouse, the notice under subsection (j) must be given to the deceased's parents, and if the deceased has no living parent, the notice must be given to the adult children of the deceased.

(l) A coroner or coroner's designee who:

- (1) is the custodian of a photograph, a video recording, or an audio recording of an autopsy; and
 - (2) knowingly or intentionally violates this section;
- commits a Class A misdemeanor.

(m) A person who knowingly or intentionally violates a court order issued under this section commits a Class A misdemeanor.

(n) A person who:

- (1) receives autopsy information under subsection (e); and
 - (2) knowingly or intentionally uses the information in a manner other than the specified purpose for which it was released;
- commits a Class A misdemeanor.

[IC 5-14-3-4](#)

Records and recordings exempted from disclosure; time limitations; destruction of records Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery: (1) Those declared confidential by state statute.

Iowa

Statute

[Iowa Code Ann. § 22.7](#)

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

41.

a. Medical examiner records and reports, including preliminary reports, investigative reports, and autopsy reports.

b. Notwithstanding paragraph “a”, the following shall be released as follows:

(1) Medical examiner-authored records and reports, including preliminary reports, investigative reports, and autopsy reports, shall be released to a law enforcement agency that is investigating the death, upon the request of the law enforcement agency.

(2) Preliminary reports of investigations by the medical examiner and autopsy reports for a decedent by whom an anatomical gift was made in accordance with chapter 142C shall be released to a procurement organization as defined in section [142C.2](#), upon the request of such procurement organization, unless such disclosure would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual.

(3) Autopsy reports shall be released to the decedent's immediate next of kin, upon the request of the decedent's immediate next of kin, unless disclosure to the decedent's immediate next of kin would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual.

c. Information regarding the cause and manner of death shall not be kept confidential under this subsection, unless disclosure would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual.

Administrative Regulation

Iowa Admin. Code r. 641-127.3(331,691)

127.3(5) Autopsy report. A complete record of the findings of the autopsy shall be submitted to the state medical examiner's office, the county attorney of the county where the death occurred and the county attorney of the county where the injury contributing to or causing the death was sustained within 90 days following the date of death, unless unusual circumstances requiring further investigation or testing exist. The report filed shall include all diagrams, transcriptions of the autopsy observations and opinions, and toxicology reports.

Kansas

Summary

44-[5a18](#) discusses the autopsy report filed by the medical examiner is public record, 45-221 provides circumstances that documents need not be open.

Statutes

[Kan. Stat. Ann. § 44-5a18](#)

44-[5a18](#). Autopsy; notice; findings; public record

Upon the filing or service of a claim for compensation for death from an occupational disease where an autopsy is necessary to accurately and scientifically ascertain and determine the cause of death, such autopsy shall be ordered by the director. Such autopsy shall be made under the supervision of a medical examiner appointed by the director. The medical examiner shall be a health care provider who is a specialist in such examinations. The medical examiner shall perform or attend such autopsy and shall certify the medical examiner's findings in a report of the autopsy. The report of autopsy shall be filed with the director and shall be a public record. The employer and claimants shall be given reasonable notice of such autopsy and each shall have the right to have a health care provider of the employer or claimant's own choosing present at the time. The director also may exercise such authority on the director's own motion or on application made to the director at any time, upon the presentation of facts showing that a controversy may exist in regard to the cause of death or the existence of any occupational disease.

[Kan. Stat. Ann. § 65-901](#)

65-901. Certain unclaimed dead bodies; use for medical, surgical and anatomical science

It shall be lawful for the chairman or head of the department of anatomy of the medical school of the university of Kansas, to claim and receive the dead body of any person required to be delivered under [K.S.A. 65-902a](#), which would otherwise be buried at public expense or on grounds reserved exclusively for pauper dead; such body to be used within the state for the purpose of the advancement of medical, surgical and anatomical science and study, and the instruction of medical students.

[Kan. Stat. Ann. § 74-7308](#)

74-7308. Condition of claimant or victim; no privilege, exception; examination or autopsy; report; other reports relevant to injury; confidentiality of records

(a) There shall be no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical, mental or emotional conditions of the claimant or victim in a proceeding under this act in which such condition is an element.

(b) If the mental, physical or emotional condition of a victim or claimant is material to a claim, the board may order the victim or claimant to submit to a mental or physical examination by a

physician or psychologist, and may order an autopsy of a deceased victim. The order may be made for good cause shown upon notice to the person to be examined and to all persons who have appeared. The order shall specify the time, place, manner, conditions and scope of the examination or autopsy and the person by whom it is to be made; and the order shall require the person to file with the board a detailed written report of the examination or autopsy. The report shall set out the findings of the person making the report, including results of all tests made, diagnoses, prognosis and other conclusions and reports of earlier examinations of the same conditions.

(c) On request of the person examined, the board shall furnish a copy of the report to such person. If the victim is deceased, the board, on request, shall furnish to the claimant a copy of the report.

(d) The board may require the claimant to supplement the application with any reasonably available medical or psychological reports relating to the injury for which compensation is claimed.

(e) All records and information given to the board to process a claim on behalf of a crime victim shall be confidential. Such exhibits, medical records, psychological records, counseling records, work records, criminal investigation records, criminal court case records, witness statements, telephone records, and other records of any type or nature whatsoever gathered for the purpose of evaluating whether to compensate a victim shall not be obtainable by any party to any action, civil or criminal, through any discovery process except:

(1) In the event of an appeal under the Kansas administrative procedure act from a decision of the board and then only to the extent narrowly and necessarily to obtain court review;

(2) upon a strict showing to the court in a separate civil or criminal action that particular information or documents are not obtainable after diligent effort from any independent source, and are known to exist otherwise only in board records, the court may inspect in camera such records to determine whether the specific requested information exists. If the court determines the specific information sought exists in the board records, the documents may then be released only by court order if the court finds as part of its order that the documents will not pose any threat to the safety of the victim or any other person whose identity may appear in board records; or

(3) by any board order granting or denying compensation to a crime victim.

[Kan. Stat. Ann. § 45-221](#)

45-221. Certain records not required to be open; separation of open and closed information required; statistics and records over 70 years old open

(a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to

[K.S.A. 75-4315d](#), and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to [K.S.A. 75-4315d](#), and amendments thereto, to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

...

(10) Criminal investigation records, except as provided herein. The district court, in an action brought pursuant to [K.S.A. 45-222](#), and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public;

(E) would not endanger the life or physical safety of any person; and

(F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

...

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

...

(29) Correctional records pertaining to an identifiable inmate or release, except that:

(A) The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;

(B) the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law;

(C) the information provided to the law enforcement agency pursuant to the sex offender registration act, [K.S.A. 22-4901 et seq.](#), and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, [K.S.A. 22-4901 et seq.](#), and amendments thereto, shall not be disclosed; and

(D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

Kentucky

Summary

Attorney general opinion provided within the context of X-rays.

Statutes

[Ky. Rev. Stat. Ann. § 311.300](#)

311.300 Professor of medical college may procure dead bodies

The professor of any medical college or school incorporated in this state that has executed the required bond may procure the unclaimed body of any person who dies in this state, in order that the professors and students of the college may dissect and examine it for the advancement of science.

[Ky. Rev. Stat. Ann. § 61.878](#)

61.878 Certain public records exempted from inspection except on order of court; restriction of state employees to inspect personnel files prohibited

(1) The following public records are excluded from the application of [KRS 61.870](#) to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:

- (a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;
- (b) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the disclosure or publication of which is directed by another statute;
- (c)
 - 1. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records;
 - 2. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained:
 - a. In conjunction with an application for or the administration of a loan or grant;
 - b. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;

c. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or

d. For the grant or review of a license to do business.

3. The exemptions provided for in subparagraphs 1. and 2. of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute;

(d) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (c) of this subsection;

(e) Public records which are developed by an agency in conjunction with the regulation or supervision of financial institutions, including but not limited to, banks, savings and loan associations, and credit unions, which disclose the agency's internal examining or audit criteria and related analytical methods;

(f) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired. The law of eminent domain shall not be affected by this provision;

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again;

(h) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of [KRS 61.870](#) to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of [KRS 61.870](#) to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by [KRS 61.870](#) to 61.884;

(i) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;

(j) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;

(k) All public records or information the disclosure of which is prohibited by federal law or regulation;

(l) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly;

(m)

1. Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:

a. Criticality lists resulting from consequence assessments;

b. Vulnerability assessments;

c. Antiterrorism protective measures and plans;

d. Counterterrorism measures and plans;

e. Security and response needs assessments;

f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;

g. The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency; and

h. Records when their disclosure will expose a vulnerability referred to in this subparagraph and that describe the exact physical location of hazardous chemical, radiological, or biological materials.

2. As used in this paragraph, "terrorist act" means a criminal act intended to:

a. Intimidate or coerce a public agency or all or part of the civilian population;

b. Disrupt a system identified in subparagraph 1.f. of this paragraph; or

c. Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency.

3. On the same day that a public agency denies a request to inspect a public record for a reason identified in this paragraph, that public agency shall forward a copy of the written denial of the request, referred to in [KRS 61.880\(1\)](#), to the

executive director of the Kentucky Office of Homeland Security and the Attorney General.

4. Nothing in this paragraph shall affect the obligations of a public agency with respect to disclosure and availability of public records under state environmental, health, and safety programs.

5. The exemption established in this paragraph shall not apply when a member of the Kentucky General Assembly seeks to inspect a public record identified in this paragraph under the Open Records Law; and

(n) Public or private records, including books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, having historic, literary, artistic, or commemorative value accepted by the archivist of a public university, museum, or government depository from a donor or depositor other than a public agency. This exemption shall apply to the extent that nondisclosure is requested in writing by the donor or depositor of such records, but shall not apply to records the disclosure or publication of which is mandated by another statute or by federal law.

(2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.

(3) No exemption in this section shall be construed to deny, abridge, or impede the right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him. The records shall include, but not be limited to, work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, lay-offs, disciplinary actions, examination scores, and preliminary and other supporting documentation. A public agency employee, including university employees, applicant, or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.

(4) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.

(5) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.

Attorney General Opinion

Ky. Op. Att'y Gen. 14-ORD-082 (2014)

To begin, 05-ORD-075 involved autopsy photos and not, as here, an x-ray. Under certain circumstances, x-ray photos may be as revealing as autopsy photos. However, it is often the case, as it is in this instance, that x-ray photos reveal only the skeletal structure of a subject in a manner that is not likely to contain personally identifiable information (unless the subject suffers from an obvious deformity with which the reviewer is familiar). In contrast to autopsy photos that are personally

identifiable and reveal flesh and blood details, x-rays depict osseous structure, and are more clinical in nature. Our review of the autopsy photos appended to Ms. Preston's letter of appeal, which were obtained through discovery, and the disputed x-ray, which we obtained under authority of [KRS 61.880\(2\)\(c\)](#), confirms that the x-ray is not graphic and implicates minimally, if at all, Mr. Glodo's surviving family members' privacy rights.¹ Though some x-ray photos may contain personally identifiable characteristics that implicate the privacy interests of surviving family members, that is not the case here.

*2 Conversely, the public's interest in disclosure of the disputed x-ray in this appeal is greater than the public's interest in the disputed autopsy photos in 05-ORD-075.

As noted, in 05-ORD-075 the Attorney General held that the public interest in determining whether the Medical Examiner properly executed her statutory function in performing the decedent's autopsy "was effectively promoted by release of the written autopsy reports." 05-ORD-075, p. 8. Here, the Medical Examiner acknowledges that no radiology report was generated after Mr. Glodo's head was x-rayed. The only record confirming the Medical Examiner's discharge of her statutory duty, as it relates to the x-ray of Mr. Glodo's skull where the fatal gunshot was inflicted, is the x-ray itself. Under these circumstances, the minimal privacy interests of surviving family members in that x-ray must yield to the public's interest in disclosure.

05-ORD-075, upon which the Cabinet relies, was appealed to the Franklin Circuit Court where it was reversed. *Blaine J. Edmond, III, et al. v. Justice and Public Safety Cabinet*, Civil Action No. 05-CI-00742 (Franklin Circuit Court Division 1). Although the court's opinion does not represent binding legal authority for the Commonwealth, it is instructive to note that the court focused on the absence of evidence "that any family members of the victim ... have voiced any objection over the release of the autopsy photos." *Id.* at 3. The record in this appeal is also devoid of evidence that Mr. Glodo's surviving family members have objected to disclosure of the x-ray.² Although not entirely controlling on the issue of the public's right of access to autopsy photos or x-rays, proof of a heightened privacy interest supported by the surviving family members' objections to disclosure, will be considered in determining whether the public's interest must yield to the family members' privacy interest.

Louisiana

Statute

La. Stat. Ann. § 44:19 § 19. Records of a coroner; autopsy photographs, video, and other visual images

A.

(1) Notwithstanding any provision of this Chapter to the contrary, any medical record or personal medical history of a deceased person in the custody of a coroner shall be confidential and shall not be subject to examination, inspection, or copying pursuant to R.S. 44:31, 32, or 33.

(2) For purposes of this Subsection, the phrase “medical record or personal medical history of a deceased person” shall mean information regarding the physical, mental, or behavioral health or condition of a deceased person prior to death.

(3) The provisions of Paragraph (1) of this Subsection shall not apply to a death certificate, final report of a coroner, or autopsy report.

B. Notwithstanding any other provision of law to the contrary, photographs, video, or other visual images, in whatever form, of or relating to an autopsy conducted under the authority of the office of the coroner shall be confidential, are deemed not to be public records, and shall not be released by the office of the coroner or any officer, employee, or agent thereof except as otherwise provided in this Section.

C. Nothing in this Section shall prevent the release of information in the custody of a coroner, including autopsy photographs, video, or other visual images, in whatever form, of or relating to an autopsy conducted under the authority of the office of the coroner as follows:

(1) To a family member of the deceased or his designee.

(2) To the succession representative of the deceased's estate or his designee.

(3) To a law enforcement agency, for official use only.

(4) To a qualified dentist, forensic anthropologist, or forensic pathologist as necessary to establish the identity of the deceased.

(5) As directed by a court order or subpoena.

D. Nothing in this Section shall prevent the inspection of photographs, video, or other visual images, in whatever form, of or relating to an autopsy.

Maine

Summary

[Me. Rev. Stat. tit. 22, § 3028](#) (7) addresses the written report.

Statutes

[Me. Rev. Stat. tit. 22, § 3028](#)

§ 3028. Investigation; autopsy

1. Authority to conduct investigation. The medical examiner or medicolegal death investigator has authority to conduct an investigation and inquiry into the cause, manner and circumstances of death in a medical examiner case. The medical examiner or medicolegal death investigator shall, if it is determined necessary, immediately proceed to the scene and, subject to the authority of the Attorney General, assume custody of the body for the purposes of the investigation, and shall retain custody until the investigation has been completed or until the Chief Medical Examiner has assumed charge of the case.

2. Investigation by law enforcement officer. When death is not suspected to be the result of physical injury attributable to criminal conduct, the medical examiner may elect not to proceed to the scene, or the Chief Medical Examiner may elect not to dispatch a medical examiner or medicolegal death investigator to the scene. If the medical examiner elects not to proceed to the scene, or the Chief Medical Examiner elects not to dispatch a medical examiner or medicolegal death investigator to the scene, the law enforcement officer in charge of the scene shall:

A. Investigate, take photographs and take possession of useful objects as directed by the medical examiner, medicolegal death investigator or the Office of Chief Medical Examiner pursuant to subsection 4;

B. Deleted. Laws 2001, c. 291, § 2.

C. Remove the body in accordance with the instructions of the medical examiner, medicolegal death investigator or the Office of Chief Medical Examiner; and

D. Make a report of the investigation available to the medical examiner, medicolegal death investigator or the Office of Chief Medical Examiner.

3. Assistance of law enforcement agency. The medical examiner, the medicolegal death investigator or the pathologist as described in subsection 8 may request the assistance and use of the facilities of the law enforcement agency having jurisdiction over the case for the purposes of photographing, fingerprinting or otherwise identifying the body. That agency shall provide the medical examiner, medicolegal death investigator or pathologist with a written report of the steps taken in providing the assistance.

4. Possession of useful objects. Except as otherwise directed by the Attorney General, the Attorney General's deputies or assistants, the medical examiner, the medicolegal death investigator or the Office of Chief Medical Examiner may direct that a law enforcement officer at the scene make measurements, take photographs and take possession of all objects that in the opinion of the medical examiner, medicolegal death investigator or the Office of Chief Medical Examiner may be useful in establishing the cause, manner and circumstances of death. For these

same purposes, the medical examiner, medicolegal death investigator or the Office of Chief Medical Examiner may direct that a law enforcement officer take possession of any objects or specimens that have been removed from the victim at the scene or elsewhere while under medical care.

5. Requests for objects. Any person having possession of any object or objects, as described in subsection 4, shall at the request of the medical examiner or medicolegal death investigator give that object or objects to a law enforcement officer, to the medical examiner, to the medicolegal death investigator or to the Office of Chief Medical Examiner. Medical personnel and institutions turning over any objects or specimens that have been removed from the victim while under medical care are immune from civil or criminal liability when complying with this subsection. Original written or recorded material that might express suicidal intent must be sent to the Office of the Chief Medical Examiner. The Chief Medical Examiner may elect to accept copies in place of originals.

6. Examination of body. In all cases, the medical examiner or medicolegal death investigator shall conduct a thorough examination of the body except in those cases when the body has already been disposed of and is not being exhumed or when the Chief Medical Examiner or Deputy Chief Medical Examiner determines, after review of available records and known circumstances, that the report of the death of the decedent may be certified and completed without examining the body.

7. Written report. Upon completing an investigation, the medical examiner or medicolegal death investigator shall submit a written report of the investigator's findings to the Chief Medical Examiner on forms provided for that purpose. The investigator shall retain one copy of the report.

If an investigator reports suspected abuse, neglect or exploitation to the Chief Medical Examiner, the Chief Medical Examiner, by reporting that information to the department on behalf of the investigator, fulfills the medical examiner's mandatory reporting requirement under section 3477 or 4011-A.

8. Autopsy. If, in any medical examiner case, in the opinion of the medical examiner, the Chief Medical Examiner, the district attorney for the district in which the death has occurred or the Attorney General, it is advisable and in the public interest that an autopsy be made, the autopsy must be conducted by the Chief Medical Examiner or by a physician that the medical examiner, with the approval of the Chief Medical Examiner, may designate. The medical examiner, with the approval of the Chief Medical Examiner, may elect to perform the autopsy. The person who performs the autopsy shall make a complete report of the findings of the autopsy and shall transmit the report to the medical examiner and the Office of Chief Medical Examiner, retaining one copy of the report.

9. Autopsy of child. In the case of a child under the age of 3 years, when death occurs without medical attendance or, if attended, without a specific natural cause, the medical examiner shall order an autopsy. The autopsy may be waived by the Chief Medical Examiner, as long as the Chief Medical Examiner includes the reason for the waiver in the record.

10. Chief Medical Examiner; jurisdiction. The Chief Medical Examiner may assume jurisdiction over a medical examiner case and may recertify the death when the Chief Medical Examiner finds that it is in the public interest to do so. The Chief Medical Examiner shall include the reasons for so doing in the record.

11. Final release of body. In any medical examiner case the body shall not be finally released for embalming or burial except by order of the medical examiner in charge of the case, or by the Chief Medical Examiner. No medical examiner may release a body without first ensuring that the case has been reported to the Office of Chief Medical Examiner.

12. Report to domestic abuse panel. If the Chief Medical Examiner determines that a death resulted from criminal conduct and that the victim was pregnant at the time of death, the Chief Medical Examiner shall send a copy of any report prepared under this section to the Domestic Abuse Homicide Review Panel created pursuant to Title 19-A, section 4013.

[Me. Rev. Stat. tit. 24-A, § 2714](#)

§ 2714. Physical examination, autopsy

There shall be a provision as follows:

Physical examination and autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

Current with legislation through the 2015 Second Regular Session of the 127th Legislature. The Second Regular Session convened January 6, 2016 and adjourned sine die April 29th, 2016. The general effective date is July 29, 2016.

§ 2826. Examination, autopsy

There shall be a provision that the insurer shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy in case of death where it is not prohibited by law.

Maryland

Statutes

[Md. Code Ann., State Gov't § 10-611](#)

§ 10-611. Duties of Division

The Division shall:

- (1) inspect the records of the units of the State government;
- (2) study the records management practices of the units;
- (3) review a proposal to buy or rent equipment, storage space, or services for records, including microfilming or photocopying, and, as appropriate, make recommendations about the proposal to:
 - (i) the Department of Budget and Management; or
 - (ii) the Board of Public Works;
- (4) on July 1, 1985 and for each subsequent 5-year period, report a series analysis of the character and quantity of records that a unit of the State government holds and that an official of the State government or the head of a unit is required or is permitted to offer to the State Archives; and
- (5) otherwise further the programs of each unit of the State government.

Administrative Regulations

[Md. Code Regs. 10.35.01.14](#)

.14 Release of Medical Examiner's Records.

- A. Individual files of the Chief Medical Examiner are confidential medical records protected from disclosure under the provisions of State Government Article, §§ 4-301 and 10-611 et seq., Annotated Code of Maryland.
- B. An exception to these confidential medical records is the official medical examiner's autopsy report. This report is a public record and is generally subject to disclosure under State Government Article, §§ 10-611 et seq., Annotated Code of Maryland, unless the case is subject to an ongoing investigation, or other appropriate reason for denial of disclosure exists.
- C. Records request by court order or subpoena shall be subject to the fee schedule set forth herein.
- D. Fee Schedule.
 - (1) Autopsy reports may be sent electronically to the requestor. The fees schedule is the same for paper or electronic reports and is as follows:
 - (a) A fee of \$30 for a first-degree relative may be charged; and

(b) A fee of \$120 for all others may be charged for providing a requested autopsy report and included consultation reports.

(2) Requests for other information or material shall be accompanied by a court order or subpoena unless the Custodian of Records determines compelling circumstances exist warranting the release of materials. If releasable, the contents of the file will be copied at a cost of \$1 per page with a minimum charge of \$25 excluding any item independently listed in §D of this regulation.

(3) Photographs are copied electronically. There is a \$50 processing fee for each CD, plus \$5 per each image copied. X-rays and CT scans are copied electronically. There is a \$50 processing fee for each CD, plus \$25 per X-ray.

(4) Slides are copied electronically. There is a \$50 processing fee for each CD, plus \$20 for each image copied. Slides may be viewed in the Office of the Chief Medical Examiner facility at a rate of \$200 for the first hour and \$50 for every 15 minute increment thereafter, partial or whole. The reviewer will have access to the medical examiner during the review.

(5) A proof of death document may be obtained for \$20.

(6) If any or all of the items listed in §D of this regulation are requested in digital format (CD or DVD), an additional fee of \$60 shall apply.

(7) These fees do not apply if the releasable documents are viewed only, by appointment, at the OCME, at the discretion of the custodian of records.

E. An individual, other than the custodian of the records of the Office of the Chief Medical Examiner or a designee, may not copy or distribute a copy of the official report of the Office of the Chief Medical Examiner.

Amended Nov. 24, 2014.

Complete through Maryland Register Vol. 43, Issue 14, dated July 8, 2016.

Massachusetts

Summary

Chief Medical Examiner is authorized to promulgate regulations for disclosure of autopsy documentation. State Regulations provide for release to certain entities.

Statute

[Mass. Ann. Laws ch. 38, § 2](#) (LexisNexis, Lexis Advance through Act 158 of the 2016 Legislative Session with the exception of Act 133)

The chief medical examiner, with approval of the secretary of the executive office of public safety, shall promulgate rules for the disclosure of autopsy reports, which shall not be deemed to be public records, to those who are legally entitled to receive them. If a medical examiner conducts an autopsy on a body of a deceased person who within six months before the date of death received services from a facility or program operated, contracted for, or licensed by the department of mental health, the office of the chief medical examiner shall provide a copy of the autopsy report, upon request, to the commissioner of mental health for the purpose of completing an investigation into the circumstances surrounding the death, if a next of kin does not object thereto. The chief medical examiner, with the approval of said secretary, may establish fees for providing autopsy reports to those who are legally entitled to receive them. Neither the chief medical examiner, nor any employee of the office of the chief medical examiner, shall be subject to civil or criminal liability for lawfully disclosing an autopsy report or any part thereof, pursuant to the rules concerning the disclosure of autopsy reports promulgated under this section, to anyone legally entitled to receive it.

Nothing in this section shall be construed to prohibit the office of the chief medical examiner from providing a copy of the autopsy report of a decedent to the decedent's surviving spouse, person in the first degree of consanguinity or, in the event there is no surviving spouse or person in the first degree of consanguinity, to the person entitled to receive the body.

Administrative Regulations

[505 Mass. Code Regs. 1.00](#) et. Esq. (Lexis Advance through all regulations in effect as of 6/17/2016)
1.02: Definitions

As used in [505 CMR 1.00](#):

Authority Compiling Statistical Data means any local, state, or federal agency or entity, excluding the Attorney General and respective District Attorneys of the Commonwealth, authorized by law to collect or receive information for the purpose of preventing or controlling disease, injury, disability, or death.

Chief means the chief medical examiner or his designee.

Health Care Provider means any doctor of medicine licensed under the provisions of M.G.L. c. 112; an intern, fellow or medical officer licensed under [M.G.L. c. 112, § 9](#); a hospital licensed under the provisions of M.G.L. c. 111 and its agents and employees; or a public hospital and its agents and employees.

Investigatory Body means any local, state, federal, or military law enforcement or regulatory agency or entity, excluding the Attorney General and respective District Attorneys of the

Commonwealth, authorized or mandated with the oversight, regulation, standardization, or review of investigations related to causes of death.

Medical Peer Review Committee means a committee as defined by [M.G.L. c. 111, § 1](#).

Office means the Office of the Chief Medical Examiner.

1.03: Disclosure of Autopsy Reports to Spouse or Next of Kin

The Office may, in its discretion, provide a copy of the autopsy report of a decedent to the decedent's surviving spouse or next of kin, who shall have priority in the order named, if the following conditions are met:

- (1) The Office receives a written request for a copy of the autopsy report from the surviving spouse or next of kin;
- (2) The surviving spouse or next of kin provides an affidavit, signed under the pains and penalties of perjury, indicating and verifying his or her relationship to the decedent; and
- (3) In cases of unnatural or suspicious death where the district attorney or his law enforcement representative is directing and controlling the investigation of the death pursuant to [M.G.L. c. 38, § 4](#), the district attorney or his law enforcement representative has determined, in his discretion and in writing, that he does not object to the disclosure of the autopsy report to the spouse or next of kin.

1.04: Disclosure of Autopsy Reports in Civil Cases

The Office may, in its discretion, provide a copy of the autopsy report of a decedent to a requesting party in a civil case if the following conditions are met:

- (1) The moving party demonstrates to the court having subject matter jurisdiction over the litigation that the autopsy report likely contains information that is relevant, material, and necessary for preparation or use in the litigation;
- (2) The moving party obtains a specific court order, authorizing disclosure of the autopsy report, issued by a judge of the court having subject matter jurisdiction over the litigation;
- (3) The Office has been afforded the opportunity to oppose and object to the disclosure of the autopsy report for reasons of confidentiality, privacy, investigative interests or as justice may require;
- (4) In cases of unnatural or suspicious death where the district attorney or his law enforcement representative is directing and controlling the investigation of the death pursuant to [M.G.L. c. 38, § 4](#), the district attorney or his law enforcement representative has determined, in his discretion and in writing, that he does not object to the disclosure of the autopsy report to the spouse or next of kin; and
- (5) The Office issues, along with the release of the autopsy report, a statement that autopsy reports are not public records and should not be disseminated or used for any purposes other than those authorized by the court order or by law.

1.05: Disclosure of Autopsy Reports to Investigatory Bodies

The Office may, in its discretion, provide a copy of the autopsy report of a decedent to a requesting investigatory body if the following conditions are met:

- (1) The investigatory body demonstrates that the autopsy report likely contains information that is relevant, material, and necessary for the complete and proper investigation of the death;
- (2) In cases of unnatural or suspicious death where the district attorney or his law enforcement representative is directing and controlling the investigation of the death pursuant to [M.G.L. c. 38, § 4](#), the district attorney or his law enforcement representative has determined, in his discretion and in writing, that, that he does not object to the disclosure of the autopsy report to the investigatory body; and
- (3) The Office issues, along with the release of the autopsy report, a statement that autopsy reports are not public records and should not be disseminated or used for any purposes other than those authorized by law.

1.06: Disclosure of Autopsy Reports to Persons or Entities Statutorily Entitled to Receive Autopsy Reports

- (1) Nothing in [505 CMR 1.06](#) shall be construed or interpreted to contravene or circumvent the provisions of M.G.L. c. 38 or any other Massachusetts statute, which authorizes or mandates the disclosure of autopsy reports.
- (2) The Office shall provide a copy of an autopsy report of a decedent to the Attorney General or District Attorney having lawful jurisdiction of the investigation of the death, forthwith upon request.

1.08: Disclosure of Autopsy Reports to Authority Compiling Statistical Data

The Office may, in its discretion, provide a copy of the autopsy report or information contained therein to a requesting Authority Compiling Statistical Data if the following conditions are met:

- (1) The authority compiling statistical data demonstrates in writing to the satisfaction of the Office that the information sought is relevant, material, and necessary for the complete and proper fulfillment of its federal or state or statutory requirements; and
- (2) The authority compiling statistical data demonstrates that all publicly accessible reports containing Office data received pursuant to this regulation will contain only aggregate data and no individual names or other personally identifying information or information that could lead to the identification of an individual decedent, or other information that is protected by statute, regulation, or executive order, including but not limited to [M.G.L. c. 214, § 1B](#), c. 66A, c. 93H, c. 93I, c. 4, § 7(26), [5 USC 552](#), and Massachusetts [Executive Order 504](#), will be published or released.

1.09: Construction and Severability

- (1) Nothing in [505 CMR 1.08](#) shall be construed or interpreted to contravene or circumvent the provisions of M.G.L. c. 38, the Massachusetts Rules of Civil and Criminal Procedure pertaining to the rules of discovery, or any other Massachusetts statute.
- (2) If any article, section, subsection, sentence, clause, or phrase of [505 CMR 1.00](#) is for any reason determined to be unconstitutional, contrary to statute, in excess of

authority, or otherwise inoperative, such determination shall not affect the validity of any other article, section, subsection, sentence, clause, or phrase of [505 CMR 1.00](#).

Michigan

Statute

[Mich. Comp. Laws Ann. § 333.2855a](#)

333.2855a. Public display of autopsy photograph identifying decedent; restrictions; civil damage action for violations

Sec. 2855a.

(1) A person shall not publicly display an autopsy photograph of a decedent that identifies the decedent by name, face, or other identifying physical feature unless 1 of the following conditions is met:

(a) One of the following individuals specifically provides written authorization for the public display of the autopsy photograph:

(i) A person nominated by will or other writing signed by the decedent.

(ii) If an individual described in subparagraph (i) cannot be identified or located following a diligent and good faith effort, the decedent's spouse.

(iii) If an individual described in subparagraph (i) or (ii) cannot be identified or located following a diligent and good faith effort, an adult child of the decedent.

(iv) If an individual described in subparagraph (i), (ii), or (iii) cannot be identified or located following a diligent and good faith effort, a parent of the decedent.

(v) If an individual described in subparagraph (i), (ii), (iii), or (iv) cannot be identified or located following a diligent and good faith effort, the next of kin of the decedent.

(vi) If an individual described in subparagraph (i), (ii), (iii), (iv), or (v) cannot be identified or located following a diligent and good faith effort, an individual charged by law with the responsibility for burial or cremation of the decedent's body.

(b) The public display of the autopsy photograph is 1 of the following:

(i) Upon written authorization by the prosecuting attorney having jurisdiction for a purpose directly related to the investigation or prosecution of a criminal case.

(ii) Authorized by a court of competent jurisdiction for a purpose directly related to the proceedings in a civil case.

(iii) Required for a health department to carry out its lawful duties.

(iv) Necessary for legitimate research or teaching of only medical, public health, or public safety personnel or students enrolled at a postsecondary educational institution.

(2) A decedent's parent, surviving spouse, and children who are injured as a result of a violation of this section may bring an action in a court of competent jurisdiction to recover \$1,000.00 or actual damages, whichever is greater, plus costs and reasonable attorney fees.

(3) This section does not apply to an internet service provider or computer network service provider who in good faith, and without knowledge of the content of the photograph, provides the medium for public display of the photograph. As used in this subsection, "internet service provider" means a person

who provides a service that enables users to access content, information, electronic mail, or other services offered over the internet.

(4) This section does not prohibit constitutionally protected speech or activity.

(5) As used in this section:

(a) “Autopsy photograph” means an image of a decedent obtained during an autopsy of that decedent in this state, and includes an image on videotape, motion picture or other film, or an image captured by digital means.

(b) “Decedent” means a deceased human being.

(c) “Public display” means to knowingly communicate, exhibit, or display in open view or to distribute to members of the public or in a public manner, whether or not for commercial purposes, through any medium of communication including, but not limited to, the internet or a computer, computer network, computer program, or computer system, as those terms are defined in section 2 of 1979 PA 53, [MCL 752.792](#).

Credits

P.A.1978, No. 368, § 2855a, added by P.A.2003, No. 322, Eff. Mar. 31, 2004.

[M. C. L. A. 333.2855a](#), MI ST 333.2855a

The statutes are current through P.A.2016, No. 280 of the 2016 Regular Session, 98th Legislature.

Minnesota

Summary

Official records are generally available. However, there are classifications of data that are not subject to open records request, this includes some personal data and certain medical data.

Statutes

[Minn. Stat. Ann. § 390.11](#)

- Subd. 5. Inquest. An inquest into a death may be held at the request of the medical examiner and the county attorney or the coroner and the county attorney. An inquest is optional and the coroner or medical examiner may investigate and certify a death without one. The coroner or medical examiner and county attorney may decide how to empanel the inquest. Inquest records will be made public, but the record and report of the inquest proceedings may not be used [in evidence](#) in any civil action arising out of the death for which an inquest was ordered. Whenever the decision is made to hold an inquest, the county attorney may issue subpoenas for witnesses and enforce their attendance. The persons served with subpoenas shall be allowed the same compensation and be subject to the same enforcement and penalties as provided by rule 22 of the Minnesota Rules of Criminal Procedure.
- Subd. 6. Records kept by coroner or medical examiner. The coroner or medical examiner shall keep full and complete records, properly indexed, giving the name, if known, of every person whose death is investigated, the place where the body was found, the date, cause, and manner of death, and all other available information concerning the death that the coroner or medical examiner considers pertinent. These records of the coroner or medical examiner are the property of the county and subject to chapter 13. These records shall be kept at the coroner's or medical examiner's office, unless no storage space is available. They shall then be kept with official county records and only released in accordance with the Data Practices Act. Records shall be kept in accordance with section 15.17.
- Subd. 7. Duty to report. Deaths of the types described in this section must be promptly reported for investigation to the coroner or medical examiner and, when appropriate, to the law enforcement agency with jurisdiction, by the law enforcement officer, attending physician, health care professional, mortician or funeral director, person in charge of the public institutions referred to in subdivision 1, or anyone who discovers a deceased person. In a case in which a crime may be involved, the coroner or medical examiner shall promptly notify the law enforcement agency with jurisdiction over a criminal investigation of the death.
- Subd. 7a. Records and other material available to coroner or medical examiner. Except for health data defined in section 13.3805, subdivision 1, paragraph (a), clause (2), health-related records or data on a decedent whose death is being investigated under this section shall be made promptly available to the coroner or medical examiner, upon the coroner's or medical examiner's written request, by any person, agency, entity, or organization having custody of, possession of, access to, or knowledge of the records or data.

This provision includes records and data, whether recorded or unrecorded, including but not limited to, records and data, including medical imaging, concerning medical, surgical, psychiatric, psychological, chemical dependency, or any other consultation, diagnosis, or treatment. In cases involving a stillborn infant or the death of a fetus or infant less than one year of age, the prenatal records on the decedent's mother may also be subpoenaed by the coroner or medical examiner. The coroner or medical examiner shall pay the reasonable costs of copies of records or data so provided under this section. Data collected or created pursuant to this subdivision relating to any psychiatric, psychological, or mental health consultation with, diagnosis of, or treatment of the decedent whose death is being investigated shall remain confidential or protected nonpublic data, except that the coroner's or medical examiner's final summary report may contain a summary of, or references to, such data. Where records of a decedent become part of the medical examiner's or coroner's file, they are not subject to subpoena or a request for production directed to the medical examiner or coroner. Body fluids, slides, tissue, organ specimens, radiographs, monitor records, video or other recordings, and any other material or article of diagnostic value obtained from the decedent prior to death shall be made available to the coroner or medical examiner upon request. Notwithstanding the provisions of sections 13.384 and 595.02, the coroner or medical examiner shall have the power to subpoena any and all documents, records, including medical records, and papers deemed useful in the investigation of a death.

Subd. 7b. Records released by coroner or medical examiner. Records and reports, including those of autopsies performed, generated, and certified by the coroner or medical examiner shall be admissible as evidence in any court or grand jury proceeding. The admissibility of such evidence under this subdivision shall not include statements made by witnesses or other persons unless otherwise admissible.

[Minn. Stat. Ann. § 15.17](#)

15.17. Official records

Subdivision 1. Must be kept. All officers and agencies of the state, counties, cities, towns, school districts, municipal subdivisions or corporations, or other public authorities or political entities within the state, hereinafter "public officer," shall make and preserve all records necessary to a full and accurate knowledge of their official activities. Government records may be produced in the form of computerized records. All government records shall be made on a physical medium of a quality to insure permanent records. Every public officer is empowered to reproduce records if the records are not deemed to be of permanent or archival value by the commissioner of administration and the records disposition panel under section 138.17. The public officer is empowered to reproduce these records by any photographic, photostatic, microphotographic, optical disk imaging system, microfilming, or other reproduction method that clearly and accurately reproduces the records. Each public officer may order that those photographs, photostats, microphotographs, microfilms, optical images, or other reproductions, be substituted for the originals of them. The public officer may direct the destruction or sale for salvage or other disposition of the originals from which they were made, in accordance with the disposition requirements of section 138.17. Photographs, photostats, microphotographs, microfilms, optical images, or other reproductions are for all purposes deemed the original

recording of the papers, books, documents, and records reproduced when so ordered by any public officer and are admissible as evidence in all courts and proceedings of every kind. A facsimile or exemplified or certified copy of a photograph, photostat, microphotograph, microfilm, optical image, or other reproduction, or an enlargement or reduction of it, has the same effect and weight as evidence as would a certified or exemplified copy of the original.

Subd. 2. Responsibility for records. The chief administrative officer of each public agency shall be responsible for the preservation and care of the agency's government records, which shall include written or printed books, papers, letters, contracts, documents, maps, plans, computer-based data, and other records made or received pursuant to law or in connection with the transaction of public business. It shall be the duty of each agency, and of its chief administrative officer, to carefully protect and preserve government records from deterioration, mutilation, loss, or destruction. Records or record books may be repaired, renovated, or rebound when necessary to preserve them properly.

Subd. 3. Delivery to successor. Every legal custodian of government records, at the expiration of that official's term of office or authority, or on the official's death a legal representative, shall deliver to a successor in office all government records in custody; and the successor shall receipt therefor to the predecessor or legal representative and shall file in the office a signed acknowledgment of the delivery. Every public officer shall demand from a predecessor in office, or the predecessor's legal representative, the delivery of all government records belonging to the office.

Subd. 4. Accessible to public. Access to records containing government data is governed by sections 13.03 and 138.17.

[Minn. Stat. Ann. § 13.03](#)

13.03. Access to government data

Subdivision 1. Public data. All government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute, or temporary classification pursuant to section 13.06, or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential. The responsible authority in every government entity shall keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use. Photographic, photostatic, microphotographic, or microfilmed records shall be considered as accessible for convenient use regardless of the size of such records.

Subd. 2. Procedures.

(a) The responsible authority in every government entity shall establish procedures, consistent with this chapter, to insure that requests for government data are received and complied with in an appropriate and prompt manner.

(b) Full convenience and comprehensive accessibility shall be allowed to researchers including historians, genealogists and other scholars to carry out extensive research and complete copying

of all records containing government data except as otherwise expressly provided by law. A responsible authority may designate one or more designees.

Subd. 3. Request for access to data.

(a) Upon request to a responsible authority or designee, a person shall be permitted to inspect and copy public government data at reasonable times and places, and, upon request, shall be informed of the data's meaning. If a person requests access for the purpose of inspection, the responsible authority may not assess a charge or require the requesting person to pay a fee to inspect data.

(b) For purposes of this section, "inspection" includes, but is not limited to, the visual inspection of paper and similar types of government data. Inspection does not include printing copies by the government entity, unless printing a copy is the only method to provide for inspection of the data. In the case of data stored in electronic form and made available in electronic form on a remote access basis to the public by the government entity, inspection includes remote access to the data by the public and the ability to print copies of or download the data on the public's own computer equipment. Nothing in this section prohibits a government entity from charging a reasonable fee for remote access to data under a specific statutory grant of authority. A government entity may charge a fee for remote access to data where either the data or the access is enhanced at the request of the person seeking access.

(c) The responsible authority or designee shall provide copies of public data upon request. If a person requests copies or electronic transmittal of the data to the person, the responsible authority may require the requesting person to pay the actual costs of searching for and retrieving government data, including the cost of employee time, and for making, certifying, and electronically transmitting the copies of the data or the data, but may not charge for separating public from not public data. However, if 100 or fewer pages of black and white, letter or legal size paper copies are requested, actual costs shall not be used, and instead, the responsible authority may charge no more than 25 cents for each page copied. If the responsible authority or designee is not able to provide copies at the time a request is made, copies shall be supplied as soon as reasonably possible.

(d) When a request under this subdivision involves any person's receipt of copies of public government data that has commercial value and is a substantial and discrete portion of or an entire formula, pattern, compilation, program, device, method, technique, process, database, or system developed with a significant expenditure of public funds by the government entity, the responsible authority may charge a reasonable fee for the information in addition to the costs of making and certifying the copies. Any fee charged must be clearly demonstrated by the government entity to relate to the actual development costs of the information. The responsible authority, upon the request of any person, shall provide sufficient documentation to explain and justify the fee being charged.

(e) The responsible authority of a government entity that maintains public government data in a computer storage medium shall provide to any person making a request under this section a copy of any public data contained in that medium, in electronic form, if the government entity can reasonably make the copy or have a copy made. This does not require a government entity to provide the data in an electronic format or program that is different from the format or program in which the data are maintained by the government entity. The entity may require the requesting person to pay the actual cost of providing the copy.

(f) If the responsible authority or designee determines that the requested data is classified so as to deny the requesting person access, the responsible authority or designee shall inform the requesting person of the determination either orally at the time of the request, or in writing as soon after that time as possible, and shall cite the specific statutory section, temporary classification, or specific provision of federal law on which the determination is based. Upon the request of any person denied access to data, the responsible authority or designee shall certify in writing that the request has been denied and cite the specific statutory section, temporary classification, or specific provision of federal law upon which the denial was based.

Subd. 4. Change in classification of data; effect of dissemination among agencies.

(a) The classification of a government entity's data shall change if it is required to do so to comply with either judicial or administrative rules pertaining to the conduct of legal actions or with a specific statute applicable to the data in the possession of the disseminating or receiving entity.

(b) If data on individuals are classified as both private and confidential by this chapter, or any other statute or federal law, the data are private.

(c) To the extent that government data are disseminated to a government entity by another government entity, the data disseminated shall have the same classification at the entity receiving them as they had at the entity providing them.

(d) If a government entity disseminates data to another government entity, a classification provided for by law at the entity receiving the data does not affect the classification of the data at the entity that disseminates the data.

(e) To the extent that judicial branch data are disseminated to government entities by the judicial branch, the data disseminated shall have the same level of accessibility at the government entity receiving them as they had at the judicial branch entity providing them. If the data have a specific classification in state statute or federal law, the government entity must maintain the data according to the specific classification.

Subd. 5. Copyright or patent of government data. A government entity may enforce a copyright or acquire a patent for a computer software program or components of a program created by that government entity without statutory authority. In the event that a government entity acquires a patent to a computer software program or component of a program, the data shall be treated as trade secret information pursuant to section 13.37.

Subd. 6. Discoverability of not public data. If a government entity opposes discovery of government data or release of data pursuant to court order on the grounds that the data are classified as not public, the party that seeks access to the data may bring before the appropriate presiding judicial officer, arbitrator, or administrative law judge an action to compel discovery or an action in the nature of an action to compel discovery.

The presiding officer shall first decide whether the data are discoverable or releasable pursuant to the rules of evidence and of criminal, civil, or administrative procedure appropriate to the action.

If the data are discoverable the presiding officer shall decide whether the benefit to the party seeking access to the data outweighs any harm to the confidentiality interests of the entity maintaining the data, or of any person who has provided the data or who is the subject of the

data, or to the privacy interest of an individual identified in the data. In making the decision, the presiding officer shall consider whether notice to the subject of the data is warranted and, if warranted, what type of notice must be given. The presiding officer may fashion and issue any protective orders necessary to assure proper handling of the data by the parties. If the data are a videotape of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse, the presiding officer shall consider the provisions of section [611A.90](#), subdivision 2, paragraph (b). If the data are data subject to the protections under chapter 5B or section 13.045, the presiding officer shall consider the provisions of section 5B.11.

- Subd. 7. Data transferred to archives. When government data that is classified as not public by this chapter or any other statute, including private data on decedents and confidential data on decedents, is physically transferred to the state archives, the data shall no longer be classified as not public and access to and use of the data shall be governed by section 138.17.
- Subd. 8. Change to classification of data not on individuals. Except for security information, nonpublic and protected nonpublic data shall become public either ten years after the creation of the data by the government entity or ten years after the data was received or collected by any governmental entity unless the responsible authority for the originating or custodial entity for the data reasonably determines that, if the data were made available to the public or to the data subject, the harm to the public or to a data subject would outweigh the benefit to the public or to the data subject. If the responsible authority denies access to the data, the person denied access may challenge the denial by bringing an action in district court seeking release of the data. The action shall be brought in the district court located in the county where the data are being maintained, or, in the case of data maintained by a state agency, in any county. The data in dispute shall be examined by the court in camera. In deciding whether or not to release the data, the court shall consider the benefits and harms in the same manner as set forth above. The court shall make a written statement of findings in support of its decision.
- Subd. 9. Effect of changes in classification of data. Unless otherwise expressly provided by a particular statute, the classification of data is determined by the law applicable to the data at the time a request for access to the data is made, regardless of the data's classification at the time it was collected, created, or received.
- Subd. 10. Costs for providing copies of data. Money may be collected by a responsible authority in a state agency for the actual cost to the agency of providing copies or electronic transmittal of government data. When money collected for purposes of this section is of a magnitude sufficient to warrant a separate account in the state treasury, that money must be deposited in a fund other than the general fund and is appropriated to the agency.
- Subd. 11. Treatment of data classified as not public; public meetings. Not public data may be discussed at a meeting open to the public to the extent provided in section 13D.05.
- Subd. 12. Pleadings. Pleadings, as defined by court rule, served by or on a government entity, are public data to the same extent that the data would be public if filed with the court.

[Minn. Stat. Ann. § 138.17](#)

138.17. Government records; administration

Subdivision 1. Destruction, preservation, reproduction of records; prima facie evidence.

(a) The attorney general, legislative auditor in the case of state records, state auditor in the case of local records, and director of the Minnesota Historical Society, hereinafter director, shall constitute the Records Disposition Panel. The members of the panel shall have power by majority vote to direct the destruction or sale for salvage of government records determined to be no longer of any value, or to direct the disposition by gift to the Minnesota Historical Society or otherwise of government records determined to be valuable for preservation. The Records Disposition Panel may by majority vote order any of those records to be reproduced by photographic or other means, and order that photographic or other reproductions be substituted for the originals of them. It may direct the destruction or sale for salvage or other disposition of the originals from which they were made. Photographic or other reproductions shall for all purposes be deemed the originals of the records reproduced when so ordered by the records disposition panel, and shall be admissible as evidence in all courts and in proceedings of every kind. A facsimile, exemplified or certified copy of a photographic, optical disk imaging, or other reproduction, or an enlargement or reduction of it, shall have the same effect and weight as evidence as would a certified or exemplified copy of the original. The Records Disposition Panel, by majority vote, may direct the storage of government records, except as herein provided, and direct the storage of photographic or other reproductions. Photographic or other reproductions substituted for original records shall be disposed of in accordance with the procedures provided for the original records.

(b) For the purposes of this chapter:

(1) the term “government records” means state and local records, including all cards, correspondence, discs, maps, memoranda, microfilms, papers, photographs, recordings, reports, tapes, writings, optical disks, and other data, information, or documentary material, regardless of physical form or characteristics, storage media or conditions of use, made or received by an officer or agency of the state and an officer or agency of a county, city, town, school district, municipal subdivision or corporation or other public authority or political entity within the state pursuant to state law or in connection with the transaction of public business by an officer or agency;

(2) the term “state record” means a record of a department, office, officer, commission, commissioner, board or any other agency, however styled or designated, of the executive branch of state government; a record of the state legislature; a record of any court, whether of statewide or local jurisdiction; and any other record designated or treated as a state record under state law;

(3) the term “local record” means a record of an agency of a county, city, town, school district, municipal subdivision or corporation or other public authority or political entity;

(4) the term “records” excludes data and information that does not become part of an official transaction, library and museum material made or acquired and kept solely for reference or exhibit purposes, extra copies of documents kept only for convenience of reference and stock of publications and processed documents, and bonds, coupons, or other obligations or evidences of indebtedness, the destruction or other disposition of which is governed by other laws;

(5) the term “state archives” means those records preserved or appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures,

operations or other activities of government or because of the value of the information contained in them, when determined to have sufficient historical or other value to warrant continued preservation by the state of Minnesota and accepted for inclusion in the collections of the Minnesota Historical Society.

(c) If the decision is made to dispose of records by majority vote, the Minnesota Historical Society may acquire and retain whatever they determine to be of potential historical value.

Subd. 1a. Records inspection. Government records which a state agency, political subdivision, or statewide system lists on a records disposition application or records schedule, or on which archival assistance or advice is requested, may be inspected by state archives' employees if state archives gives prior notice. Employees of the archives shall have access to the records for the purpose of determining the historical or other continuing value of the records, regardless of the records' classification pursuant to chapter 13 or 270B. Employees of the archives shall be liable to the penalties set forth for improper disclosure by them of private, confidential, nonpublic, or protected nonpublic data inspected for this purpose.

Subd. 1b. Transfer process. After July 1, 1982, all records deemed to be of continuing value and authorized for transfer to the archives by the Records Disposition Panel shall be retained by the requesting agency or may be transferred to the archives in accordance with subdivision 1, notwithstanding the provisions of chapter 13. The responsible authority of the state agency, political subdivision, or statewide system transferring records to the archives shall notify the archivist or a designee with regard to the records transferred of the classification of the records pursuant to chapter 13.

Subd. 1c. Access to archives records.

(a) All records transferred to the archives shall be accessible to the public unless the archives determines that the information:

(1) was compiled for law enforcement purposes and disclosure would

(i) materially impair the effectiveness of an ongoing investigation, criminal intelligence operation, or law enforcement proceeding;

(ii) identify a confidential informant;

(iii) reveal confidential investigative techniques or procedures, including criminal intelligence activity; or

(iv) endanger the life of an individual;

(2) is administrative or technical information, including software, operating protocols, employee manuals, or other information, the disclosure of which would jeopardize the security of a record-keeping system;

(3) is proprietary information, including computer programs and software and other types of information manufactured or marketed by persons under exclusive legal right, owned by the agency or entrusted to it;

(4) contains trade secrets or confidential commercial and financial information obtained, upon request, from a person;

(5) is library, archival, or museum material contributed by private persons to the extent of any lawful limitation imposed upon the material; or

(6) if disclosed, would constitute a clearly unwarranted invasion of personal privacy. Disclosure of an individually identifiable record does not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interest of the individual.

(b) The society may withhold access to state archives from any person who willfully mutilates, damages, or defaces archival records, or wrongfully removes them from state archives; provided that the society shall notify the person of the decision to withhold access, and the person may, within 30 days, appeal the decision to the Executive Council of the society.

(c) The state archivist shall notify any person from whom access is withheld pursuant to paragraph (a). The person may, within 30 days of the day the notice is sent, appeal the archivist's determination to the Executive Council of the society. The Executive Council shall, within 30 days of the filing of an appeal, issue a decision determining if the archivist has correctly applied the standards of paragraph (a). The decision of the Executive Council may be appealed to the District Court of Ramsey County.

Subd. 2. Repealed by Laws 1971, c. 529, § 15, eff. May 26, 1971.

Subd. 3. University; State Agricultural Society; Minnesota Historical Society. Laws 1971, chapter 529, sections 1 to 14 shall not apply to the public records of the University of Minnesota, the Minnesota State Agriculture Society, or the Minnesota Historical Society.

Subd. 4. State library. No public records of the Minnesota State Library shall be subject to the disposition or orders provided by Laws 1971, chapter 529, except with the consent of the state librarian.

Subd. 5. Supreme Court. No public records of the Supreme Court shall be subject to the disposition or orders provided by Laws 1971, chapter 529, except with the consent of the court.

Subd. 6. Archivist; equipment; supplies. The Minnesota Historical Society shall employ a professional archivist, who shall be known as the state archivist, and other agents and personnel as are necessary to enable it to carry out its duties and powers. The archivist shall be appointed by the director of the society.

Subd. 7. Records management. It shall be the duty of the head of each state agency and the governing body of each county, municipality, and other subdivision of government to establish and maintain an active, continuing program for the economical and efficient management of the records of each agency, county, municipality, or other subdivision of government. Public officials shall prepare an inclusive inventory of records in their custody, to which shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records, establishing a time period for the retention or disposal of each series of records. When the schedule is unanimously approved by the records disposition panel, the head of the governmental unit or agency having custody of the records may dispose of the type of records listed in the schedule at a time and in a manner prescribed in the schedule for particular records which were created after the approval. A list of records disposed of pursuant to this subdivision shall be maintained by the governmental unit or agency. When records containing not public data as defined in section 13.02, subdivision 8a, are being disposed of under this subdivision, the records must be destroyed in a way that prevents their contents from being determined.

Subd. 8. Emergency records preservation. Every county, municipality, or other subdivision of government may institute a program for the preservation of necessary documents essential to the continuity of government in the event of a disaster or emergency.

[Minn. Stat. Ann. § 13.04](#)

13.04. Rights of subjects of data

Subdivision 1. Type of data. The rights of individuals on whom the data is stored or to be stored shall be as set forth in this section.

Subd. 2. Tennessean warning. An individual asked to supply private or confidential data concerning the individual shall be informed of: (a) the purpose and intended use of the requested data within the collecting government entity; (b) whether the individual may refuse or is legally required to supply the requested data; (c) any known consequence arising from supplying or refusing to supply private or confidential data; and (d) the identity of other persons or entities authorized by state or federal law to receive the data. This requirement shall not apply when an individual is asked to supply investigative data, pursuant to section 13.82, subdivision 7, to a law enforcement officer.

Subd. 3. Access to data by individual. Upon request to a responsible authority or designee, an individual shall be informed whether the individual is the subject of stored data on individuals, and whether it is classified as public, private or confidential. Upon further request, an individual who is the subject of stored private or public data on individuals shall be shown the data without any charge and, if desired, shall be informed of the content and meaning of that data. After an individual has been shown the private data and informed of its meaning, the data need not be disclosed to that individual for six months thereafter unless a dispute or action pursuant to this section is pending or additional data on the individual has been collected or created. The responsible authority or designee shall provide copies of the private or public data upon request by the individual subject of the data. The responsible authority or designee may require the requesting person to pay the actual costs of making and certifying the copies.

The responsible authority or designee shall comply immediately, if possible, with any request made pursuant to this subdivision, or within ten days of the date of the request, excluding Saturdays, Sundays and legal holidays, if immediate compliance is not possible.

Subd. 4. Procedure when data is not accurate or complete.

(a) An individual subject of the data may contest the accuracy or completeness of public or private data. To exercise this right, an individual shall notify in writing the responsible authority describing the nature of the disagreement. The responsible authority shall within 30 days either:

(1) correct the data found to be inaccurate or incomplete and attempt to notify past recipients of inaccurate or incomplete data, including recipients named by the individual; or

(2) notify the individual that the authority believes the data to be correct. Data in dispute shall be disclosed only if the individual's statement of disagreement is included with the disclosed data.

The determination of the responsible authority may be appealed pursuant to the provisions of the Administrative Procedure Act relating to contested cases. Upon receipt of an appeal by an individual, the commissioner shall, before issuing the order and notice of a contested case hearing required by chapter 14, try to resolve the dispute through education, conference, conciliation, or persuasion. If the parties consent, the commissioner may refer the matter to mediation. Following these efforts, the commissioner shall dismiss the appeal or issue the order and notice of hearing.

(b) Data on individuals that have been successfully challenged by an individual must be completed, corrected, or destroyed by a government entity without regard to the requirements of section 138.17.

After completing, correcting, or destroying successfully challenged data, a government entity may retain a copy of the commissioner of administration's order issued under chapter 14 or, if no order were issued, a summary of the dispute between the parties that does not contain any particulars of the successfully challenged data.

Subd. 4a. Sex offender program data; challenges. Notwithstanding subdivision 4, challenges to the accuracy or completeness of data maintained by the Department of Human Services sex offender program about a civilly committed sex offender as defined in section 246B.01, subdivision 1a, must be submitted in writing to the data practices compliance official of the Department of Human Services. The data practices compliance official must respond to the challenge as provided in this section.

[Minn. Stat. Ann. § 13.384](#)

13.384. Medical data

Subdivision 1. Definition. As used in this section:

(a) "Directory information" means name of the patient, date admitted, and general condition.

(b) "Medical data" are data collected because an individual was or is a patient or client of a hospital, nursing home, medical center, clinic, health or nursing agency operated by a government entity including business and financial records, data provided by private health care facilities, and data provided by or about relatives of the individual.

Subd. 2. Public hospitals; directory information.

(a) During the time that a person is a patient in a hospital operated by a government entity under legal commitment, directory information is public data. After the person is released by termination of the person's legal commitment, the directory information is private data on individuals.

(b) If a person is a patient other than pursuant to commitment in a hospital controlled by a government entity, directory information is public data unless the patient requests otherwise, in which case it is private data on individuals.

(c) Directory information about an emergency patient who is unable to communicate which is public under this subdivision shall not be released until a reasonable effort is made to notify the

next of kin or health care agent. Although an individual has requested that directory information be private, the hospital may release directory information to a law enforcement agency pursuant to a lawful investigation pertaining to that individual.

Subd. 3. Classification of medical data. Unless the data is summary data or a statute specifically provides a different classification, medical data are private but are available only to the subject of the data as provided in sections 144.291 to 144.298, and shall not be disclosed to others except:

- (a) pursuant to section 13.05;
- (b) pursuant to section 253B.0921;
- (c) pursuant to a valid court order;
- (d) to administer federal funds or programs;
- (e) to the surviving spouse, parents, children, siblings, and health care agent of a deceased patient or client or, if there are no surviving spouse, parents, children, siblings, or health care agent to the surviving heirs of the nearest degree of kindred;
- (f) to communicate a patient's or client's condition to a family member, health care agent, or other appropriate person in accordance with acceptable medical practice, unless the patient or client directs otherwise; or
- (g) as otherwise required by law.

Mississippi

Statutes

[Miss. Code. Ann. § 41-37-13](#)

§ 41-37-13. Report; filing; preservation and availability

In all cases where an autopsy is performed as provided in Section 41-37-9, the person making said autopsy shall file a report, in duplicate, of said autopsy with the circuit clerk of the county where the death is being investigated. Such circuit clerk shall keep and preserve said report and make it available to the district attorney, county prosecuting attorney, grand jury, coroner, and to the accused.

[Miss. Code. Ann. § 41-37-23](#)

§ 41-37-23. Additional authorized requesters of autopsy

The executive officer of the Mississippi State Board of Health or a county health officer may petition in like manner as is provided in Section 41-37-9 a circuit judge, chancellor, or county judge in any county in which a person dies or where the body of such deceased person may be, and such circuit judge, chancellor, or county judge may order an autopsy to be performed upon the body of such deceased person in the interest of public health and welfare in cases where the cause of death is not known and cannot be determined with reasonable certainty without an autopsy and when it would appear to such judge or chancellor by such petition and evidence in support thereof that death may have been due to communicable disease or contagious disease or to poison, foreign substance, radiation or for any other reason exact knowledge as to which would be of benefit to the public health and welfare. In such cases the same fees as specified in criminal investigations to the autopsy physician and chemist shall be allowed by the board of supervisors out of the general fund of the county in which such petition is filed, except that no fee shall be allowed and paid to any physician or chemist who is a regular salaried employee of the state or county. A copy of the report of the autopsy physician and chemist in such cases shall be filed with the clerk of the court in which such order was entered, with the county health officer of such county and with the executive officer of the state board of health.

[Miss. Code. Ann. § 41-61-65](#)

§ 41-61-65. Autopsy or investigation; review

(1) If, in the opinion of the medical examiner investigating the case, it is advisable and in the public interest that an autopsy or other study be made for the purpose of determining the primary and/or contributing cause of death, an autopsy or other study shall be made by the State Medical Examiner, or the State Medical Examiner may choose a competent pathologist who is designated by the State Medical Examiner or the Department of Public Safety as a pathologist qualified to perform postmortem examinations and autopsies to perform the autopsy or study. To be eligible to be designated under this section, a pathologist must be an M.D. or D.O. who is certified in forensic pathology by the American Board of Pathology unless a certified forensic pathologist is not available to perform a postmortem examination or autopsy within a reasonable time. The State Medical Examiner or designated pathologist may retain any

tissues as needed for further postmortem studies or documentation. When the medical examiner has received notification under Section 41-39-15(6) that the deceased is medically suitable to be an organ and/or tissue donor, the State Medical Examiner or designated pathologist may retain any biopsy or medically approved sample of the organ and/or tissue in accordance with the provisions of Section 41-39-15(6). A complete autopsy report of findings and interpretations, prepared on forms designated for this purpose, shall be submitted promptly to the State Medical Examiner. Copies of the report shall be furnished to the authorizing medical examiner, district attorney and court clerk. A copy of the report shall be furnished to one (1) adult member of the immediate family of the deceased or the legal representative or legal guardian of members of the immediate family of the deceased upon request. In determining the need for an autopsy, the medical examiner may consider the request from the district attorney or county prosecuting attorney, law enforcement or other public officials or private persons. However, if the death occurred in the manner specified in subsection (2)(j) of Section 41-61-59, an autopsy shall be performed by the State Medical Examiner or a designated pathologist who is qualified as required by this subsection, and the report of findings shall be forwarded promptly to the State Medical Examiner, investigating medical examiner, the State Department of Health, the infant's attending physician and the local sudden infant death syndrome coordinator.

(2) Any medical examiner or duly licensed physician performing authorized investigations and/or autopsies as provided in Sections 41-61-51 through 41-61-79 who, in good faith, complies with the provisions of Sections 41-61-51 through 41-61-79 in the determination of the cause and/or manner of death for the purpose of certification of that death, shall not be liable for damages on account thereof, and shall be immune from any civil liability that might otherwise be incurred or imposed.

(3) Family members or others who disagree with the medical examiner's determination shall be able to petition and present written argument to the State Medical Examiner for further review. If the petitioner still disagrees, he may petition the circuit court, which may, in its discretion, hold a formal hearing. In all those proceedings, the State Medical Examiner and the county medical examiner or county medical examiner investigator who certified the information shall be made defendants. All costs of the petition and hearing shall be borne by the petitioner.

Missouri

Statutes

[Mo. Ann. Stat. § 58.740](#)

58.740. Records, contents, how kept (certain counties)

The medical examiner shall keep full and complete records in his office, properly indexed, giving the name, if known, of each¹ deceased person investigated under sections 58.010, 58.020, 58.060, 58.090, 58.160, 58.375, 58.451, 58.455 and 58.700 to 58.765 the place where the body was found, date and cause of death, and all other available information. The original report of the medical examiner or pathologist and the detailed findings of the autopsy, if any, shall be attached to the record of each case. The medical examiner shall promptly deliver to the prosecuting attorney of the county copies of all records relating to every death in which, in the judgment of such medical examiner, further investigation may be deemed advisable. The prosecuting attorney of the county may obtain from the office of the medical examiner copies of these records or other information which he may deem necessary.

[Mo. Ann. Stat. § 58.460](#)

58.460. Disposition of body a duty of coroner, when

Whenever an inquest shall be held, or any case in which the coroner is involved, if there be no relative or friend of the deceased, nor any person willing to bury the body, nor any person whose duty it is to attend to such burial, the coroner shall order the embalming of the body, procure an inexpensive plain coffin, and cause a grave to be dug and the body to be conveyed thereto and buried, or shall cause the body to be cremated and shall cause the cremated remains to be disposed of in a lawful manner in a marked grave. It shall be the duty of the coroner, in so doing, to avoid all unnecessary expense, and to render to the commission an accurate statement of all money expended by him for such purpose; and the county commission shall make to him a reasonable allowance for his actual expenses in procuring the coffin, transporting the deceased to the grave, digging the grave and burying the body, or in obtaining such cremation and disposition of the cremated remains in a marked grave; and also a reasonable allowance, according to the circumstances, for his own time and services in attending to such preparations and burial, or to such cremation and disposition in a marked grave.

[Mo. Ann. Stat. § 58.785](#)

58.785. Release of decedent information to procurement organization--disclosure by procurement organization--medicolegal examination--cooperation between coroner and procurement organization in removal of body part, when--consultation--resolution of conflicts--denial of recovery--coroner presence at removal procedure, costs

1. Upon request of a procurement organization, a coroner or medical examiner shall release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is under the jurisdiction of the coroner or medical examiner. If the decedent's body or part is medically suitable for transplantation, therapy, research, or

education, the coroner or medical examiner shall release postmortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the postmortem examination results or other information received from the coroner or medical examiner only if relevant to transplantation or therapy.

2. The coroner or medical examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a prospective donor or a donor whose body is under the jurisdiction of the coroner or medical examiner which the coroner or medical examiner determines may be relevant to the investigation.

3. A person that has any information requested by a coroner or medical examiner under subsection 2 of this section shall provide that information as expeditiously as possible to allow the coroner or medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of parts for purposes of transplantation, therapy, research, or education.

4. If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the coroner or medical examiner and a postmortem examination is not required, or the coroner or medical examiner determines that a postmortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the coroner or medical examiner and procurement organization shall cooperate in the timely removal of the part from the decedent for purposes of transplantation, therapy, research, or education.

5. If an anatomical gift of a part from the decedent under the jurisdiction of the coroner or medical examiner has been or might be made, but the coroner or medical examiner initially believes that the recovery of the part could interfere with the postmortem investigation into the decedent's cause or manner of death, the coroner or medical examiner shall consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. After consultation, the coroner or medical examiner may allow recovery.

6. Following the consultation under subsection 5 of this section, in the absence of mutually agreed upon protocols to resolve conflict between the coroner or medical examiner and the procurement organization, if the coroner or medical examiner intends to deny recovery, the coroner or medical examiner or his or her designee, at the request of the procurement organization, shall attend the removal procedure for the part before making a final determination not to allow the procurement organization to recover the part. During the removal procedure, the coroner or medical examiner or his or her designee may allow recovery by the procurement organization to proceed, or, if the coroner or medical examiner or his or her designee reasonably believes that the part may be involved in determining the decedent's cause or manner of death, deny recovery by the procurement organization.

7. If the coroner or medical examiner or his or her designee denies recovery under subsection 6 of this section, the coroner or medical examiner or his or her designee shall:

- (1) Explain in a record the specific reasons for not allowing recovery of the part;
- (2) Include the specific reasons in the records of the coroner or medical examiner; and

(3) Provide a record with the specific reasons to the procurement organization.

8. If the coroner or medical examiner or his or her designee allows recovery of a part under subsection 4, 5, or 6 of this section, the procurement organization shall, upon request, cause the physician or technician who removes the part to provide the coroner or medical examiner with a record describing the condition of the part, a biopsy, photograph, and any other information and observations that would assist in the postmortem examination.

9. If a coroner or medical examiner or his or her designee is required to be present at a removal procedure under subsection 6 of this section, the procurement organization requesting the recovery of the part shall, upon request, reimburse the coroner or medical examiner or his or her designee for the additional costs incurred in complying with subsection 6 of this section.

Montana

Statutes

[Mont. Code Ann. § 50-21-104](#)

50-21-104. Autopsies

All autopsies of a human body must be performed by a physician legally authorized to practice medicine in this state. Upon completion, the physician shall send a written report of the physician's findings, including the cause of death if determined, to the:

- (1) physician attending the person at the time of death if other than the physician performing the autopsy;
- (2) hospital or skilled nursing facility, upon request, where the person died or where the person was confined during the person's last illness to be retained as part of the permanent record of the hospital or skilled nursing facility;
- (3) to the next of kin of the decedent or the representative of the decedent's estate upon request and to any other person lawfully requesting the report.

[Mont. Code Ann. § 50-21-103](#)

50-21-103. Limitations on right to perform autopsy or dissection

The right to perform an autopsy, dissect a human body, or make any postmortem examination involving dissection of any part of a body is limited to cases in which:

- (1) specifically authorized by law;
- (2) a coroner is authorized to hold an inquest and then only to the extent that the coroner may authorize dissection or autopsy;
- (3) authorized by a written statement of the deceased, whether the statement is of a testamentary character or otherwise;
- (4) authorized by the husband, wife, or next of kin responsible by law for burial to determine the cause of death and then only to the extent authorized;
- (5) the decedent died in a hospital operated by the United States department of veterans affairs, Montana school for the deaf and blind, or an institution in the department of corrections or the department of public health and human services, leaving no surviving husband, wife, or next of kin responsible by law for burial and the manager or superintendent of the hospital or institution where death occurred obtains authority on order of the district court to determine the cause of death and then only to the extent authorized by court order;
- (6) the decedent died in the state, was a resident, but left no surviving husband, wife, or next of kin charged by law with the duty of burial and the attending physician obtains authority on order of the district court for the purpose of ascertaining the cause of death and then only to the extent authorized by court order after it has been shown that the physician made diligent search for the next of kin responsible by law for burial.

[Mont. Code Ann. § 50-21-101](#)

50-21-101. Procurement of cadavers

Any medical school in the United States may procure unclaimed human bodies for use in teaching and demonstrations of anatomy.

[Mont. Code Ann. § 46-4-103](#)

[MCA 46-4-103](#)

46-4-103. Autopsy--when conducted, scope

(1) If in the opinion of the coroner an autopsy is advisable, the coroner shall order one performed on any dead human body for which the death requires an inquiry and shall retain a medical examiner or associate medical examiner to perform it.

Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. Consent of the family or next of kin of the deceased is not required for an autopsy that is ordered by the coroner, county attorney, or attorney general. In ordering an autopsy the coroner, county attorney, or attorney general shall order the body to be exhumed if it has been interred.

(2) The right to conduct an autopsy includes the right to retain specimens the medical examiner performing the autopsy considers necessary.

(3) The state of Montana shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy, investigation, or inquiry is initiated at the request of the county attorney or county coroner.

(4) If a county does not provide a morgue or other facility for postmortem examination, the county coroner may order the use of a funeral home or an appropriate hospital facility for the examination.

(5) Autopsies performed under this section on a decedent whose death is under investigation and who has made an anatomical gift or on whose behalf an anatomical gift has been made must be performed in accordance with 72-17-217 and 72-17-218.

Attorney General Opinion

[37 Mont. Op. Att'y Gen. 482](#) (1978)

“THEREFORE, IT IS MY OPINION:

County Attorneys, law enforcement personnel, and coroners must release reports of accident investigations, autopsies and related tests to persons specifically listed in statutes. Public access to the results of investigations not covered by statute is left to the discretion of the public official following the guidelines set forth in this opinion and [37 OP. ATT'Y GEN. NO. 107](#) (1978).”

Nebraska

Statutes

[Neb. Rev. Stat. Ann. § 23-1827](#)

23-1827. Organ and tissue donations; preliminary investigation; access to information; release of organs or tissues; exception; presence for removal procedure

- (1) A coroner shall conduct a preliminary investigation of a decedent within the coroner's jurisdiction as soon as possible after notification by the hospital in which such decedent is located or the hospital to which such decedent is being transported. The coroner may designate the coroner's physician or another physician to conduct the preliminary investigation.
- (2) The preliminary investigation shall be completed within a time period that is compatible with the preservation and recovery of organs or tissues for the purpose of transplantation.
- (3) The coroner may request and shall have access to all necessary information including copies of medical records, laboratory test results, X-rays, and other diagnostic results. The information shall be provided as expeditiously as possible, through reasonable means, to permit the preliminary investigation to be completed within a time period compatible with the preservation and recovery of organs or tissues for the purpose of transplantation.
- (4) Upon completion of the preliminary investigation, the coroner shall release all organs or tissues which have been donated or may yet be donated pursuant to the Revised Uniform Anatomical Gift Act except those that the coroner reasonably believes contain evidence of the proximate cause or means of death. If the coroner reasonably believes that a specific organ or tissue contains evidence of the proximate cause or means of death and the organ or tissue is otherwise subject to recovery as a donated organ or tissue pursuant to the Revised Uniform Anatomical Gift Act, the coroner or his or her designee shall be present for the removal procedure (a) to make a final determination that allows the recovery of the organs and tissues to proceed, (b) to request a biopsy, or (c) to deny removal of such organ or tissue if the coroner determines such organ or tissue contains evidence of the proximate cause or means of death. After a preliminary investigation is completed under this section, all organs or tissues compatible for transplantation, except any organs or tissues for which the coroner has denied recovery, may be recovered pursuant to the Revised Uniform Anatomical Gift Act.

[Neb. Rev. Stat. Ann. § 23-1830](#)

23-1830. Organ and tissue donations; coroner's access to medical information, medical records, pathology reports, and the donor's body

- (1) If the coroner releases any organ or tissue for recovery, the coroner may request that a blood sample, a sample of catheterized urine, a sample of bile if the liver is recovered for the purpose of transplantation, a biopsy specimen in fixative of the organ or tissue procured, and copies of any photographs, pictures, or other diagrams of the organ or tissue made at the time of recovery be delivered to the coroner.

(2) A coroner shall have access to medical records, pathology reports, and the body of the donor following the recovery of any organ or tissue allowed under section 23-1827 or 23-1828.

[Neb. Rev. Stat. Ann. § 23-1816](#)

23-1816. Inquest; body of deceased; disposition

The coroner shall cause the body of each deceased person which the coroner is caused to view, to be delivered to the friends of the deceased, if there be any, but if there be none, the coroner shall cause the body to be decently buried and the expenses shall be paid from any property belonging to the deceased, or if there be none, from the county treasury, by warrant drawn thereon.

[Neb. Rev. Stat. Ann. § 84-712](#)

84-712. Public records; free examination; memorandum and abstracts; copies; fees

(1) Except as otherwise expressly provided by statute, all citizens of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to (a) examine such records, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

(2) Copies made by citizens or other persons using their own copying or photocopying equipment pursuant to subdivision (1)(a) of this section shall be made on the premises of the custodian of the public record or at a location mutually agreed to by the requester and the custodian.

(3)

(a) Copies may be obtained pursuant to subdivision (1)(b) of this section only if the custodian has copying equipment reasonably available. Such copies may be obtained in any form designated by the requester in which the public record is maintained or produced, including, but not limited to, printouts, electronic data, discs, tapes, and photocopies. This section shall not be construed to require a custodian to copy any public record that is available to the requester on the custodian's web site on the Internet. The custodian of the public record is required to provide the location of the public record on the Internet to the requester. If the requester does not have reasonable access to the Internet due to lack of computer, lack of Internet availability, or inability to use a computer or the Internet, the custodian shall produce copies for the requester.

(b) Except as otherwise provided by statute, the public body, public entity, or public official which is the custodian of a public record may charge a fee for providing copies of such public record pursuant to subdivision (1)(b) of this section, which fee shall not

exceed the actual added cost of making the copies available. For purposes of this subdivision,

(i) for photocopies, the actual added cost of making the copies available shall not exceed the amount of the reasonably calculated actual added cost of the photocopies, which may include a reasonably apportioned cost of the supplies, such as paper, toner, and equipment, used in preparing the copies, as well as any additional payment obligation of the custodian for time of contractors necessarily incurred to comply with the request for copies,

(ii) for printouts of computerized data on paper, the actual added cost of making the copies available shall include the reasonably calculated actual added cost of computer run time and the cost of materials for making the copy, and

(iii) for electronic data, the actual added cost of making the copies available shall include the reasonably calculated actual added cost of the computer run time, any necessary analysis and programming by the public body, public entity, public official, or third-party information technology services company contracted to provide computer services to the public body, public entity, or public official, and the production of the report in the form furnished to the requester.

(c) The actual added cost used as the basis for the calculation of a fee for records shall not include any charge for the existing salary or pay obligation to the public officers or employees with respect to the first four cumulative hours of searching, identifying, physically redacting, or copying. A special service charge reflecting the calculated labor cost may be included in the fee for time required in excess of four cumulative hours, since that large a request may cause some delay or disruption of the other responsibilities of the custodian's office, except that the fee for records shall not include any charge for the services of an attorney to review the requested public records seeking a legal basis to withhold the public records from the public.

(d) State agencies which provide electronic access to public records through a portal established under section 84-1204 shall obtain approval of their proposed reasonable fees for such records pursuant to sections 84-1205.02 and 84-1205.03, if applicable, and the actual added cost of making the copies available may include the approved fee for the portal.

(e) This section shall not be construed to require a public body or custodian of a public record to produce or generate any public record in a new or different form or format modified from that of the original public record.

(f) If copies requested in accordance with subdivision (1)(b) of this section are estimated by the custodian of such public records to cost more than fifty dollars, the custodian may require the requester to furnish a deposit prior to fulfilling such request.

(4) Upon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, but not more than four business days after actual receipt of the request, an estimate of the expected cost of the copies and either

(a) access to or, if copying equipment is reasonably available, copies of the public record,

(b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or

(c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request.

The requester shall have ten business days to review the estimated costs, including any special service charge, and request the custodian to fulfill the original request, negotiate with the custodian to narrow or simplify the request, or withdraw the request. If the requester does not respond to the custodian within ten business days, the custodian shall not proceed to fulfill the request. The four business days shall be computed by excluding the day the request is received, after which the designated period of time begins to run. Business day does not include a Saturday, a Sunday, or a day during which the offices of the custodian of the public records are closed.

[Neb. Rev. Stat. Ann. § 71-612](#)

71-612. Department; certificates; copies; fees; waiver of fees, when; search of death certificates; fee; access; petty cash fund; authorized

(1) The department, as the State Registrar, shall preserve permanently and index all certificates received. The department shall supply to any applicant for any proper purpose, as defined by rules and regulations of the department, a certified copy of the record of any birth, death, marriage, annulment, or dissolution of marriage or an abstract of marriage. The department shall supply a copy of a public vital record for viewing purposes at its office upon an application signed by the applicant and upon proof of the identity of the applicant. The application may include the name, address, and telephone number of the applicant, purpose for viewing each record, and other information as may be prescribed by the department by rules and regulations to protect the integrity of vital records and prevent their fraudulent use. Except as provided in subsections (2), (3), (5), (6), and (7) of this section, the department shall be entitled to charge and collect in advance a fee of sixteen dollars to be paid by the applicant for each certified copy or abstract of marriage supplied to the applicant or for any search made at the applicant's request for access to or a certified copy of any record or abstract of marriage, whether or not the record or abstract is found on file with the department.

(2) The department shall, free of charge, search for and furnish a certified copy of any record or abstract of marriage on file with the department upon the request of

(a) the United States Department of Veterans Affairs or any lawful service organization empowered to represent veterans if the copy of the record or abstract of marriage is to be issued, for the welfare of any member or veteran of the armed forces of the United States or in the interests of any member of his or her family, in connection with a claim growing out of service in the armed forces of the nation or

(b) the Military Department.

(3) The department may, free of charge, search for and furnish a certified copy of any record or abstract of marriage on file with the department when in the opinion of the department it would be a hardship for the claimant of old age, survivors, or disability benefits under the federal Social Security Act to pay the fee provided in this section.

(4) A strict account shall be kept of all funds received by the department. Funds received pursuant to subsections (1), (5), (6), and (8) of this section shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money credited to the fund pursuant to this section shall be used for the purpose of administering the laws relating to vital statistics and may be used to create a petty cash fund administered by the department to facilitate the payment of refunds to individuals who apply for copies or abstracts of records. The petty cash fund shall be subject to section 81-104.01, except that the amount in the petty cash fund shall not be less than twenty-five dollars nor more than one thousand dollars.

(5) The department shall, upon request, conduct a search of death certificates for stated individuals for the Nebraska Medical Association or any of its allied medical societies or any in hospital staff committee pursuant to sections 71-3401 to 71-3403. If such death certificate is found, the department shall provide a noncertified copy. The department shall charge a fee for each search or copy sufficient to cover its actual direct costs, except that the fee shall not exceed three dollars per individual search or copy requested.

(6) The department may permit use of data from vital records for statistical or research purposes under section 71-602 or disclose data from certificates or records to federal, state, county, or municipal agencies of government for use in administration of their official duties and charge and collect a fee that will recover the department's cost of production of the data. The department may provide access to public vital records for viewing purposes by electronic means, if available, under security provisions which shall assure the integrity and security of the records and data base and shall charge and collect a fee that shall recover the department's costs.

(7) In addition to the fees charged under subsection (1) of this section, the department shall charge and collect an additional fee of one dollar for any certified copy of the record of any birth or for any search made at the applicant's request for access to or a certified copy of any such record, whether or not the record is found on file with the department. Any county containing a city of the metropolitan class which has an established city-county or county health department pursuant to sections 71-1626 to 71-1636 which has an established system of registering births and deaths shall charge and collect in advance a fee of one dollar for any certified copy of the record of any birth or for any search made at the applicant's request for such record, whether or not the record is found on file with the county. All fees collected under this subsection shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund.

(8) The department shall not charge other state agencies the fees authorized under subsections (1) and (7) of this section for automated review of any certificates or abstracts of marriage. The department shall charge and collect a fee from other state agencies for such automated review that will recover the department's cost.

Administrative Regulations

174 Neb. Admin. Code Ch. 3, 001

These regulations govern the access to and release of birth, death, marriage, and dissolution of marriage certificates under [Neb. Rev. Stat. § 71-612](#).

174 Neb. Admin. Code Ch. 3, 003

003 VIEWING OR OBTAINING A CERTIFIED COPY OF A RECORD

3-003.01 Birth, death, marriage, and dissolution of marriage certificates are public records unless otherwise provided by law or court order and as such, the Department allows said records to be viewed during normal office hours. The applicant must make a request to view the vital record and provide the applicant's name and address.

3-003.02 An applicant wishing to view a vital record will be provided at the statutory fee a copy of the certificate which will be stamped "NOT A LEGAL DOCUMENT - FOR REVIEW ONLY." This copy will not contain any information contained on that portion of the vital record titled "medical or health information" or "information for statistical purposes only" or similar statistical information not registering the vital event itself.

3-003.03 Copies of certificates provided to an applicant for review may not be removed from the area provided for viewing. These copies must not be photocopied or reproduced by the applicant. Such copies must be returned to the Department before the applicant leaves the viewing area. An applicant may make and keep notes on the contents of a record.

3-003.04 The Department will provide no copies of a vital record other than certified copies to an applicant demonstrating a proper purpose except death certificates for scientific research pursuant to [Neb. Rev. Stat. § 71-612\(5\)](#).

3-003.05 The Department will supply for any proper purpose as defined in 174 NAC 3-004, a certified copy of a birth, death, marriage, or dissolution of marriage record, except as otherwise provided by law or court order. The burden is on the applicant to prove to the Department that a valid proper purpose exists. To obtain a certified copy, an applicant must:

3-003.05A Provide sufficient information to enable the Department to locate and identify each certified copy requested.

3-003.05B Pay the statutory fees for each certified copy or each search for a certified copy, whether or not the record is found, unless exempt from payment by law.

3-003.05C Provide name and address, telephone number, and proof of identity. More than one document showing proof of identity may be required. If the applicant is involved in medical, scientific, law enforcement, government, genealogical, or historical research, the applicant must provide the name of the entity, if any, which the applicant represents; the name of the principal investigator if other than the applicant; qualifications of the applicant if appropriate; the location where the research will take place and the means by which the research will take place.

3-003.05D Describe the purpose for each certified copy requested and provide satisfactory proof to the Department that the request is for a proper purpose as defined below.

Current with amendments received through June 16, 2016.

174 Neb. Admin. Code Ch. 3, 004

004 PROPER PURPOSE:

Proper purpose means and includes the following circumstances:

3-004.01 Personal Use: Personal use by a registrant of his or her own certificate of birth, certificate of marriage, or certificate of dissolution of marriage, upon proof of identity.

3-004.02 Legal Use: Use by a registrant, the registrant's family, or the registrant's legal representative of a certificate for a legal purpose that requires documentation of a vital event to obtain a legal right or privilege upon proof of identity. A legal purpose includes, but is not limited to the following:

3-004.02A To establish the fact of death or identity in a probate or estate action.

3-004.02B To transfer title to a motor vehicle or other personal or real property.

3-004.02C To obtain government documents such as a driver's license, identification card, social security, passports, or other state or federal licenses, benefits, or certificates.

3-004.02D To obtain admission to school.

3-004.02E To establish a legal relationship with another person or property right such as an inheritance, insurance, or dependency benefit.

3-004.02F To provide a copy or copies of a certificate of birth resulting in stillbirth to the parent(s) as listed on the fetal death record.

3-004.03 Consensual Use: Use upon submission by the applicant of the written consent of the registrant to obtain the certificate. Such written consent will be retained by the Department and made a part of the application.

3-004.04 Scientific or Medical Use: Use upon proof of identity and qualifications by a researcher employed by a research organization, university, institution, or government agency, who is conducting scientific, medical, or public health research of a certificate, so long as there is no publication or disclosure of the name or names or facts that would lead to the identity of any person included in the certificate.

3-004.05 Law Enforcement Use: Use of a certificate upon proof of identity and employment with an agency of the federal government, state government, or political subdivision of the state, charged by law with the duty of detecting or prosecuting crime or enforcing child support or establishing paternity.

3-004.06 Genealogical Use: Use of a certificate of birth and death by a person engaged in genealogical research:

3-004.06A Upon proof of identity of the applicant when the person whose certificate is requested has been deceased for 50 or more years; or

3-004.06B Upon proof of identity of the applicant and written consent of the registrant or a member of registrant's family when the registrant is alive or has been deceased less than 50 years.

3-004.06C A certificate of birth resulting in stillbirth is available only to the parent(s) as listed on the fetal death record. A certificate of birth resulting in stillbirth is not open to the public for genealogical use.

3-004.07 Historical Research: Use by a historical researcher of a certificate upon proof of identity and proof of qualification, including but not limited to documentation that:

3-004.07A Applicant possesses academic credentials as a historian from, or is currently majoring in and pursuing a course of study in history in an accredited university, college, or nationally-recognized organization.

3-004.07B Applicant is engaged in a historical research project.

3-004.07C Each certificate requested is relevant to the project.

3-004.08 Governmental Use: Use of a certificate upon proof of identity and employment by federal, state, or political subdivision government agencies for statistical purposes, disease control or prevention, health-related record keeping, and for record keeping required by any state or federal agency in the course of its official duties.

3-004.09 Media Use: Use of a certificate upon proof of identity and employment with a newspaper, magazine, radio, or television station for the purpose of reporting news to the public.

Current with amendments received through June 16, 2016.

Neb. Admin. R. & Regs. Tit. 174, Ch. 3, § 004, 174 NE ADC Ch 3

174 Neb. Admin. Code Ch. 3, 002

002 DEFINITIONS

Applicant means a person requesting a certified copy or a person seeking to view a certificate.

Application means a request for a record in writing containing information required by the Department.

Certificate means the form used for registration or reporting to the Department the event of birth, death, marriage, or dissolution of marriage as approved by state law or regulation. For purposes of these regulations, certificate includes an abstract of marriage as provided in [Neb. Rev. Stat. § 71-601.01](#) and a certificate of birth resulting in stillbirth as provided in [Neb. Rev. Stat. § 71-606](#). Certificate does not include that portion of the certificate entitled "for health data and statistical research," "information for statistical purposes only" or for "medical or health information only" or similar language except as specifically provided in these regulations.

The portion of the certificate designated for “health data and statistical research” is confidential and released only to the United States Public Health Service or its successor, government health agencies, or a researcher as approved by the Department in these rules. The Department may publish analyses of any information received on the forms for scientific and public health purposes in such a manner as to assure that the identity of any individual cannot be ascertained.

Certified copy means a certificate certified by the Department as provided by law.

Department means the Department of Health and Human Services.

Family means the parent, spouse, or child of a registrant. Family does not include the biological parent of an adopted child.

Legal representative means the registrant's attorney, legal guardian or conservator, custodian, personal representative, executor, or executrix of the registrant's estate or other person showing lawful authority to act on behalf of the registrant.

Proof of Identity means documentation issued by a federal, state, or local political subdivision, corporation, or other entity, that contains a photograph of the applicant and facts identifying the applicant or other documentary evidence establishing identity.

Proof of qualification means written documentation establishing the credentials or authority of the applicant or facts required by these regulations to demonstrate a proper purpose.

Registrant means the individual who is the subject of the vital record.

Research means a systematic statistical study, conforming to or in accordance with generally accepted medical or scientific standards or principles, designed to develop or contribute to medical or scientific knowledge, and which does not identify the persons in the study.

Current with amendments received through June 16, 2016.

Nevada

Statutes

[Nev. Rev. Stat. Ann. § 450B.870](#)

450B.870. Medical review committee entitled to autopsy records concerning death under review; sharing of information concerning subject of review; autopsy records are privileged

1. A medical review committee is entitled to access to any autopsy records relating to a death under review.
2. Each organization represented on a medical review committee to review the medical care or death of a person shall share with other members of the committee information in its possession concerning the person who is the subject of the review and any other information deemed by the organization to be pertinent to the review.
3. Any autopsy records provided to a medical review committee pursuant to this section are privileged records for the purposes of [NRS 49.119](#) and 49.121.
4. As used in this section, “medical review committee” means a medical review committee of a county or district board of health that certifies, licenses or regulates providers of emergency medical services pursuant to the provisions of this chapter, but only when functioning as a peer review committee.

[Nev. Rev. Stat. Ann. § 49.119](#)

49.119. General rule of privilege

A review committee has a privilege to refuse to disclose and to prevent any other person from disclosing its proceedings and records and testimony given before it

[Nev. Rev. Stat. Ann. § 49.121](#)

49.121. Who may claim privilege

1. The privilege may be claimed by any member of the review committee, any person whose work has been reviewed by the committee or any person who has offered testimony, an opinion or documentary evidence before the committee.
2. The privilege is presumed to be claimed as to a particular matter unless a written waiver is signed by all persons entitled to claim the privilege as to that matter.
3. The privilege is not waived or lost if a person discloses information which is otherwise privileged to a governmental or regulatory agency of this State or the United States.

[Nev. Rev. Stat. Ann. § 617.380](#)

617.380. Autopsy: Order by insurer; findings of physician

1. On the filing of a claim for compensation for death from an occupational disease where in the opinion of the insurer it is necessary to ascertain accurately and scientifically the cause of death, an autopsy may be ordered by the insurer.

The autopsy must be made by a person designated by the insurer.

2. The person requesting an autopsy must pay the charge of the physician making it.

3. Any person interested may designate a duly licensed physician to attend the autopsy.

4. The findings of the physician performing the autopsy must be filed with the insurer and is a public record.

[Nev. Rev. Stat. Ann. § 239.010](#)

239.010. Public books and public records open to inspection; confidential information in public books and records; copyrighted books and records; copies to be provided in medium requested

1. Except as otherwise provided in this section and NRS

...

and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

3. A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that is not otherwise confidential.

4. A person may request a copy of a public record in any medium in which the public record is readily available. An officer, employee or agent of a governmental entity who has legal custody or control of a public record:

(a) Shall not refuse to provide a copy of that public record in a readily available medium because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

(b) Except as otherwise provided in [NRS 239.030](#), shall, upon request, prepare the copy of the public record and shall not require the person who has requested the copy to prepare the copy himself or herself.

Attorney General Opinion

[1982 Nev. Op. Att'y Gen. 47](#) (1982)

Autopsy Reports; Public Records—Strong public policy of confidentiality of medical information requires that autopsy reports not be available for public inspection.

...

Autopsy protocols have not been expressly declared confidential by law but confidentiality of the protocol, or detailed findings of the autopsy, does appear to be implicitly, if not explicitly, required by the county code. The coroner is directed to file the findings of the autopsy in 'his records of the death of the deceased person' ([Clark County Code 2.12.140](#)) which file also includes witness' testimony, inquest information and other investigative reports. This material is used, among other things, to determine the cause of death. The official register, labeled 'Coroner Register,' sets forth the fulfillment of the coroner's statutory duties including identification of the dead person, inventory of any personal property of the deceased, disposal of the remains, notification of the next of kin and the date and cause of death. ([Clark County Code 2.12.050](#)). Thus, the apparent intent is to have a register, open to public inspection, and a file containing detailed medical information maintained away from the public eye.

...

Second, the right of public inspection of public records is not absolute. Other states with public record statutes similar to Nevada's have concluded that, in addition to any express statutory exemption, public policy may constitute a ground for denial of public inspection.

...

Here is in this state a strong public policy that the secrets of a person's body are a very private and confidential matter upon which any intrusion in the interest of public health or adjudication is narrowly circumscribed. Cf. [NRS 441.110](#), 441.210 (reporting of venereal disease); [NRS 49.245](#) (court-ordered examination partially privileged); [NRS 49.235](#) (doctor-patient testimonial privilege). Of particular interest are [NRS 629.021](#) and 629.061 which restrict the inspection of health care records containing 'information relating to the medical history examination, diagnosis or treatment' to the patient or his authorized representative and [NRS 440.650](#) which restricts the release of a death certificate to a person who has a direct and tangible interest therein. While cognizant that public inspection is the rule and secrecy the exception, we can ascertain no public interest in disclosure sufficient to outweigh the public policy of confidentiality of personal medical information. The fact that a person dies in an accident, is drowned, or meets his death in any of a number of ways which may require an autopsy is no justification for enabling public knowledge of that which was closely guarded throughout his lifetime.

There may, of course, be a situation when a particular report would be available for a particular party who has sufficient interest to justify that access. This access is, as always, available through the correct procedures of law. This opinion addresses solely the question of the inspection, copying and possible dissemination of an autopsy report by any member of the public.

CONCLUSION

An autopsy protocol is a public record, but is not open to public inspection upon demand, because disclosure would be contrary to a strong public policy; the Coroner Register is open to public inspection. Furthermore, maintaining the confidentiality of the medical information contained in the protocol accords with the intent of the governing ordinances and the administrative interpretation thereof.

New Hampshire

Statutes

[N.H. Rev. Stat. Ann. § 611-B:21](#)

611-B:21 Autopsy and Investigative Reports.

I. The medical examiner shall charge a reasonable fee for each autopsy report made available upon request. Such fee shall be credited to the medico-legal investigation fund established under [RSA 611-B:28](#).

II. Homicide autopsy reports shall be made available only to the department of justice unless a written release is provided by the department of justice.

III. Except as provided otherwise by law and in rules adopted by the chief medical examiner pursuant to [RSA 541-A, autopsy](#) reports, investigative reports, and supporting documentation are confidential medical records and, as such, are exempt from the provisions of [RSA 91-A](#). Copies of such documents may be made available to the next of kin, a law enforcement, prosecutorial, or other governmental agency involved in the investigation of the death, the decedent's treating physician, and a medical or scientific body or university or similar organization for educational or research purposes.

Autopsy reports, investigative reports, and supporting documents shall not otherwise be released without the authorization of next of kin.

IV. For any autopsy conducted pursuant to [RSA 126-A:5](#), V, a report of any autopsy requested by the commissioner of health and human services shall be provided to the commissioner's quality assurance program and any autopsy findings, test results, reports, or any other information pertaining to the autopsy shall be treated by the department of health and human services in accordance with the quality assurance program under [RSA 126-A:4](#), IV. The copy of the report provided to the department under this section shall be privileged and confidential as provided in [RSA 126-A:4](#), IV(b), except that the medical examiner may forward a copy of the report to the department of justice if the medical examiner finds that the cause of death may be attributable to criminal conduct, or may otherwise disclose the report in accordance with this statute.

[N.H. Rev. Stat. Ann. § 126-A:5](#)

126-A:5 Commissioner of Health and Human Services.

I. Administrative and executive direction of the department of health and human services shall be under the direction of a commissioner of health and human services who shall be appointed by the governor and council. The commissioner shall hold office for a term of 4 years from the date of the appointment.

II. The commissioner may enter into such contracts as the commissioner deems necessary for the provision of services to clients of the department and for the operation of facilities of the department, subject to the approval of the governor and council. The commissioner further may receive, expend, control, convey, hold in trust, or invest any funds or real or personal property given or devised to or owned by any facility as the commissioner deems appropriate or expedient. At the discretion of the commissioner, the department may directly operate and

administer any program or facility which provides, or which may be established to provide, services to clients of the department, or the commissioner may contract with any individual, partnership, association, agency, or corporation, either public or private, profit, or nonprofit, as, in the discretion of the commissioner, may be necessary and appropriate for the operation and administration of any program or facility which provides services to clients of the department.

II-a. Sixty days after the end of each fiscal year, the commissioner shall produce an annual report which shall consist of an aggregate schedule of payables for class 90 grant lines, which are greater than \$1,000,000, for such fiscal year. Payables shall start with the date the bill for goods or services is received by the department without regard to whether the bill is subsequently adjusted or paid. All payables with a receipt date within the report period shall be included. The report shall be submitted to the legislative budget assistant, the house and senate finance committees, the house speaker, senate president, and the governor.

III. The commissioner may designate any member of the department to act on behalf of the commissioner or the department. The commissioner further may delegate any duty or authority of the commissioner or the department to any member of the department or to any sub-unit or component of the department.

IV. Pursuant to [RSA 541-A, the](#) commissioner shall have the authority to establish fees, copayments or any other charges for services or assistance provided by or on behalf of the department.

V. The commissioner shall have the authority to direct an autopsy be made upon the death of any person admitted to, a resident of, or receiving care from the New Hampshire hospital, Glenclyff home, or any other residential facility operated by the department or a contract service provider, if the commissioner deems it necessary for the purpose of determining the existence of infection or disease, cause of death, or for other good reason. The findings of any such autopsy shall be treated by the department in accordance with the quality assurance program under [RSA 126-A:4](#), IV and by the medical examiner in accordance with the provisions of [RSA 611-B:21](#), IV.

New Jersey

Statutes

[N.J. Stat. Ann. § 47:1A-1](#)

The Legislature finds and declares it to be the public policy of this State that:

government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded by P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented, shall be construed in favor of the public's right of access;

all government records shall be subject to public access unless exempt from such access by: P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law, federal regulation, or federal order;

a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy; and nothing contained in P.L.1963, c. 73 (C.47:1A-1 et seq.), as amended and supplemented, shall be construed as affecting in any way the common law right of access to any record, including but not limited to criminal investigatory records of a law enforcement agency.

[N.J. Stat. Ann. § 47:1A-3](#)

47:1A-3. Records of investigations in progress

a. Notwithstanding the provisions of P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented, where it shall appear that the record or records which are sought to be inspected, copied, or examined shall pertain to an investigation in progress by any public agency, the right of access provided for in P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented may be denied if the inspection, copying or examination of such record or records shall be inimical to the public interest; provided, however, that this provision shall not be construed to allow any public agency to prohibit access to a record of that agency that was open for public inspection, examination, or copying before the investigation commenced. Whenever a public agency, during the course of an investigation, obtains from another public agency a government record that was open for public inspection, examination or copying before the investigation commenced, the investigating agency shall provide the other agency with sufficient access to the record to allow the other agency to comply with requests made pursuant to P.L.1963, c. 73 (C.47:1A-1 et seq.).

b. Notwithstanding the provisions of P.L.1963, c. 73 (C.47:1A-1 et seq.), as amended and supplemented, the following information concerning a criminal investigation shall be available to the public within 24 hours or as soon as practicable, of a request for such information:

where a crime has been reported but no arrest yet made, information as to the type of crime, time, location and type of weapon, if any;

if an arrest has been made, information as to the name, address and age of any victims unless there has not been sufficient opportunity for notification of next of kin of any victims of injury and/or death to any such victim or where the release of the names of any victim would be contrary to existing law or court rule. In deciding on the release of information as to the identity of a victim, the safety of the victim and the victim's family, and the integrity of any ongoing investigation, shall be considered;

if an arrest has been made, information as to the defendant's name, age, residence, occupation, marital status and similar background information and, the identity of the complaining party unless the release of such information is contrary to existing law or court rule;

information as to the text of any charges such as the complaint, accusation and indictment unless sealed by the court or unless the release of such information is contrary to existing law or court rule;

[N.J. Stat. Ann. § 52:17B-88](#)

[N.J.S.A. 52:17B-88](#)

52:17B-88. Findings; report; autopsy; conclusions; copy to closest surviving relative; transportation of body

If the cause of such death shall be established beyond a reasonable doubt, the county medical examiner shall reduce his findings to writing and promptly make a full report thereof to the State Medical Examiner and to the county prosecutor on forms to be prescribed by the State Medical Examiner for such purpose. If, however, in the opinion of the county medical examiner, the State Medical Examiner, an assignment judge of the Superior Court, the county prosecutor or the Attorney General, an autopsy is necessary, or if, in cases where the suspected cause of death of a child under one year of age is sudden infant death syndrome or the child is between one and three years of age and the death is sudden and unexpected, and an investigation has been conducted under the provisions of section 9 of P.L.1967, c. 234 (C.52:17B-86), and the parent, parents or legal guardian of the child request an autopsy, the same shall be performed, by (1) the State Medical Examiner, or an assistant designated by him or by (2) the county medical examiner or a deputy or assistant county medical examiner provided either has the recognized training or experience in forensic pathology or by (3) such competent forensic pathologists as may be authorized by the State Medical Examiner; except that when the suspected cause of death of a child under one year of age is sudden infant death syndrome or the child is between one and three years of age and the death is sudden and unexpected, upon the request of the parent, parents or legal guardian of the child, a pediatric pathologist, if available, shall assist in the performance of the autopsy under the direction of a forensic pathologist. The county medical examiner shall notify the parent, parents or legal guardian of the child that they may request that a pediatric pathologist assist in the performance of the autopsy. A detailed description of the findings written during the progress of such autopsy and the conclusions drawn therefrom shall thereupon be filed in the offices of the State Medical

Examiner, the county medical examiner and the county prosecutor. The county medical examiner shall make available a copy of these findings and conclusions to the closest surviving relative of the decedent within 90 days of the receipt of a request therefor, unless the death is under active investigation by a law enforcement agency. If the suspected cause of death of a child under one year of age is sudden infant death syndrome or if the child is between one and three years of age and the death is sudden and unexpected, the findings and conclusions shall be reported to the child's parent, parents or legal guardian and the State Department of Health and Senior Services within 48 hours after the death of the child.

It shall be the duty of any county medical examiner to call upon the State Medical Examiner or an assistant State medical examiner, or other person authorized and designated by the State Medical Examiner, to make an examination or perform an autopsy whenever he deems it necessary or desirable, and it shall be the duty of the State Medical Examiner or assistant State medical examiner to perform such examination, except in such cases as a competent pathologist is so authorized by the State Medical Examiner to perform such autopsy. The necessary expenses for transportation of a body for autopsy by the State Medical Examiner or an assistant State medical examiner or an authorized pathologist and such reasonable fee payable to the authorized pathologist as has been approved by the State Medical Examiner for each autopsy such authorized pathologist may perform shall be paid by the State.

[N.J. Stat. Ann. § 52:17B-92](#)

It shall be the duty of the State Medical Examiner, and the county medical examiners, to keep full and complete records in their respective offices, properly indexed, giving the name, if known, of every such person, the place where the body was found, date and cause of death, and all other available information relating thereto.

The original report of the State Medical Examiner, assistant State medical examiners, or county medical examiners, and the detailed findings of the autopsy, if any, shall be attached to the record of each case. The State Medical Examiner, or in case of his absence or inability, an assistant State medical examiner, and the county medical examiners, shall promptly deliver to the county prosecutor of the county wherein the death occurred copies of all records relating to every death in which, in the judgment of such medical examiner, further investigation may be deemed advisable. The county prosecutor may obtain from the office of the State Medical Examiner, or of the county medical examiners, as the case may be, copies of such records or other information which he may deem necessary. The records of the office of the State Medical Examiner, and of the county medical examiners, made by themselves or by anyone under their direction or supervision, or transcripts thereof certified by such medical examiner, shall be received as competent evidence in any court in this State of the matters and facts therein contained.

A reasonable fee may be charged to private persons for copies of such records and upon such conditions as may be prescribed by the State Medical Examiner; provided, however, that no person with a proper interest in such records shall be denied access thereto. All such fees collected by the State Medical Examiner and county medical examiners shall be paid into the State Treasury or county treasury, respectively, on or before the tenth day of each month. The records which shall be admissible as evidence under this section shall be records of the results

of views and examinations of or autopsies upon the bodies of deceased persons by such medical examiner, or by anyone under his direct supervision or control, and shall not include statements made by witnesses or other persons.

Administrative Code

[N.J. Admin. Code § 13:49-3.1](#)

13:49–3.1 Release of records

(a) The records that are required by law to be made, maintained or kept by the County or State Medical Examiner are the Report of Investigation by Medical Examiner, the inventory of property of value, the autopsy report, including its findings and conclusions, and the results of external examinations upon the bodies of deceased persons. Not included within this definition are any records or portions thereof which contain opinions, subjective evaluations or critical analyses.

(b) The medical examiner shall, upon request, make available for inspection during regular business hours the records required to be made, maintained or kept as defined by (a) above and shall produce copies of the requested records upon payment of such reasonable fee as may be provided by this chapter, except as otherwise provided by:

1. The Right to Know Law, [N.J.S.A. 47:1A-1](#) et seq.;
2. Laws covering confidentiality of records such as the AIDS Assistance Law, N.J.S.A. 5C-1 et seq.;
3. Any other law requiring confidentiality of records;
4. The status of an ongoing investigation as defined by [Executive Order No. 123](#)(1985);
or
5. Whenever medical examiner's records are not yet complete.

(c) Any other records that satisfy the common law definition of a “public record” which may exist in the medical examiner's file may be inspected or copied with the exceptions as noted above in (b) provided the requestor is able to demonstrate that his or her particular interest outweighs the need of the agency and/or the public interest in confidentiality. The propriety of the party's interest in these records shall be determined by the authorized county medical examiner in consultation with the State Medical Examiner whose final determination shall be binding. The next of kin of the decedent, immediate family members, physicians who treated the decedent for his or her last illness or injury, the decedent's legal representative, law enforcement agencies, or attorneys or insurance companies representing parties in litigation arising from the incident that caused the decedent's death are presumed to have a proper interest in these records.

(d) In the event that the requestor is unable to demonstrate a proper interest, the County or State Medical Examiner may advise the requestor to seek a court ordered release of records.

(e) Notwithstanding (b) and (c) above, if the death has been referred to the county prosecutor or Attorney General for continuing criminal investigation, only the county prosecutor or Attorney General may disclose the autopsy findings. When a party seeks the autopsy report in connection with pending or future criminal litigation, the county prosecutor or Attorney General shall provide the report through the discovery process, in accordance with court rules, or before discovery is undertaken if the prosecutor or Attorney General deems it appropriate.

(f) Notwithstanding (c) and (d) above, the autopsy report may be furnished to any person upon written authority of the decedent's next of kin or legal representative, unless the death has been referred to the county prosecutor or Attorney General for continuing criminal investigation.

New Mexico

Summary

Public records have confidentiality tiers setup by the state to withhold private information. When cited below § 2-3-13 refers to legislative council records; § 18-6-11.1, Confidentiality of site location of “archaeological resources”

Statute

[N.M. Stat. Ann. § 14-2-1](#)

A. Every person has a right to inspect public records of this state except:

- (1) records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;
- (2) letters of reference concerning employment, licensing or permits;
- (3) letters or memoranda that are matters of opinion in personnel files or students' cumulative files;
- (4) law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed in this paragraph;
- (5) as provided by the Confidential Materials Act;
- (6) trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting;
- (7) tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack; and
- (8) as otherwise provided by law.

B. Protected personal identifier information contained in public records may be redacted by a public body before inspection or copying of a record. The presence of protected personal identifier information on a record does not exempt the record from inspection. Unredacted records that contain protected personal identifier information shall not be made available on publicly accessible web sites operated by or managed on behalf of a public body.

[N.M. Stat. Ann. § 14-3-2](#)

G. “public records” means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government or because of the informational and historical value of data contained therein. Library or museum material of the state library, state

institutions and state museums, extra copies of documents preserved only for convenience of reference and stocks of publications and processed documents are not included;

[N.M. Stat. Ann. § 14-3-7.1](#)

A. Notwithstanding any other provision of law, any public record deemed by law to be confidential and required by a records retention and disposition schedule to be maintained longer than twenty-five years shall not, after twenty-five years from the date of creation, be confidential and shall be accessible to the public, except:

- (1) personal identification information deemed confidential by law, which shall remain confidential for one hundred years after the date of creation, unless a shorter duration is otherwise required by law;
- (2) records that are confidential pursuant to Section 2-3-13 [NMSA 1978, which shall](#) remain confidential for seventy-five years after the date of creation;
- (3) records that are confidential pursuant to [Section 18-6-11.1 NMSA](#) 1978; and
- (4) records whose disclosure is prohibited by court action or federal law.

B. Nothing in this section shall limit or remove the discretion of a records custodian to withhold a public record pursuant to [Section 14-2-1 NMSA](#) 1978.

New York

Statutes

[N.Y. Pub. Off. Law § 87](#) (McKinney)

2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

- (a) are specifically exempted from disclosure by state or federal statute;
- (b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;
- (c) if disclosed would impair present or imminent contract awards or collective bargaining negotiations;
- (d) are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise;
- (e) are compiled for law enforcement purposes and which, if disclosed, would:
 - i. interfere with law enforcement investigations or judicial proceedings;
 - ii. deprive a person of a right to a fair trial or impartial adjudication;
 - iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or
 - iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;
- (f) if disclosed could endanger the life or safety of any person;
- (g) are inter-agency or intra-agency materials which are not:
 - i. statistical or factual tabulations or data;
 - ii. instructions to staff that affect the public;
 - iii. final agency policy or determinations;
 - iv. external audits, including but not limited to audits performed by the comptroller and the federal government; or
- (h) are examination questions or answers which are requested prior to the final administration of such questions.

[N.Y. Pub. Off. Law § 89](#) (McKinney)

2.

- (a) The committee on public access to records may promulgate guidelines regarding deletion of identifying details or withholding of records otherwise available under this article to prevent

unwarranted invasions of personal privacy. In the absence of such guidelines, an agency may delete identifying details when it makes records available.

(b) An unwarranted invasion of personal privacy includes, but shall not be limited to:

- i. disclosure of employment, medical or credit histories or personal references of applicants for employment;
- ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility;
- iii. sale or release of lists of names and addresses if such lists would be used for solicitation or fund-raising purposes;
- iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it;
- v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency;
- vi. information of a personal nature contained in a workers' compensation record, except as provided by section one hundred ten-a of the workers' compensation law; or
- vii. disclosure of electronic contact information, such as an e-mail address or a social network username, that has been collected from a taxpayer under section one hundred four of the real property tax law.

(c) Unless otherwise provided by this article, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy pursuant to paragraphs (a) and (b) of this subdivision:

- i. when identifying details are deleted;
- ii. when the person to whom a record pertains consents in writing to disclosure;
- iii. when upon presenting reasonable proof of identity, a person seeks access to records pertaining to him or her; or
- iv. when a record or group of records relates to the right, title or interest in real property, or relates to the inventory, status or characteristics of real property, in which case disclosure and providing copies of such record or group of records shall not be deemed an unwarranted invasion of personal privacy, provided that nothing herein shall be construed to authorize the disclosure of electronic contact information, such as an e-mail address or a social network username, that has been collected from a taxpayer under section one hundred four of the real property tax law.

2-a. Nothing in this article shall permit disclosure which constitutes an unwarranted invasion of personal privacy as defined in subdivision two of this section if such disclosure is prohibited under section ninety-six of this chapter.

[N.Y. Pub. Off. Law § 96](#) (McKinney)

(1) No agency may disclose any record or personal information unless such disclosure is:

- (a) pursuant to a written request by or the voluntary written consent of the data subject, provided that such request or consent by its terms limits and specifically describes:
- (i) the personal information which is requested to be disclosed;
 - (ii) the person or entity to whom such personal information is requested to be disclosed; and
 - (iii) the uses which will be made of such personal information by the person or entity receiving it; or
- (b) to those officers and employees of, and to those who contract with, the agency that maintains the record if such disclosure is necessary to the performance of their official duties pursuant to a purpose of the agency required to be accomplished by statute or executive order or necessary to operate a program specifically authorized by law; or
- (c) subject to disclosure under article six of this chapter, unless disclosure of such information would constitute an unwarranted invasion of personal privacy as defined in paragraph (a) of subdivision two of section eighty-nine of this chapter; or
- (d) to officers or employees of another governmental unit if each category of information sought to be disclosed is necessary for the receiving governmental unit to operate a program specifically authorized by statute and if the use for which the information is requested is not relevant to the purpose for which it was collected; or
- (e) for a routine use, as defined in subdivision ten of section ninety-two of this article; or
- (f) specifically authorized by statute or federal rule or regulation; or
- (g) to the bureau of the census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title XIII of the United States Code; or
- (h) to a person who has provided the agency with advance written assurance that the record will be used solely for the purpose of statistical research or reporting, but only if it is to be transferred in a form that does not reveal the identity of any data subject; or
- (i) pursuant to a showing of compelling circumstances affecting the health or safety of a data subject, if upon such disclosure notification is transmitted to the data subject at his or her last known address; or
- (j) to the state archives as a record which has sufficient historical or other value to warrant its continued preservation by the state or for evaluation by the state archivist or his or her designee to determine whether the record has such value; or
- (k) to any person pursuant to a court ordered subpoena or other compulsory legal process; or
- (l) for inclusion in a public safety agency record or to any governmental unit or component thereof which performs as one of its principal functions any activity pertaining to the enforcement of criminal laws, provided that, such record is reasonably described and is requested solely for a law enforcement function; or
- (m) pursuant to a search warrant; or

(n) to officers or employees of another agency if the record sought to be disclosed is necessary for the receiving agency to comply with the mandate of an executive order, but only if such records are to be used only for statistical research, evaluation or reporting and are not used in making any determination about a data subject; or

(o) to officers or employees of a public retirement system of the city of New York if the information sought to be disclosed is necessary for the receiving public retirement system to process benefits under the retirement and social security law, the administrative code of the city of New York, or the education law or any other applicable provision of law. A written request or consent from the data subject pursuant to paragraph (a) of this subdivision shall not be required for the disclosure of records pursuant to this paragraph.

(2) Nothing in this section shall require disclosure of:

(a) personal information which is otherwise prohibited by law from being disclosed;

(b) patient records concerning mental disability or medical records where such disclosure is not otherwise required by law;

(c) personal information pertaining to the incarceration of an inmate at a state correctional facility which is evaluative in nature or which, if disclosed, could endanger the life or safety of any person, unless such disclosure is otherwise permitted by law;

(d) attorney's work product or material prepared for litigation before judicial, quasi-judicial or administrative tribunals, as described in subdivisions (c) and (d) of section three thousand one hundred one of the civil practice law and rules, except pursuant to statute, subpoena issued in the course of a criminal action or proceeding, court ordered or grand jury subpoena, search warrant or other court ordered disclosure.

[N.Y. County Law § 677](#) (McKinney)

1. The writing made by the coroner, or by the coroner and coroner's physician, or by the medical examiner, at the place where he takes charge of the body, shall be filed promptly in the office of the coroner or medical examiner. The testimony of witnesses examined before him and the report of any examination made or directed by him shall be made in writing or reduced to writing and thereupon filed in such office.

2. The report of any autopsy or other examination shall state every fact and circumstance tending to show the condition of the body and the cause and means or manner of death. The person performing an autopsy, for the purpose of determining the cause of death or means or manner of death, shall enter upon the record the pathological appearances and findings, embodying such information as may be prescribed by the commissioner of health, and append thereto the diagnosis of the cause of death and of the means or manner of death. Methods and forms prescribed by the commissioner of health for obtaining and preserving records and statistics of autopsies conducted within the state shall be employed. A detailed description of the findings, written during the progress of the autopsy, and the conclusions drawn therefrom shall, when completed, be filed in the office of the coroner or medical examiner.

3.

(a) The coroner or coroners of each county, or the medical examiner, shall keep full and complete records, properly indexed, stating the name, if known, of every person whose death is investigated, the place where the body was found, the date of death, if known, and if not known, the date or approximate date as determined by the investigation, to which there shall be attached the original report of the coroner, or coroner and coroner's physician or physician employed, or medical examiner, and the detailed findings of the autopsy, if any. Such records shall be kept in the office of the county clerk except in those counties having a full-time coroner or medical examiner, in which case such records shall be kept in the office of the coroner or medical examiner.

(b) Such records shall be open to inspection by the district attorney of the county. Upon application of the personal representative, spouse or next of kin of the deceased to the coroner or the medical examiner, a copy of the autopsy report, as described in subdivision two of this section shall be furnished to such applicant.

Upon proper application of any person who is or may be affected in a civil or criminal action by the contents of the record of any investigation, or upon application of any person having a substantial interest therein, an order may be made by a court of record, or by a justice of the supreme court, that the record of that investigation be made available for his inspection, or that a transcript thereof be furnished to him, or both.

4. The coroner, coroner's physician or medical examiner shall promptly deliver to the district attorney copies of all records pertaining to any death whenever, in his opinion, or in the judgment of the person performing the autopsy, there is any indication that a crime was committed.

5. The coroner, coroner's physician or medical examiner shall promptly report to the commissioner of motor vehicles, in a form and manner specified by the commissioner, the results of all quantitative tests for alcohol, and for any trace of a controlled substance, as defined in section three thousand three hundred six of the public health law, that the coroner, coroner's physician or medical examiner has reasonable cause to believe is present, performed upon bodies of victims of motor vehicle accidents pursuant to the requirements of subdivision three of section six hundred seventy-four of this chapter.

North Carolina

Statute

[N.C. Gen. Stat. § 130A-389.1](#)

(c) The following persons may obtain copies of autopsy photographs or video or audio recordings but may not disclose the photographs or video or audio recordings to the public unless otherwise authorized by law:

- (1) The personal representative of the estate of the deceased.
- (2) A person authorized by an order issued in a special proceeding pursuant to subsection (d) of this section.
- (3) A physician licensed to practice in North Carolina who uses a copy of the photographs or video or audio recording to confer with attorneys or others with a bona fide professional need to use or understand forensic science, provided that the physician promptly returns the copy to the custodian.
- (4) After redacting all information identifying the decedent, including name, address, and social security number, and after anonymizing any physical recognition, a medical examiner, coroner, physician, or their designee who uses such material for:
 - a. Medical or scientific teaching or training purposes;
 - b. Teaching or training of law enforcement personnel;
 - c. Teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science;
 - d. Conferring with medical or scientific experts in the field of forensic science; or
 - e. Publication in a scientific or medical journal or textbook.

A medical examiner, coroner, or physician who has in good faith complied with this subsection shall not be subject to any penalty under this section.

Any person who lawfully obtains a copy of a photograph or video or audio recording pursuant to this subsection shall be required to sign a statement acknowledging that they have received notice that any unauthorized disclosure of the photograph or video or audio recording is a Class 2 misdemeanor.

(Lexis Advance through Session Laws 2016-3, 2016 2nd Extra Session)

North Dakota

Statutes

[N.D. Cent. Code Ann. § 44-04-18.18](#)

§ 44-04-18.18. Autopsy images--Confidential--Exceptions

1. An autopsy photograph or other visual image or a video or audio recording of an autopsy is confidential. However, a criminal justice agency may use or disclose these materials for purposes of an investigation or prosecution.

2.

a. After redacting all information identifying the decedent, including name, address, and social security number, and anonymizing facial recognition, a medical examiner, coroner, or physician may use an autopsy photograph, image, or recording for:

- (1) Medical or scientific teaching or training purposes;
- (2) Teaching or training of law enforcement personnel;
- (3) Teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science;
- (4) Conferring with medical or scientific experts; or
- (5) Publication in a scientific or medical journal or textbook.

b. A medical examiner, coroner, or physician who has in good faith complied with this subsection is not subject to any penalty or liability for using an autopsy photograph, image, or recording.

3. The decedent's spouse, child, parent, or sibling, upon proof of the relationship, may view an autopsy photograph, image, or recording in the business office of a medical examiner, coroner, or physician who has possession of the materials, if there is not an active criminal investigation or prosecution.

4. Disclosure of an autopsy photograph, image, or recording may be obtained under section 44-04-18.11.

Where: § 44-04-18.11. Disclosure pursuant to subpoena or order. [N.D. Cent. Code Ann. § 44-04-18.11](#).

Ohio

Summary

Discussion in case law below.

Statutes

[Ohio Rev. Code Ann. § 313.23](#)

(A) As used in this section:

(1) "Interested person" means an employee of the coroner's office, a physician, dentist, nurse, professor at a medical school, medical student, medical resident, nursing student, an employee of a procurement organization, a member of a law enforcement agency, or any other person the coroner, in the coroner's discretion, determines is appropriate.

(2) "Procurement organization" has the same meaning as in section 2108.01 of the Revised Code.

(B) The coroner may allow an interested person to view an autopsy of a decedent without the interested person receiving permission to view the decedent's autopsy from the decedent's next of kin.

(C) No person who is under eighteen years of age and who is not an interested person may view an autopsy.

[Ohio Rev. Code Ann. § 313.09](#)

The coroner shall keep a complete record of and shall fill in the cause of death on the death certificate, in all cases coming under his jurisdiction. All records shall be kept in the office of the coroner, but, if no such office is maintained, then such records shall be kept in the office of the clerk of the court of common pleas. Such records shall be properly indexed, and shall state the name, if known, of every deceased person as described in section 313.12 of the Revised Code, the place where the body was found, date of death, cause of death, and all other available information.

The report of the coroner and the detailed findings of the autopsy shall be attached to the report of each case. The coroner shall promptly deliver, to the prosecuting attorney of the county in which such death occurred, copies of all necessary records relating to every death in which, in the judgment of the coroner or prosecuting attorney, further investigation is advisable. The sheriff of the county, the police of the city, the constable of the township, or marshal of the village in which the death occurred may be requested to furnish more information or make further investigation when requested by the coroner or his deputy. The prosecuting attorney may obtain copies of records and such other information as is necessary from the office of the coroner. All records of the coroner are the property of the county.

Administrative Regulations

[Ohio Admin. Code 3701-5-14](#)

(D) If the child's parent makes a request for the preliminary results of the autopsy, the coroner or person designated by him shall give the parent an oral statement of the preliminary results after they are available.

(E) The coroner shall send written notice of the final results of the investigation and autopsy, including the final results of examinations, investigations and procedures required in paragraphs (A) and (B) of this rule, to the Ohio department of health, the health district or department with jurisdiction in the area in which the child's parent resides, and, upon a request of the parent of the child, to the child's attending physician, within a reasonable time after the final results are available. The coroner shall send written notice of the final results to a parent upon written request.

Case Law

State ex rel. Dayton Newspapers, Inc. v. Rauch, [12 Ohio St. 3d 100, 100-01, 465 N.E.2d 458, 459](#) (1984)

We adhere to our policy that exceptions to the disclosure requirements of [R.C. 149.43\(B\)](#) be strictly construed against the custodian of records. See State, ex rel. Plain Dealer Pub. Co., v. Krouse (1977), [51 Ohio St.2d 1, 364 N.E.2d 854 \[5 O.O.3d 1\]](#). However, we agree with respondent that the autopsy reports herein are exempt from disclosure as specific investigatory work product under [R.C. 149.43\(A\)\(2\)\(c\)](#). The autopsy is, in itself, an investigation. The fact that it is required because a homicide occurred distinguishes the autopsy *101 report from the "routine factual reports" we held subject to disclosure in State, ex rel. Beacon Journal, v. Univ. of Akron (1980), [64 Ohio St.2d 392, 415 N.E.2d 310 \[18 O.O.3d 534\]](#). Moreover, we recognize that the confidentiality of the contents of an autopsy report is essential to its effective use in further investigation by law enforcement personnel.

We are unpersuaded by relator's argument that the terms of [R.C. 313.09](#) and 313.10 require disclosure. [R.C. 313.10](#) provides that "*** records of the coroner *** are public records ***." However, in describing the records of the coroner, [R.C. 313.09](#) in part provides:

"The coroner shall keep a complete record of and shall fill in the cause of death on the death certificate, in all cases coming under his jurisdiction. *** Such records shall be properly indexed, and shall state the name, if known, of every deceased person as described in section 313.12 of the Revised Code, the place where the body was found, date of death, cause of death, and all other available information. The report of the coroner and the detailed findings **460 of the autopsy shall be attached to the report of each case. ***"

This statute treats the autopsy report as an item separate from the other information the coroner is required to keep as a public record. Thus, we cannot conclude, as relator urges, that it requires disclosure of the autopsy report in the same manner as the other information specified.

Accordingly, the writ is denied.

State ex rel. Dayton Newspapers, Inc. v. Rauch, [12 Ohio St. 3d 100, 101, 465 N.E.2d 458, 459-60](#) (1984)

Oklahoma

Pending legislation included.

Statutes

[Okla. Stat. Ann. tit. 63, § 941a](#)

§ 941a. Custody of the body

Upon completion of an investigation by the Office of the Chief Medical Examiner, the body of the deceased shall be released to the person legally entitled to the custody thereof, or his or her representative, unless:

1. A release is signed by the person legally entitled to the custody of the body; or
2. The attending physician has notified the Chief Medical Examiner of the State of Oklahoma, or his or her designee, of the need for further investigation into the cause of death, or has notified the appropriate district attorney of such need; or
3. The laws of this state or the regulations of the Board of Medicolegal Investigations require additional information or examination that cannot be obtained or completed within the above period of time.

[Okla. Stat. Ann. tit. 63, § 949](#)

§ 949. Records--Evidence--Sudden Unexpected Death in Infants and Children

A.

1.

a. The Office of the Chief Medical Examiner shall keep full and complete records, properly indexed, giving the name, if known, of every person whose death is investigated, the place where the body was found, the date, cause, and manner of death and all other relevant information concerning the death. The full report and detailed findings of the autopsy, if any, shall be a part of the record in each case.

b. The Chief Medical Examiner shall track and forward, within seventy-two (72) hours after the examination, demographic information on sudden, unexpected and nontraumatic infant deaths including, but not limited to, Sudden Infant Death Syndrome (SIDS), to the Oklahoma SIDS Coordinator at the State Department of Health and the SIDS Foundation of Oklahoma. As used in this subparagraph, "Sudden Unexpected Death in Infants and Children" (SUDIC) means the sudden, unexpected death of an apparently healthy infant less than one (1) year of age which remains unexplained following a complete medicolegal analysis and death scene investigation. The Chief Medical Examiner shall follow up with further notification upon final determination of a cause of death. Such notification shall be for statistical reporting purposes only.

2. The office shall promptly deliver to each district attorney having jurisdiction of the case, copies of all cases relating to a death for which further investigation may be advisable. Any district attorney or other law enforcement official may, upon request, obtain copies of such records or other information deemed necessary to the performance of such district attorney's or other law enforcement official's official duties.

B. No report, findings, testimony, or other information of a medical examiner shall be admitted [in evidence](#) in any civil action in any court in this state, except under the following circumstances:

1. Certified copies of reports pertaining to the factual determinations of views and examination of or autopsies upon the bodies of deceased persons by the Chief Medical Examiner or anyone under his or her supervision or control may be admitted [in evidence](#) in any civil case in a court of competent jurisdiction in this state by stipulation of all parties in the case;

2. If a party refuses to stipulate to admission, the reports may be requested by any party seeking to admit the records as evidence. The request shall be made to the Office of the Chief Medical Examiner, who shall furnish same;

3. The party seeking admission of the reports shall then serve interrogatories concerning the facts to be answered under oath by the person preparing the records. The interrogatories and answers thereto shall be subject to the rules of evidence and may be admissible [in evidence](#) in any civil case in a court of competent jurisdiction. Objections to the interrogatories shall be made by any party in accordance with law just as if the interrogatories had been served on the objecting party. Cross interrogatories shall be submitted and shall be answered and admitted [in evidence](#) in the same manner as interrogatories;

4. The taking of depositions shall then be allowed pursuant to the provisions of Section 3230 of Title 12 of the Oklahoma Statutes; provided, however, depositions shall take place at the Office of the Chief Medical Examiner or anyone under his or her supervision or control whose testimony is sought, unless all parties, including the medical examiner, agree the deposition can be taken elsewhere;

5. No other testimony of the Chief Medical Examiner or anyone under his or her supervision and control shall be admitted [in evidence](#) in any civil action in any court of this state, unless timely application is made to the court by an interested party or litigant and timely notice of the application is given to the medical examiner. After a hearing, the court, for good cause shown, may order the appearance of the Chief Medical Examiner or anyone under his or her supervision and control for the purpose of testifying and may order that a subpoena be issued for that appearance; provided, however, that such order by the court shall be the exception and not the rule; and

6. The cost of the records or certified copies thereof shall be paid by the party requesting same. The reasonable fee charged by the Chief Medical Examiner or anyone under his or her supervision and control for answering interrogatories or cross interrogatories, submitting to depositions, or providing testimony shall be paid by the party submitting same. This fee shall be in place of any other witness fee allowed by law.

C. Certified copies of reports and findings, exclusive of hearsay evidence, may be admitted [in evidence](#) in preliminary hearings and criminal trials by stipulation.

D. Certified copies of reports of investigations by a medical examiner, laboratory reports and/or autopsy reports may be furnished to the next of kin or others having need for them upon written statement and payment of a reasonable fee set by the Board of Medicolegal Investigations.

[Okla. Stat. Ann. tit. 63, § 945](#)

§ 945. Person to perform autopsy--Extent--Report of findings

When properly authorized, an autopsy shall be performed by the Chief Medical Examiner or such person as may be designated by him or her for such purpose.

The Chief Medical Examiner or a person designated by him or her may authorize arterial embalming of the body prior to the autopsy when such embalming would in his or her opinion not interfere with the autopsy. The extent of the autopsy shall be made as is deemed necessary by the person performing the autopsy. A full and complete report of the facts developed by the autopsy together with the findings of the person making it shall be prepared and filed in the Office of the Chief Medical Examiner without unnecessary delay. Copies of such reports and findings shall be furnished to district attorneys and law enforcement officers making a criminal investigation in connection with the death.

Pending Legislation

PENDING LEGISLATION

2015 Oklahoma Senate Bill No. 698, Oklahoma First Regular Session of the Fifty-Fifth Legislature, 2015
Oklahoma Senate Bill No. 698, Oklahoma First Regular Session of the Fifty-Fifth Legislature

Section 945. When properly authorized, an autopsy shall be performed by the Chief Medical Examiner or such person as may be designated by him or her for such purpose. The Chief Medical Examiner or a person designated by him or her may authorize arterial embalming of the body prior to the autopsy when such embalming would in his or her opinion not interfere with the autopsy. The extent of the autopsy shall be made as is deemed necessary by the person performing the autopsy. A full and complete report of the facts developed by the autopsy together with the findings of the person making it shall be prepared and filed in the Office of the Chief Medical Examiner without unnecessary delay. Copies of such reports and findings shall be furnished to district attorneys and law enforcement officers making a criminal investigation in connection with the death. Before making autopsy reports available to media outlets and persons without a demonstrable family relation to the deceased, the Office of the Chief Medical Examiner shall redact all health information relating to the deceased and the reports shall only provide the name and cause of death.

Oregon

Statutes

[Or. Rev. Stat. Ann. § 192.501](#)

The following public records are exempt from disclosure under [ORS 192.410](#) to 192.505 unless the public interest requires disclosure in the particular instance:

(36) A medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner under [ORS 146.117](#).

[Or. Rev. Stat. Ann. § 146.117](#)

(1) A medical examiner or district attorney may order an autopsy performed in any death requiring investigation. This authorization for an autopsy shall permit the pathologist to remove and retain body tissues or organs from the deceased for the purpose of the legal or medical determination of the manner or cause of death, or other purposes approved under policies established by the State Medical Examiner Advisory Board.

(2) If an autopsy is ordered, the medical examiner shall obtain the services of a pathologist authorized under [ORS 146.045 \(2\)\(b\)](#).

(3) A pathologist may not receive compensation for performing the autopsy if, as medical examiner, the pathologist ordered the autopsy.

Pennsylvania

Summary

Pending legislation included.

Statutes

[16 Pa. Stat. Ann. § 1238](#)

§ 1238. Autopsy; inquest; records

- (a) If, upon investigation, the coroner shall be unable to determine the cause and manner of death, he shall perform or order an autopsy on the body.
- (b) If the coroner is unable to determine the cause and manner of death following the autopsy, he may conduct an inquest upon a view of the body, as provided by law. At the inquest, the coroner's duty shall be to ascertain the cause of death, to determine whether any person other than the deceased was criminally responsible therefor by act or neglect, and if so, the identity of the person, and to examine any further evidence and witnesses regarding the cause of death.
- (c) The proceedings at the inquest shall be recorded, at the expense of the county, in a manner to be provided by the county commissioners.

[16 Pa. Stat. Ann. § 1251](#)

§ 1251. Official records of coroner

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

Case Law

Com. ex rel. Dist. Attorney of Blair Cty., [583 Pa. 620, 629, 880 A.2d 568, 574](#) (2005)

Both Pennsylvania's common law and this Court's procedural rules, which are a product of experience, are replete with examples recognizing the Commonwealth's right to petition, and the trial court's authority to grant, the sealing of information in the course of an investigation or judicial proceedings. Two examples recognized by this Court's procedural rules include protective orders for pretrial discovery and inspection, and sealing search warrant affidavits. Thus, Rule 573(F), entitled "Protective Orders," provides, in relevant part:

Upon a sufficient showing, the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate.

[Pa.R.Crim.P. 573](#) (F). Therefore, "upon a sufficient showing," a trial court may seal certain statements, documents, or other evidence from discovery or inspection at a point in a criminal proceeding well-beyond the investigative stage. [Id.](#) Additionally, Rule 211, entitled "Sealing Search Warrant Affidavits," provides that a district attorney can request that a search warrant affidavit be sealed "upon good cause shown." [Pa.R.Crim.P. 211](#) (A). Rule 211 also provides that the justice or judge sealing the affidavit must state the length of time it will be sealed, [Pa.R.Crim.P. 211](#) (C); that the affidavit must not be sealed for more than 60 days, unless the period is extended at

the request of the district attorney, who may seek “an unlimited number of extensions” at 30-day intervals, [Pa.R.Crim.P. 211\(E\),\(G\)](#); and that the district attorney can delay providing the defendant a copy of the sealed affidavit for intervals of not more than 30 days up to the date of court arraignment. [Pa.R.Crim.P. 211\(H\)\(2\)](#).

...

Com. ex rel. Dist. Attorney of Blair Cty., [583 Pa. 620, 631, 880 A.2d 568, 575](#) (2005)

There is nothing in the plain language of Section 1251 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). We also recognize, as the panel majority did, 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.” [Id.](#)

Penn Jersey Advance, Inc. v. Grim, [599 Pa. 534, 541–43, 962 A.2d 632, 637](#) (2009)

In reaching this 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.” Penn Jersey Advance, [910 A.2d at 123](#); Johnstown Tribune, [871 A.2d at 329](#).⁷ Although interests of privacy or potential privilege were *542 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. Buchanan, *supra* at 631, [880 A.2d at 575](#). 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.

Finally, we do not share the Commonwealth Court's perception that there is a conflict between Section 1251, which may allow access to autopsy reports free of charge if they are deemed “official” records, and the later-enacted Section 1236.1(c), which allows a coroner to charge for autopsy reports. Penn Jersey Advance, [910 A.2d at 122–23](#) (citing Johnstown Tribune, [871 A.2d at 329](#)). By the terms of Section 1251, the records that a coroner must deposit with the prothonotary are not available until thirty days after the end of each year, at which time interested persons may “inspect” such records. Section 1236.1, which is entitled “Requests for examinations and reports,” authorizes a

coroner to charge up to \$100 for each autopsy report, without mention of any time requirement. [16 P.S. § 1236.1\(c\)](#). Thus, Section 1236.1 merely 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. The existence of such mechanism for obtaining *543 an autopsy report does not compel the conclusion that autopsy reports are therefore not official records under Section 1251.

Pending Legislation

PENDING LEGISLATION STATUS: 04/01/2016 (H) REFERRED TO JUDICIARY, APRIL 1, 2016
[2015 PA H.B. 1931](#) (NS)

2015 Pennsylvania House Bill No. 1931, Pennsylvania One Hundred Ninety-Ninth General Assembly - 2015-2016, 2015 Pennsylvania House Bill No. 1931, Pennsylvania One Hundred Ninety-Ninth General Assembly - 2015-2016 Section 1236-A. Records of coroner.

(a) Maintenance.--All records shall be maintained in the office of the coroner. If no office is maintained, then a public record providing the name of the deceased, the date of death, and the cause and manner of death shall be deposited in the office of prothonotary for the inspection of a person with an interest in the record.

(b) Limitation on public records.--A record, made by or caused to be taken or made by the coroner, indicating any of the following in a personally identifiable manner may not be considered a public record:

- (1) An individual's medical, psychiatric history, psychological history or disability status. This paragraph shall include an evaluation, consultation, prescription, diagnosis or treatment.
- (2) Results of tests, including drug tests, or relating to a criminal investigation.
- (3) An autopsy record, a digital image of a postmortem examination or autopsy, a copy, reproduction or facsimile of an autopsy report or a photograph, negative or print. This paragraph shall include a photograph or videotape of the body or a portion of the body of a deceased person at the scene of death or in the course of a postmortem examination or autopsy.

(c) Invasion of privacy.--A person seeking access to a record that is or may contain medical, psychiatric, psychological or investigatory matter, the disclosure of which would constitute an invasion of personal privacy either to the reputation of the deceased or to the physical and mental well-being of any next of kin, shall do the following:

- (1) Notify all next of kin of the request.
- (2) Provide clear and convincing proof of a general need that overrides the privacy or is not prohibited by any applicable Federal or State law or regulation.

(d) Use of data.--The coroner may use information or photographs for purposes of official duties, training and education, as long as the personally identifiable information has been removed.

(e) Data to Commonwealth.--Nothing shall prohibit the coroner from providing information to the Commonwealth as required by other laws, provided the information will not be publicly reported in a personally identifiable manner.

(f) Report to General Assembly.--Annually the coroners shall provide a report to the General Assembly regarding drug-related deaths for the prior calendar year.

Section 1237-A. Certain reproduction of images of deceased prohibited.

(a) Images.--A first responder who is dispatched to or is otherwise present at the scene of a motor vehicle accident or other emergency situation, for the purpose of providing medical care or other assistance, may not photograph, film, videotape, record or otherwise reproduce in any manner, the image of an individual who is deceased or is being provided medical care or other assistance, except in accordance with applicable rules, regulations or operating procedures of the agency employing the first responder.

(b) Disclosure.--A first responder may not disclose any photograph, film, videotape, record, or other reproduction of the image of an individual, living or deceased, being removed from or being provided medical care or other assistance at the scene of a motor vehicle accident or other emergency situation without the prior written consent of the individual, or the individual's next-of-kin if the individual cannot provide consent, unless that disclosure was for a legitimate law

enforcement, public safety, health care or insurance purpose or pursuant to a court order.

(c) Criminal liability.--An individual who knowingly violates the the provisions of subsection (b) commits a misdemeanor and shall, upon conviction, pay a fine of not less than \$200. Each photograph, film, digital image, videotape, record or other reproduction shall constitute a separate offense.

(d) Civil liability.--In addition to any other right of action or recovery otherwise available under the laws of this Commonwealth, a first responder who knowingly violates the provisions of subsection (a) or (b) shall be liable to the individual or the individual's next-of-kin whose image was taken or disclosed, who may bring a civil action.

(e) Damages.--The court may award damages for civil liability under subsection (d) as follows:

(1) Actual damages, but not less than liquidated damages computed at the rate of \$1,000 for each violation of this article.

(2) Punitive damages upon proof of willful or reckless disregard of the law.

(3) Reasonable attorney fees and other litigation costs reasonably incurred.

(4) Other preliminary and equitable relief as the court determines to be appropriate.

(f) Definitions.--As used in this section, the following words and phrases when used in this section shall have the meanings given to them in this subsection:

"Disclose." To sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate,

disseminate, present, exhibit, advertise or offer.

"First responder." Any of the following:

(1) A law enforcement officer.

(2) Paid or volunteer firefighter.

(3) Paid or volunteer member of a duly incorporated first aid, emergency, ambulance or rescue squad association.

(4) Any other individual who, in the course of the individual's employment, is dispatched to the scene of a motor vehicle accident or other emergency situation for the purpose of providing medical care, removal of a deceased individual or other assistance.

Rhode Island

Statutes

38 R.I. Gen. Laws § 2-2 (Lexis 2016)

(4) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data (including electronic mail messages, except specifically for any electronic mail messages of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities) or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. For the purposes of this chapter, the following records shall not be deemed public:

(A)

(I)

(a) All records relating to a client/attorney relationship and to a doctor/patient relationship, including all medical information relating to an individual in any files.

(b) Personnel and other personal individually-identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to [5 U.S.C. § 552](#) et. seq.; provided, however, with respect to employees, and employees of contractors and subcontractors working on public works projects which are required to be listed as certified payrolls, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and any other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state, municipality, employment contract, or public works contractor or subcontractor on public works projects work location, and/or project, business telephone number, the city or town of residence, and date of termination shall be public. For the purposes of this section "remuneration" shall include any payments received by an employee as a result of termination, or otherwise leaving employment, including, but not limited to, payments for accrued sick and/or vacation time, severance pay, or compensation paid pursuant to a contract buy-out provision.

(II) Notwithstanding the provisions of this section, or any other provision of the general laws to the contrary, the pension records of all persons who are either current or retired members of any public retirement systems as well as all persons who become members of those retirement systems after June 17, 1991 shall be open for public inspection. "Pension records" as used in this section shall include all records containing information concerning pension and retirement benefits of current and retired members of the retirement systems and future members of said systems, including all records concerning retirement credits purchased and the ability of any member of the retirement system to purchase retirement credits, but excluding all information regarding the medical condition of any person and all information identifying the member's designated beneficiary or beneficiaries unless and until the member's designated beneficiary or beneficiaries have received or are receiving pension and/or retirement benefits through the retirement system.

(B) Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.

(C) Child custody and adoption records, records of illegitimate births, and records of juvenile proceedings before the family court.

(D) All records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency. Provided, however, such records shall not be deemed public only to the extent that the disclosure of the records or information (a) could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, or the information furnished by a confidential source, (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical safety of any individual. Records relating to management and direction of a law enforcement agency and records or reports reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public.

(E) Any records which would not be available by law or rule of court to an opposing party in litigation.

(F) Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.

(G) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to the contribution by the contributor.

(H) Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining.

(I) Reports and statements of strategy or negotiation with respect to the investment or borrowing of public funds, until such time as those transactions are entered into.

(J) Any minutes of a meeting of a public body which are not required to be disclosed pursuant to chapter 46 of title 42.

(K) Preliminary drafts, notes, impressions, memoranda, working papers, and work products; provided, however, any documents submitted at a public meeting of a public body shall be deemed public.

(L) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment or promotion, or academic examinations; provided, however, that a person shall have the right to review the results of his or her examination.

(M) Correspondence of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities.

(N) The contents of real estate appraisals, engineering, or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions

have been terminated or abandoned; provided the law of eminent domain shall not be affected by this provision.

(O) All tax returns.

(P) All investigatory records of public bodies, with the exception of law enforcement agencies, pertaining to possible violations of statute, rule, or regulation other than records of final actions taken provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.

(Q) Records of individual test scores on professional certification and licensing examinations; provided, however, that a person shall have the right to review the results of his or her examination.

(R) Requests for advisory opinions until such time as the public body issues its opinion.

(S) Records, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law, or rule of court.

(T) Judicial bodies are included in the definition only in respect to their administrative function provided that records kept pursuant to the provisions of chapter 16 of title 8 are exempt from the operation of this chapter.

(U) Library records which by themselves or when examined with other public records, would reveal the identity of the library user requesting, checking out, or using any library materials.

(V) Printouts from TELE--TEXT devices used by people who are deaf or hard of hearing or speech impaired.

(W) All records received by the insurance division of the department of business regulation from other states, either directly or through the National Association of Insurance Commissioners, if those records are accorded confidential treatment in that state. Nothing contained in this title or any other provision of law shall prevent or be construed as prohibiting the commissioner of insurance from disclosing otherwise confidential information to the insurance department of this or any other state or country, at any time, so long as the agency or office receiving the records agrees in writing to hold it confidential in a manner consistent with the laws of this state.

(X) Credit card account numbers in the possession of state or local government are confidential and shall not be deemed public records.

(Y) Any documentary material, answers to written interrogatories, or oral testimony provided under any subpoena issued under Rhode Island general law § 9-1.1-6.

(Z) Any individually identifiable evaluations of public school teachers made pursuant to state or federal law or regulation.

(AA) All documents prepared by school districts intended to be used by school districts in protecting the safety of their students from potential and actual threats.

38 [R.I. Gen. Laws Ann. § 38-2-3](#)

§ 38-2-3. Right to inspect and copy records--Duty to maintain minutes of meetings--Procedures for access

(a) Except as provided in § 38-2-2(4), all records maintained or kept on file by any public body, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person or entity shall have the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof.

(b) Any reasonably segregable portion of a public record excluded by subdivision 38-2-2(4) shall be available for public inspection after the deletion of the information which is the basis of the exclusion. If an entire document or record is deemed non-public, the public body shall state in writing that no portion of the document or record contains reasonable segregable information that is releasable.

(c) Each public body shall make, keep, and maintain written or recorded minutes of all meetings.

(d) Each public body shall establish written procedures regarding access to public records but shall not require written requests for public information available pursuant to [R.I.G.L. § 42-35-2](#) or for other documents prepared for or readily available to the public.

These procedures must include, but need not be limited to, the identification of a designated public records officer or unit, how to make a public records request, and where a public record request should be made, and a copy of these procedures shall be posted on the public body's website if such a website is maintained and be made otherwise readily available to the public. The unavailability of a designated public records officer shall not be deemed good cause for failure to timely comply with a request to inspect and/or copy public records pursuant to subsection (e). A written request for public records need not be made on a form established by a public body if the request is otherwise readily identifiable as a request for public records.

(e) A public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request. If the inspection or copying is not permitted within ten (10) business days, the public body shall forthwith explain in writing the need for additional time to comply with the request. Any such explanation must be particularized to the specific request made. In such cases the public body may have up to an additional twenty (20) business days to comply with the request if it can demonstrate that the voluminous nature of the request, the number of requests for records pending, or the difficulty in searching for and retrieving or copying the requested records, is such that additional time is necessary to avoid imposing an undue burden on the public body.

(f) If a public record is in active use or in storage and, therefore, not available at the time a person or entity requests access, the custodian shall so inform the person or entity and make an appointment for the person or entity to examine such records as expeditiously as they may be made available.

(g) Any person or entity requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them. Any public body which maintains its records in a computer storage system shall provide any data properly identified in a printout or other reasonable format, as requested.

(h) Nothing in this section shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data.

(i) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer.

(j) No public records shall be withheld based on the purpose for which the records are sought, nor shall a public body require, as a condition of fulfilling a public records request, that a person or entity provide a reason for the request or provide personally identifiable information about him/herself.

(k) At the election of the person or entity requesting the public records, the public body shall provide copies of the public records electronically, by facsimile, or by mail in accordance with the requesting person or entity's choice, unless complying with that preference would be unduly burdensome due to the volume of records requested or the costs that would be incurred. The person requesting delivery shall be responsible for the actual cost of delivery, if any.

Case Law

[600 A.2d 279](#)

Supreme Court of Rhode Island. STATE v. Aires CORREIA. No. 91-6-C.A.Dec. 5, 1991.

The defendant contends that the trial justice erroneously admitted into evidence the autopsy report prepared by Dr. Callery that contained references to bite marks and other information supplied by Doctors Villarosa and Murray. The defendant claims that the trial justice should have excluded the report because some conclusions contained in the report originated from Drs. Villarosa and Murray, who did not testify at trial, thereby violating defendant's constitutional right of confrontation. Rule 803(8) of the Rhode Island Rules of Evidence provides as follows:

...

“Public Records and Reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel [personnel], or (C) in civil actions and proceedings and against the state in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.”

The State Office of the Medical Examiner is a statutorily created agency of the government coming within Rule 803(8). Doctor Callery prepared the report while employed by the medical examiner's office. Doctor Callery, as a medical examiner, was under a legal duty to perform an autopsy, listing his findings and conclusions regarding the factual cause and manner of death. The doctor also testified that the autopsy report contained the activities of the medical examiner's office. Therefore, we conclude that the admission of the autopsy report is supported by the standards set forth by Rule 803(8).

South Carolina

Statute

[S.C. Code Ann. § 17-5-535](#)

§ 17-5-535. Persons authorized to view photographs or videos of autopsy; training use exception; penalty.

(A) Photographs, videos, or other visual images and audio recordings of or related to the performance of an autopsy shall only be viewed by or disseminated to:

- (1) the coroner or the medical examiner, or both, and their staff;
- (2) members of law enforcement agencies, for official use only;
- (3) parents of the deceased, surviving spouse, children, guardian, personal representative next of kin, and any other person given permission or authorization to view or possess the visual images by the personal representative of the deceased's estate;
- (4) those involved in a judicial or administrative proceeding related to the death of the subject of the photograph, video, other visual image or audio recordings including, but not limited to:
 - (a) parties to a civil suit arising from, related to, or relevant to the death or autopsy of the subject of the photograph, video, other visual image or audio recordings, and the attorneys for the parties and the staff of the attorneys;
 - (b) a person charged with a crime arising from, related to or relevant to the death or autopsy of the subject of the photograph, video, other visual image or audio recordings, and the person's attorney and the staff of the attorney;
 - (c) staff of the prosecutor's office considering or prosecuting criminal charges arising from, related to or relevant to the death or autopsy of the subject of the photograph, video, other visual image or audio recordings;
 - (d) lay and expert witnesses conferred with, consulted or retained by a party or an attorney considering or involved in a legal or administrative proceeding arising from, related to or relevant to the death or autopsy of the subject of the photograph, video, other visual image or audio recordings;
 - (e) judges and administrative hearing officers, as well as their staff, involved in a judicial or administrative proceeding arising from, related to or relevant to the death or autopsy of the subject of the photograph, video, other visual image or audio recordings; and
 - (f) members of any jury, including grand juries, petit juries and coroner's juries, empanelled to hear or decide any issue arising from, related to or relevant to the death or autopsy of the subject of the photograph, video, other visual image or audio recordings;

(5) physicians and other persons consulted by or supervising the physicians or persons who were involved in the performance of the autopsy of the subject of the photograph, video, other visual images, or audio recordings; and

(6) a person who receives such photographs, videos, or other visual images pursuant to a validly issued court order, after notice and opportunity to object are provided to the personal representative of the deceased's estate.

These photographs and videos must be released and disseminated only as authorized by this section.

(B) Notwithstanding the provisions contained in subsection (A), a photograph, video, other visual image of an autopsy, or an audio recording of an autopsy, or a combination of each of these items, after all information immediately identifying the decedent has been redacted and after making facial recognition anonymous to the extent reasonably possible if lawfully obtained or possessed may be used for:

(1) legitimate medical scientific teaching or training purposes;

(2) legitimate teaching or training of law enforcement personnel;

(3) teaching or training of attorneys or other individuals with a professional need to use or understand forensic science or public health;

(4) conferring with medical or scientific experts in the field of forensic science or public health; or

(5) publication in a scientific or medical or legal journal or textbook.

(C) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not less than five thousand dollars nor more than fifty thousand dollars. Each violation under this section must be considered a separate offense.

(LexisNexis, Lexis Advance through all Legislation enacted in the 2015 Session)

South Dakota

Statutes

[S.D. Codified Laws § 34-26-3](#)

34-26-3. Dissection authorized by decedent during life

The right to dissect the dead body of a human being exists whenever a person lawfully gives permission for such disposal of his body or any part thereof after death.

[S.D. Codified Laws § 1-27-1](#)

1-27-1. Public records open to inspection and copying

Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, as defined in § 1-27-1.1, are hereby fully empowered and authorized to examine such public record, and make memoranda and abstracts therefrom during the hours the respective offices are open for the ordinary transaction of business and, unless federal copyright law otherwise provides, obtain copies of public records in accordance with this chapter.

Each government entity or elected or appointed government official shall, during normal business hours, make available to the public for inspection and copying in the manner set forth in this chapter all public records held by that entity or official.

[S.D. Codified Laws § 1-27-1.1](#)

1-27-1.1. Public records defined

Unless any other statute, ordinance, or rule expressly provides that particular information or records may not be made public, public records include all records and documents, regardless of physical form, of or belonging to this state, any county, municipality, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form remains a public record when maintained in any other form. For the purposes of §§ 1-27-1 to 1-27-1.15, inclusive, a tax-supported district includes any business improvement district created pursuant to chapter 9-55.

[S.D. Codified Laws § 1-27-1.5](#)

1-27-1.5. Certain records not open to inspection and copying

The following records are not subject to §§ 1-27-1, 1-27-1.1, and 1-27-1.3:

- (1) Personal information in records regarding any student, prospective student, or former student of any educational institution if such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with [20 U. S.C. 1232g](#), as such section existed on January 1, 2009;

(2) Medical records, including all records of drug or alcohol testing, treatment, or counseling, other than records of births and deaths. This law in no way abrogates or changes existing state and federal law pertaining to birth and death records;

(3) Trade secrets, the specific details of bona fide research, applied research, or scholarly or creative artistic projects being conducted at a school, postsecondary institution or laboratory funded in whole or in part by the state, and other proprietary or commercial information which if released would infringe intellectual property rights, give advantage to business competitors, or serve no material public purpose;

(4) Records which consist of attorney work product or which are subject to any privilege recognized in article V of chapter 19-19;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, if the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training. However, this subdivision does not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person, and this subdivision does not apply to a 911 recording or a transcript of a 911 recording, if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure. This law in no way abrogates or changes §§ 23-5-7 and 23-5-11 or testimonial privileges applying to the use of information from confidential informants;

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property;

(7) Personnel information other than salaries and routine directory information. However, this subdivision does not apply to the public inspection or copying of any current or prior contract with any public employee and any related document that specifies the consideration to be paid to the employee;

(8) Information solely pertaining to protection of the security of public or private property and persons on or within public or private property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts, emergency management or response, or public safety, the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; lock combinations; or any blueprints, building plans, or infrastructure records regarding any building or facility that expose or create vulnerability through disclosure of the location, configuration, or security of critical systems;

(9) The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Gaming Commission and those persons or entities with which the commission has entered into contractual relationships. Nothing in this subdivision allows the commission to withhold from the public any information relating to amounts paid persons or entities with which the commission has entered into contractual relationships, amounts of prizes paid, the name of the prize winner, and the municipality, or county where the prize winner resides;

- (10) Personally identified private citizen account payment information, credit information on others supplied in confidence, and customer lists;
- (11) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;
- (12) Correspondence, memoranda, calendars or logs of appointments, working papers, and records of telephone calls of public officials or employees;
- (13) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in South Dakota if necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This subdivision does not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, or the federal Native American Graves Protection and Repatriation Act;
- (14) Records or portions of records kept by public bodies which maintain collections of archeological, historical, or paleontological significance which nongovernmental donors have requested to remain closed or which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the federal Native American Graves Protection and Repatriation Act and the Archeological Resources Protection Act;
- (15) Employment applications and related materials, except for applications and related materials submitted by individuals hired into executive or policymaking positions of any public body;
- (16) Social security numbers; credit card, charge card, or debit card numbers and expiration dates; passport numbers, driver license numbers; or other personally identifying numbers or codes; and financial account numbers supplied to state and local governments by citizens or held by state and local governments regarding employees or contractors;
- (17) Any emergency or disaster response plans or protocols, safety or security audits or reviews, or lists of emergency or disaster response personnel or material; any location or listing of weapons or ammunition; nuclear, chemical, or biological agents; or other military or law enforcement equipment or personnel;
- (18) Any test questions, scoring keys, results, or other examination data for any examination to obtain licensure, employment, promotion or reclassification, or academic credit;
- (19) Personal correspondence, memoranda, notes, calendars or appointment logs, or other personal records or documents of any public official or employee;
- (20) Any document declared closed or confidential by court order, contract, or stipulation of the parties to any civil or criminal action or proceeding;
- (21) Any list of names or other personally identifying data of occupants of camping or lodging facilities from the Department of Game, Fish and Parks;
- (22) Records which, if disclosed, would constitute an unreasonable release of personal information;

- (23) Records which, if released, could endanger the life or safety of any person;
- (24) Internal agency record or information received by agencies that are not required to be filed with such agencies, if the records do not constitute final statistical or factual tabulations, final instructions to staff that affect the public, or final agency policy or determinations, or any completed state or federal audit and if the information is not otherwise public under other state law, including chapter 15-15A and § 1-26-21;
- (25) Records of individual children regarding commitment to the Department of Corrections pursuant to chapters 26-8B and 26-8C;
- (26) Records regarding inmate disciplinary matters pursuant to § 1-15-20; and
- (27) Any other record made closed or confidential by state or federal statute or rule or as necessary to participate in federal programs and benefits.

Tennessee

Statute

[Tenn. Code Ann. § 38-7-119](#)

38-7-119. Unauthorized video or audio recordings of autopsies.

(a)

(1) Except as provided in subsection (c), it is an offense for the chief medical examiner, a county medical examiner, or pathologist designated pursuant to § 38-7-105, or any agent or employee of the chief medical examiner, a county medical examiner, or pathologist, to contract with or grant authorization to an unauthorized person or an external entity to photograph, videotape, or otherwise capture visual images, or audio recordings in whatever form of a deceased human body, a human autopsy or a body immediately prior to, during or immediately following an autopsy.

(2) No person shall distribute, publish or otherwise disseminate any autopsy photographs, videotape or other visual image or any autopsy audio recording without the written consent of the next of kin or personal representative in the order established pursuant to subdivision (c)(1)(A), unless such use is consistent with subdivision (c)(1)(B), (c)(1)(C) or (c)(1)(D).

(b) Nothing in this section shall prevent the chief medical examiner, a county medical examiner, or pathologist designated pursuant to § 38-7-105, or any agent or employee of the chief medical examiner, county medical examiner, or pathologist, from carrying out training efforts or such person's statutory responsibilities.

(c)

(1) A person is not considered "unauthorized" for purposes of subsection (a) if such person photographs, videotapes, or otherwise captures visual images, or audio recordings in whatever form of a deceased human body, human autopsy or a body immediately prior to, during or immediately following such an autopsy, if it is done with the express written consent or at the direction of:

(A) The next-of-kin or personal representative of the deceased in the following order of priority:

(i) Spouse;

(ii) Any adult child;

(iii) Parents;

(iv) Any sibling; or

(v) Administrator or executor, if appointed;

(B) A law enforcement agency or district attorney general, for official use only;

(C) A court order or subpoena; or

(D) An attorney representing a defendant in a criminal case where the original photographs, images or records of the chief medical examiner, a county medical

examiner, coroner or pathologist designated pursuant to § 38-7-105 are not available through discovery or are otherwise not sufficient for the defense of such defendant.

(2) In determining whether the next-of-kin of the deceased is authorized to give consent, the chief medical examiner, county medical examiner, or pathologist designated pursuant to § 38-7-105 shall refer to the priority order in subdivision (c)(1)(A). If a next-of-kin higher on the priority lists consents, the lack of consent of any next-of-kin lower on the list is irrelevant. If a next-of-kin higher on the priority list refuses to give consent, consent by a next-of-kin lower on the list is also irrelevant.

(d) A chief medical examiner, a county medical examiner, or pathologist designated pursuant to § 38-7-105, or any agent or employee of a chief medical examiner, a county medical examiner, or pathologist, shall incur no criminal or civil liability for permitting a person to photograph, videotape, or otherwise capture visual images, or audio recordings in whatever form of a deceased human body or a human autopsy or a body immediately prior to, during or immediately following an autopsy as a result of the consent to such conduct given by the next-of-kin, if such official is presented with the written consent of a next-of-kin of the deceased who is higher on the priority list set out in subdivision (c)(1)(A) than any next-of-kin who does not consent.

(e) To the extent that the chief medical examiner, a county medical examiner, or pathologist designated pursuant to § 38-7-105, or any agent or employee of the chief medical examiner, county medical examiner, or pathologist, is a covered entity under the privacy regulations promulgated pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), nothing in this section shall be construed to preempt any provisions of those regulations that provide greater protection of the deceased's privacy than does this section.

(f)

(1) A violation of subdivision (a)(1) is a Class A misdemeanor punishable by fine only.

(2) A violation of subdivision (a)(1) is a Class A misdemeanor punishable by fine or imprisonment if the chief medical examiner, a county medical examiner, coroner or pathologist, or an agent or employee of the chief medical examiner, a county medical examiner, coroner or pathologist, receives compensation or other thing of value as an inducement to violate this section.

(3) A violation of subdivision (a)(2) is a Class A misdemeanor.

(Lexis Advance through Chapter 1087 of the 2016 Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis.com and Lexis Advance after the publication of the certified volumes and supplements. Pursuant to [TCA sections 1-1-110](#), 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA).

Texas

Summary

Citation to relevant trial court order included in "Case Law" section below.

Statutes

Tex. Crim. Proc. Code Ann. § art. 49.25

Records

Sec. 11.

(a) The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. The records may not be withheld, subject to a discretionary exception under Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

(1) under a subpoena or authority of other law; or

(2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

(b) Under the exception to public disclosure provided by Subsection (a), a governmental body as defined by Section 552.003, Government Code, may withhold a photograph or x-ray described by Subsection (a) without requesting a decision from the attorney general under Subchapter G, Chapter 552, Government Code. This subsection does not affect the required disclosure of a photograph or x-ray under Subsection (a)(1) or (2).

[Tex. Gov't Code Ann. § 552.108](#)

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

(3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

[Tex. Gov't Code Ann. § 552.115](#)

(a) A birth or death record maintained by the vital statistics unit of the Department of State Health Services or a local registration official is excepted from the requirements of Section 552.021, except that:

(2) a death record is public information and available to the public on and after the 25th anniversary of the date of death as shown on the record filed with the vital statistics unit or local registration official, except that if the decedent is unidentified, the death record is public information and available to the public on and after the first anniversary of the date of death;

Case Law

THE HOUSTON CHRONICLE PUBLISHING COMPANY and Peggy O'Hare, v. Hon. Tommy THOMAS, Sheriff of Harris County, Texas., 2005 WL 4889929 2005 WL 4889929 (Tex.Dist.) (Trial Order)

District Court of Texas, 165th Judicial District. Harris County

Utah

Statutes

[Utah Code Ann. § 26-4-11](#)

§ 26-4-11. Records and reports of investigations

A complete copy of all written records and reports of investigations and facts resulting from medical care treatment, autopsies conducted by any person on the body of the deceased who died in any manner listed in Section 26-4-7 and the written reports of any investigative agency making inquiry into the incident shall be promptly made and filed with the medical examiner. Failure to submit reports other than reports of a county attorney, district attorney, or law enforcement agency, upon written request from the medical examiner within 10 days is a class B misdemeanor.

[Utah Code Ann. § 26-4-17](#)

§ 26-4-17. Records of medical examiner--Copies furnished to next-of-kin, law enforcement officers, and attending physician--Confidentiality

- (1) The medical examiner shall keep and maintain full and complete original records, properly indexed, giving the name, if known, or otherwise identifying every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, the occupation of the decedent if available, and all other relevant information concerning the death. A full report and detailed findings of the autopsy or report of the investigation shall be part of the record in each case.
- (2) The county attorney, the district attorney, the attorney general, or other law enforcement official having jurisdiction may, upon written request, secure copies of the original records where necessary for the performance of their duties.
- (3) The medical examiner shall promptly deliver copies of all reports, findings, and records gathered or compiled in the investigation of a death to the decedent's next-of-kin, legal representative, or physicians who attended the decedent during the year before death, upon their written request for the release of documents.
- (4) The medical examiner shall maintain the confidentiality of the records which shall be released as provided herein and upon payment of fees prescribed by the department under Section 26-1-6.

Vermont

Statute

12-6 Vt. Code R. § 2

6.4.8 Emergencies or Death of a Resident

- a. The ICF/MR must notify promptly, the resident's next-of-kin or guardian of any unusual occurrence concerning the resident, including serious illness, accident, or death.
- b. If any autopsy is performed after a resident's death:
 1. A qualified physician who has no conflict of interest or loyalty to the ICF/MR must perform the autopsy.
 2. The resident's family must be told of the autopsy findings if they so desire.

Virginia

Statutes

[Va. Code Ann. § 32.1-285](#)

§ 32.1-285. Autopsies

A. If, in the opinion of the Office of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy be made as part of the investigation of the death, or if an autopsy is requested by the attorney for the Commonwealth or by a judge of the circuit court of the county or city wherein such body is or where death occurred or wherein any injury contributing to or causing death was sustained, an autopsy shall be performed by the Chief Medical Examiner, an Assistant Chief Medical Examiner, or a pathologist with whom the Commissioner has entered into an agreement in accordance with § 32.1-281. Upon petition of a member of the immediate family or the spouse of the deceased in a case of death by injury, such circuit court may, for good cause shown, order an autopsy, after providing notice and an opportunity to be heard to the attorney for the Commonwealth for the jurisdiction wherein the injury contributing to or causing death was sustained or where death occurred.

Further, in all cases of death suspected to be attributable to Sudden Infant Death Syndrome (SIDS), an autopsy shall be advisable and in the public interest and shall be performed as required by § 32.1-285.1. A full record and report of the facts developed by the autopsy and findings of the person making such autopsy shall be promptly made and filed with the Office of the Chief Medical Examiner and a copy furnished the judge or attorney for the Commonwealth requesting such autopsy. In the discretion of the Chief Medical Examiner or an Assistant Chief Medical Examiner, a copy of any autopsy report or findings may be furnished to any appropriate attorney for the Commonwealth and to the appropriate law-enforcement agency investigating the death.

B. In the case of a child death investigation that indicates child abuse or neglect contributed to the death, or that the child suffered from abuse and neglect, the case shall be immediately reported to the child protective services unit of the local Department of Social Services by the Chief Medical Examiner, an Assistant Chief Medical Examiner, or a medical examiner appointed pursuant to § 32.1-282.

[Va. Code Ann. § 2.2-3704](#)

§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges; transfer of records for storage, etc.

A. Except as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter or to impose the time limits for response by a public body. Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester or make one of the following responses in writing:

1. The requested records are being entirely withheld. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.
2. The requested records are being provided in part and are being withheld in part. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.
3. The requested records could not be found or do not exist. However, if the public body that received the request knows that another public body has the requested records, the response shall include contact information for the other public body.
4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days in which to provide one of the four preceding responses.

C. Any public body may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search, and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

D. Subject to the provisions of subsection G, no public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body.

E. Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of this chapter.

F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public

body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, including, where the public body has the capability, the option of posting the records on a website or delivering the records through an electronic mail address provided by the requester, if that medium is used by the public body in the regular course of business. No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to provide records in any format under such terms and conditions as agreed between the requester and public body, including the payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation, or compilation of a new public record.

H. In any case where a public body determines in advance that charges for producing the requested records are likely to exceed \$200, the public body may, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

I. Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.

J. In the event a public body has transferred possession of public records to any entity, including but not limited to any other public body, for storage, maintenance, or archiving, the public body initiating the transfer of such records shall remain the custodian of such records for purposes of responding to requests for public records made pursuant to this chapter and shall be responsible for retrieving and supplying such public records to the requester. In the event a public body has transferred public records for storage, maintenance, or archiving and such transferring public body is no longer in existence, any public body that is a successor to the transferring public body shall be deemed the custodian of such records. In the event no successor entity exists, the entity in possession of the public records shall be deemed the custodian of the records for purposes of compliance with this chapter, and shall retrieve and supply such records to the requester. Nothing in this subsection shall be construed to apply to records transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the Virginia Public Records Act (§ 42.1-76 et seq.). In accordance with § 42.1-79, the

Library of Virginia shall be the custodian of such permanently archived records and shall be responsible for responding to requests for such records made pursuant to this chapter.

[Va. Code Ann. § 2.2-3705.5](#)

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and Developmental Services shall be disclosed. No such summaries or data shall include any information that identifies specific individuals receiving services.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

3. Reports, documentary evidence and other information as specified in §§ 51.5-122, 51.5-141, and 63.2-104.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2; and information furnished to the Office of the Attorney General in connection with an investigation or litigation pursuant to Article 19.1 (§ 8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (§ 32.1-310 et seq.) of Title 32.1. Information from the records of completed investigations shall be disclosed in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.
5. Information collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.
6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818.
7. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.
8. Information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1.
9. Information acquired (i) during a review of any child death conducted by the State Child Fatality Review team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to the extent that such information is made confidential by § 32.1-283.2; (ii) during a review of any death conducted by a family violence fatality review team to the extent that such information is made confidential by § 32.1-283.3; or (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § 32.1-283.5 or by a local or regional adult fatality review team to the extent that such information is made confidential by § 32.1-283.6.
10. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § 32.1-276.4.
11. Information held by the Health Practitioners' Monitoring Program Committee within the Department of Health Professions that may identify any practitioner who may be, or who is actually, impaired and disclosure of such information is prohibited by § 54.1-2517.
12. Information relating to a grant application, or accompanying a grant application, submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title 51.5 that would (i) reveal (a) medical or mental health records or other data identifying individual patients or (b) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, or scholarly issues, when such

information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

13. Any information copied, recorded, or received by the Commissioner of Health in the course of an examination, investigation, or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

14. Information and statistical registries required to be kept confidential pursuant to §§ 63.2-102 and 63.2-104.

15. Information relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such information that are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

16. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § 38.2-5002.2.

17. Information held by the State Health Commissioner relating to the health of any person subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1. However, nothing in this subdivision shall be construed to authorize the withholding of statistical summaries, abstracts, or other information in aggregate form.

18. The names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, ([42 U.S.C. § 12131](#) et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § 63.2-600.

19. Information held by certain health care committees and entities that may be withheld from discovery as privileged communications pursuant to § 8.01-581.17.

Washington

Statutes

West's [RCWA 68.50.105](#), WA ST 68.50.105

68.50.105. Autopsies, postmortems--Reports and records confidential--Exceptions

1) Reports and records of autopsies or postmortems shall be confidential, except that the following persons may examine and obtain copies of any such report or record: The personal representative of the decedent as defined in [RCW 11.02.005](#), any family member, the attending physician or advanced registered nurse practitioner, the prosecuting attorney or law enforcement agencies having jurisdiction, public health officials, the department of labor and industries in cases in which it has an interest under [RCW 68.50.103](#), or the secretary of the department of social and health services or his or her designee in cases being reviewed under [RCW 74.13.640](#).

(2)

(a) Notwithstanding the restrictions contained in this section regarding the dissemination of records and reports of autopsies or postmortems, nor the exemptions referenced under [RCW 42.56.240\(1\)](#), nothing in this chapter prohibits a coroner, medical examiner, or his or her designee, from publicly discussing his or her findings as to any death subject to the jurisdiction of his or her office where actions of a law enforcement officer or corrections officer have been determined to be a proximate cause of the death, except as provided in (b) of this subsection.

(b) A coroner, medical examiner, or his or her designee may not publicly discuss his or her findings outside of formal court or inquest proceedings if there is a pending or active criminal investigation, or a criminal or civil action, concerning a death that has commenced prior to January 1, 2014.

(3) The coroner, the medical examiner, or the attending physician shall, upon request, meet with the family of the decedent to discuss the findings of the autopsy or postmortem. For the purposes of this section, the term "family" means the surviving spouse, state registered domestic partner, or any child, parent, grandparent, grandchild, brother, or sister of the decedent, or any person who was guardian of the decedent at the time of death.

West's [RCWA 11.02.005](#), WA ST 11.02.005

11.02.005. Definitions and use of terms

(11) "Personal representative" includes executor, administrator, special administrator, and guardian or limited guardian and special representative.

Case Law

Reid v. Pierce Cty., [136 Wash. 2d 195, 210–13, 961 P.2d 333, 341–42](#) (1998)

We agree with the Plaintiffs' interpretation of the common law right of privacy and recognize that the cases relied upon by Plaintiffs are more consistent with our own jurisprudence on this issue than those relied upon by the County.

In *Cowles Publ'g Co. v. State Patrol*, [109 Wash.2d 712, 748 P.2d 597](#) (1988), we identified the nature of facts protected by the right of privacy, stating:

Every individual has some phases of his life and his activities and some facts about himself that he does not expose to the public eye, but keeps entirely to himself or at most reveals only to his family or to close personal friends. Sexual relations, for example, are normally entirely private

matters, as are family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man's life in his home, and some of his past history that he would rather forget. When these intimate details of his life are spread before the public gaze in a manner highly offensive to the ordinary reasonable man, there is an actionable invasion of his privacy, unless the matter is one of legitimate public interest.

Cowles Publ'g Co., [109 Wash.2d at 721, 748 P.2d 597](#) (quoting [Restatement \(Second\) of Torts § 652D](#), at 386 (1977)). See also *Seattle Firefighters Union Local No. 27 v. Hollister*, [48 Wash.App. 129, 135, 737 P.2d 1302](#) (1987). We fail to see how autopsy photographs of the Plaintiffs' deceased relatives do not constitute intimate details of the Plaintiffs' lives or are not facts Plaintiffs do not wish exposed "before the public gaze."

Furthermore, our holding is supported by [RCW 68.50.105](#), which declares a public policy that autopsy records regarding deceased persons remain confidential and distributed only to a select few. That statute states:

Autopsies, post mortems-Reports and records confidential-Exceptions. Reports and records of autopsies or post mortems shall be confidential, except that the following persons may examine and obtain copies of any such report or record: The personal representative of the decedent as defined *211 in [RCW 11.02.005](#), any family member, the attending physician, the prosecuting attorney or law enforcement agencies having jurisdiction, public health officials, or to the department of labor and industries in cases in which it has an interest under [RCW 68.50.103](#).

[RCW 68.50.105](#) (emphasis added). See *State v. Petersen*, [47 Wash.2d 836, 838, 289 P.2d 1013](#) (1955) (Autopsy reports remain confidential even after they are shared with parties outlined in statute. "If this was not so, then a prosecutor, after obtaining an autopsy report, could pass it on to others, and the legislative pronouncement that such reports are confidential would be violated." (emphasis added)). In addition to [RCW 68.50.105](#), a November 4, 1994 memorandum from the County to staff of the Medical Examiner's office indicates the County recognized the confidential nature of autopsy reports:

In the past, we have had a few "prominent" people come to our office that have required an autopsy. Photographs have been taken by employees of these people for "personal" collections. The only photographs that should be taken of individuals are for investigation and autopsy purposes only. Please destroy any photographs that you may be keeping for personal **342 reasons, or place the photo(s) in the case file. Any employee found with these photos in their possession without justification, will be subject to severe disciplinary action.

Clerk's Papers (Hyde-Lucas) at 264.

With those two examples of the confidential nature of autopsy reports in mind, we can only conclude that, by displaying the autopsy photographs, a matter private to the lives of the Plaintiffs was given publicity by the County. In none of the cases relied upon by the County is there mention of a statute analogous to [RCW 68.50.105](#). This statute reflects a public policy identified by the Legislature that records made during an autopsy remain confidential and should be released only to those persons which have a genuine interest in the reports.

The County's assertion that Plaintiffs have no privacy interest in the autopsy records is *212 refuted by [RCW 68.50.105](#), which requires confidentiality, and by the County's own directive to its employees not to appropriate and display autopsy records. To hold, as the County would suggest, that the relatives of a decedent have no cause of action, no matter how egregious the act, is counterintuitive. We conclude, instead, that the relatives of the deceased have a protectable privacy interest.

Our conclusion is supported by *Loft v. Fuller*, [408 So.2d 619](#) (Fla.App.1981). There, the Florida Court of Appeals addressed the right of privacy of family members after a book had been published containing

certain information regarding one of their deceased relatives. The court recognized that case authority was split on whether the deceased's relatives may recover for invasion of their own privacy interests even though they were not personally the focus of the publicity in question. Although the court determined the plaintiffs could not maintain an action for invasion of privacy because the "appellants have not alleged any independent violation of their own personal privacy rights," Loft, [408 So.2d at 624](#), the court stated:

We are wary of a blanket rule barring all relatives of a deceased from bringing a common law invasion of privacy action simply because the relatives were not directly involved in the publicity. However, in our view such relatives must shoulder a heavy burden in establishing a cause of action. When there are unusual circumstances, such as those that were involved in most of the cases which have recognized claims by the relatives, it may be that a defendant's conduct towards a decedent will be found to be sufficiently egregious to give rise to an independent cause of action in favor of members of decedent's immediate family.

Loft, [408 So.2d at 624](#). We agree.

12 We hold the immediate relatives of a decedent have a protectable privacy interest in the autopsy records of the decedent. That protectable privacy interest is grounded in maintaining the dignity of the deceased. We also hold the trial court erred in granting the County's CR 12(b)(6) and summary judgment motions on this issue. The County's actions *213 in these cases are sufficiently egregious to enable the families of the deceased to maintain their own action. Plaintiffs have alleged sufficient facts to require trial on this issue.

Child's suicide note was exempt from disclosure under provision in Public Disclosure Act exempting autopsy and post mortem reports even though it was written before, rather than after death and creation of medical examiner's records, as note was part of the examiner's post mortem report about circumstances of child's death. *Comaroto v. Pierce County Medical Examiner's Office* (2002) [111 Wash.App. 69, 43 P.3d 539](#).

While an autopsy report is confidential under this section, trial court retains discretion to admit such a report. *Zueger v. Public Hosp. Dist. No. 2 of Snohomish County* (1990) [57 Wash.App. 584, 789 P.2d 326](#). Intention of legislature to place autopsy reports in class which is not subject to judicial inquiry or process cannot be determined by word "confidential" as used in this section, since legislative intent must be gleaned from examination of enactment in its entirety. *State v. Thompson* (1959) [54 Wash.2d 100, 338 P.2d 319](#).

While this section relates initially to report of autopsy being confidential in hands of the coroner, such report would remain confidential while in possession of prosecuting attorney. *State v. Petersen* (1955) [47 Wash.2d 836, 289 P.2d 1013](#).

Relatives of deceased individuals could maintain common law action for invasion of privacy against county based on allegations that county employees had appropriated photographs of decedents' corpses taken by medical examiner's office and had shown them to others. *Reid v. Pierce County* (1998) [136 Wash.2d 195, 961 P.2d 333](#).

Immediate relatives of a decedent have a protectable privacy interest in the autopsy records of the decedent. *Reid v. Pierce County* (1998) [136 Wash.2d 195, 961 P.2d 333](#).

[W. Va. Code Ann. § 61-12-10](#)

§ 61-12-10. When autopsies made and by whom performed; records of date investigated; copies of records and information; reporting requirements

(a) If in the opinion of the chief medical examiner, or of the county medical examiner of the county in which the death in question occurred, it is advisable and in the public interest that an autopsy be made, or if an autopsy is requested by either the prosecuting attorney or the judge of the circuit court or other court of record having criminal jurisdiction in that county, an autopsy shall be conducted by the chief medical examiner or his or her designee, by a member of his or her staff, or by a competent pathologist designated and employed by the chief medical examiner under the provisions of this article. For this purpose, the chief medical examiner may employ any county medical examiner who is a pathologist who holds board certification or board eligibility in forensic pathology or has completed an American Board of Pathology fellowship in forensic pathology to make the autopsies, and the fees to be paid for autopsies under this section shall be in addition to the fee provided for investigations pursuant to section eight of this article.

A full record and report of the findings developed by the autopsy shall be filed with the office of the chief medical examiner by the person making the autopsy.

(b) Within the discretion of the chief medical examiner, or of the person making the autopsy, or if requested by the prosecuting attorney of the county, or of the county where any injury contributing to or causing the death was sustained, a copy of the report of the autopsy shall be furnished to the prosecuting attorney.

(c) The office of the chief medical examiner shall keep full, complete and properly indexed records of all deaths investigated, containing all relevant information concerning the death and the autopsy report if an autopsy report is made. Any prosecuting attorney or law-enforcement officer may secure copies of these records or information necessary for the performance of his or her official duties.

(d) Copies of these records or information shall be furnished, upon request, to any court of law, or to the parties therein to whom the cause of death is a material issue, except where the court determines that interests in a civil matter conflict with the interests in a criminal proceeding, in which case the interests in the criminal proceeding shall take precedence. The office of chief medical examiner shall be reimbursed a reasonable rate by the requesting party for costs incurred in the production of records under this subsection and subsection (c) of this section.

(e) The chief medical examiner is authorized to release investigation records and autopsy reports to the multidisciplinary team authorized by section three, article five-d, chapter forty-nine of this code and as authorized in subsection (h) of this section. At the direction of the Secretary of the Department of Health and Human Resources the chief medical examiner may release records and information to other state agencies when considered to be in the public interest.

(f) Any person performing an autopsy under this section is empowered to keep and retain, for and on behalf of the chief medical examiner, any tissue from the body upon which the autopsy was performed which may be necessary for further study or consideration.

(g) In cases of the death of any infant in the State of West Virginia where sudden infant death syndrome is the suspected cause of death and the chief medical examiner or the medical examiner of the county in which the death in question occurred considers it advisable to perform an autopsy, it is the duty of the chief medical examiner or the medical examiner of the county in which the death occurred to notify the sudden infant death syndrome program within the division of maternal and child health and to inform the program of all information to be given to the infant's parents.

(h) If the chief medical officer determines that a drug overdose is the cause of death of a person, the chief medical examiner shall provide notice of the death to the West Virginia Controlled Substances Monitoring Program Database Review Committee established pursuant to subsection (b), section five, article nine, chapter sixty-a of this code and shall include in the notice any information relating to the cause of the fatal overdose.

W. Va. Code R. 64-84-19

§ 64-84-19. Autopsy Reports.

19.1. The autopsy report shall comprise the document titled "Report of Death Investigation and Post-mortem Examination Findings," together with all reports of ancillary tests requested by the prosecutor. The autopsy report shall include at least the following items:

19.1.a. The name of the deceased and the method of identification;

19.1.b. The condition of the body as received, including the state of preservation of the body and the development of postmortem changes; the deceased's clothing as well as its condition and significant defects;

19.1.c. Body development, and the height and weight of the deceased;

19.1.d. A description of body surface features, such as scars and tattoos;

19.1.e. A description of medical treatment and any postmortem organ or tissue donation, and associated effects;

19.1.f. A report of injury and manifestations thereof;

19.1.g. A report of findings on internal examination, including organ weight and appearance, and any abnormalities present, including natural disease, malformation or injury, and their effects;

19.1.h. A report of the microscopic examination, if performed;

19.1.i. A list of retained materials taken from the body during autopsy;

19.1.j. A list of other ancillary studies performed during, or as part of the autopsy, such as toxicology, photography, or X-ray imaging, and their results;

19.1.k. A statement of determination of the cause and manner of death based on autopsy findings, review of pertinent medical and investigative records and investigation findings, noting both areas of correlation and conflict of autopsy findings with reported circumstances of death and;

19.1.l. The date, place and time of the autopsy; the identity of the prosecutor; his or her signature, and the date he or she signed it

19.2. The autopsy report shall not include medical, corrective and/or other therapeutic, investigative and incarceration records of the deceased obtained by the investigation at OCME request pursuant to [WV Code § 61-12-8\(a\)](#).

19.3. The original autopsy report, or any other original or irreplaceable element as determined by the Chief Medical Examiner pertaining to the OCME case files, may not be released from the OCME custody. When, upon request, copies of autopsy reports are released, pursuant to [WV Code § 61-12-10](#), to the prosecuting attorney or to the court of record having criminal jurisdiction over the death, by mail or by other established courier, including electronically, such copies of the autopsy report shall be released with a notarized statement attesting that it is a true and accurate copy of the original record.

19.4. Pursuant to § 61-12-10(e) and § 49-6A-2, in the case of the death of any unemancipated person under the age of 18, whose death cannot be wholly attributed to natural disease, or where there is suspicion of significant neglect or maltreatment of the decedent, immediate notification of the death and known death circumstances shall be made to Child Protective Service (CPS) of the county of decedent residence, using a form provided by the OCME.

19.5. A reasonable fee may be charged by the Commissioner for providing autopsy reports.

19.5.a. Fees payable under this section shall be deposited in the health services fund to be used to support the purposes of the OCME.

Current with updates received through July 31, 2016

W. Va. Code R. 15-8-7

§ 15-8-7. Confidentiality.

7.1. The board shall carry out a program to protect the confidentiality of the information received by the central repository.

7.2. The board may disclose confidential information received by the central repository to any person who is engaged in receiving, processing, or storing the information.

7.3. The board may release confidential information received by the central repository to the following persons:

- (a) A duly authorized agent of a board in this state or another state that licenses practitioners authorized to prescribe Schedules II, III, and IV controlled substances who is engaged in an investigation, an adjudication, or a prosecution of a violation under any state or federal law that involves a controlled substance;
- (b) Members of the West Virginia State Police expressly authorized by the superintendent of the West Virginia State Police to have access to the information;
- (c) An authorized agent of a local law-enforcement agency who is acting as a member of a Federally affiliated drug task force who is engaged in an investigation, an adjudication, or a prosecution of a violation under any state or federal law that involves a controlled substance;
- (d) Authorized agents of the federal Drug Enforcement Administration who is engaged in an investigation, an adjudication, or a prosecution of a violation under any state or federal law that involves a controlled substance;
- (e) The Chief Medical Examiner for the State of West Virginia or his or her duly authorized agent for use in post-mortem examinations;
- (f) A person with an enforceable court order or regulatory agency administrative subpoena;
- (g) Inspectors and agents of the board to carry out the lawful purposes of the CSMP program, for purposes of a pharmacy inspection or drug inventory, or who are engaged in an investigation, an adjudication, or a prosecution of a violation under any state or federal law that involves a controlled substance;
- (h) Prescribing practitioners or their duly authorized agents;
- (i) Pharmacists or a registered pharmacy technician as the agent of the pharmacist; and
- (j) A person using the data for compilation of educational, scholarly, or statistical purposes so long as the individually identifiable data of the persons or entities stored in the central repository remains confidential.

7.4. All information released by the board shall be related to a specific patient or a specific individual or entity under investigation by any of the persons set forth in subsection 7.3 (a) through (i) of this section except that practitioners who prescribe or dispense controlled substances may also request specific data related to any and all dispensings reported to the database as prescribed and/or dispensed under their drug enforcement administration controlled substance registration number or for the purpose of providing treatment to a patient.

(a) A practitioner or practitioner's delegate may, prior to affirmatively accepting a patient into the practitioner's practice, obtain confidential information from the CSMP related to that patient for the purpose of determining whether or not to accept the patient and provide treatment.

(b) If the patient is a newborn child or child being fed human breast milk, a practitioner or practitioner's delegate may obtain confidential information from the CSMP related to the child's mother, wet nurse, or other direct source of human breast milk, as the practitioner believes may be relevant for the purpose of providing treatment to that child-patient.

7.5. All access to the data collected by the central repository shall be limited to regular business hours of the board's office unless an individual authorized to receive the information proves that an immediate danger to the public exists and immediate access is necessary to prevent further harm, Provided That the board may permit access at any time to authorized users through the use of a secure connection and through the use of proper security features designed to protect the integrity and confidentiality of the information from unauthorized access or disclosure.

7.6. Any person or entity having access to the central repository and who is permitted to designate a duly authorized agent to have access to the central repository pursuant to this rule shall make the designation on a form to be supplied by the board. It is the responsibility of the designating individual to insure that the designated agent maintains the confidentiality of the information in the central repository as required. Further, should the designating individual remove the authority of the designated agent to act as the duly authorized agent, or should the designated agent leave the employment of the designating individual or entity such that he or she is no longer eligible to act as the duly authorized agent, then the designating individual shall immediately notify the board, at which time the designee's access to the central repository shall be removed.

7.7. A practitioner may file or store copies of any patient-specific report obtained from the CSMP in the patient's confidential medical file or chart maintained by the practitioner. The practitioner may share the information contained in the report with other practitioners providing treatment to the patient, the patient, or the patient's properly authorized guardian or representative for the purpose of providing treatment. However, the information held in the patient file or chart is not subject to discovery in a civil or criminal matter absent a court order. The information is obtainable from the practitioner in a proper regulatory agency administrative matter through a regulatory agency administrative subpoena.

7.8. The board shall review records in the CSMP in accordance with parameters set by the Advisory Committee to identify abnormal or unusual practices of patients who exceed those parameters and are therefore outliers in the CSMP data. The board shall issue reports of the results of these searches to the Review Committee for its regular review and action. Further, the board shall communicate with prescribers and dispensers of the patients who exceed the parameters to inform them of each practitioner's patient's activities as demonstrated in the CSMP reports. All such reports and communications produced by the board shall be kept confidential by the board and the Review Committee, and are not open to inspection except as provided for confidential records and reports of the Review Committee.

7.9. The Review Committee may query the CSMP based on parameters established by the advisory committee to identify abnormal or unusual practices of patients who are outliers in the data according to their controlled substance prescribing, dispensing, or usage patterns or other indicators available in the system. The Review Committee may also query the CSMP based on parameters established by the advisory committee to identify abnormal prescribing and/or dispensing patterns of practitioners indicated by outliers in the system. The Review Committee may also query the CSMP for any relevant prescribing or dispensing records of involved patients or practitioners as it carries out its duty to review notices provided by the chief medical examiner pursuant to [West Virginia Code § 61-12-10\(h\)](#) and determine on a case-by-case basis whether a practitioner who prescribed or dispensed a controlled substance may have resulted in or contributed to the drug overdose, and, if so, if the practitioner may have breached

professional or occupational standards or committed a criminal act when prescribing the controlled substance at issue to the decedent. The Review Committee, in accordance with parameters established by the Advisory Committee, may provide any pertinent information in its discretion from the CSMP to the relevant practitioner, the practitioner's licensing board, or law enforcement as permitted by [West Virginia Code § 60A-9-5\(b\)](#). The Review Committee, in accordance with parameters established by the Advisory Committee, may also communicate with pertinent practitioners or patients to make them aware of the practitioner's own prescribing or dispensing patterns or history, or the patient's own usage patterns or history as reflected in the CSMP in an effort to reduce inappropriate use of prescription drugs in accordance with [West Virginia Code § 60A-9-5\(3\)\(C\)](#). The information obtained and developed by or on behalf of the Review Committee may not be shared except as provided in [West Virginia Code § 60A-9-5\(b\)](#) and as provided specifically in subsection 7.8 and this subsection of this section.

WEST VIRGINIA BOARD OF PHARMACY

Current with updates received through July 31, 2016

W. Va. Code R. 64-84-18

§ 64-84-18. Release of Information.

18.1. Autopsy and investigation findings, results of ancillary studies performed by or at the request of the OCME and all case file documents created by the process of death investigation by this office are confidential records and information, disclosed only as specified under [WV Code §§ 61-12-8](#), 61-12-10, 61-12-13 and 61-12A-3. In the case of deaths investigated by the OCME, medical, corrective, other therapeutic, investigative and incarceration records of the deceased obtained at OCME request pursuant to [WV Code § 61-12-8\(a\)](#), are confidential and are not releasable by the medical examiner upon any request or subpoena.

18.2. With the exception of any medical, corrective, and or other therapeutic, investigative and incarceration records of the deceased obtained by the investigation at OCME request pursuant to [W.V. Code § 61-12-8\(a\)](#) the OCME shall release records and information obtained by the OCME investigation to the next of kin, the executor or administrator of the estate, or to any designee specified by the next of kin or executor or administrator of the estate, upon their written request, except when the circumstances of death are the subject of a criminal investigation or criminal proceeding, in which case the same records and information pertaining to the investigation into the death by the OCME shall be released only to the principal investigating agency, the prosecuting attorney holding jurisdiction for the death, or to their designee unless the prosecuting attorney authorizes the release or unless the release is authorized by order of the court of record having criminal jurisdiction.

18.3. At the direction of the Secretary, the Chief Medical Examiner may release autopsy or toxicology reports to governmental agencies when the Secretary finds it to be in the public interest, except when the circumstances of death are the subject of a criminal investigation or criminal proceeding in accordance with [WV Code § 61-12-10\(d\)](#).

Current with updates received through July 31, 2016

Wisconsin

Summary

State Health Regulations included

Administrative Regulations

Wis. Admin. Code HS § 124.14

(1) MEDICAL RECORD. A medical record shall be maintained for every patient admitted for care in the hospital. The record shall be kept confidential and released only in accordance with ss. 51.30, 146.81 to 146.83, or 252.15, Stats., and ch. DHS 92, as appropriate.

(2) SERVICE.

(a) General requirement. The hospital shall have a medical records service with administrative responsibility for all medical records maintained by the hospital.

(b) Confidentiality.

1. Written consent of the patient or the patient's legally authorized representative shall be presented as authority for release of medical information to persons not otherwise authorized to receive this information.

2. Original medical records may not be removed from the hospital except by authorized persons who are acting in accordance with a court order, a subpoena issued under s. 908.03 (6m), Stats., or in accordance with contracted services, and where measures are taken to protect the record from loss, defacement, tampering and unauthorized access.

(c) Preservation. There shall be a written policy for the preservation of medical records, either the original record or in the form of microfiche. The retention period shall be determined by each hospital based on historical research, legal, teaching, and patient care needs but medical records shall be maintained for at least 5 years.

(d) Personnel. 1. Adequate numbers of personnel who are qualified to supervise and operate the service shall be provided.

Wis. Admin. Code HS § 124.14

(3) RESPONSIBILITIES.

(a) Medical record contents. The medical record staff shall ensure that each patient's medical record contains:

...

15. Autopsy findings when an autopsy is performed;

Wis. Admin. Code HS § 92.03

(4) Release of treatment records after death.

(a) Consent for the release of treatment records of a deceased patient may be given by an executor, administrator or other court-appointed personal representative of the estate.

(b) If there is no appointment of a personal representative, the consent may be given by the patient's spouse or, if there is none, by any responsible member of the patient's family.

(c) Disclosures required under federal or state laws involving the collection of death statistics and other statistics may be made without consent.

Wyoming

Statute

[Wyo. Stat. Ann. § 7-4-105](#)

§ 7-4-105. Confidentiality of reports, photos and recordings; exceptions; penalties

(a) After viewing the body and completing his investigation, the coroner shall draw up and sign his verdict on the death under consideration. The coroner shall also make a written docket giving an accurate description of the deceased person, his name if it can be determined, cause and manner of death, including relevant toxicological factors, age of decedent, date and time of death and the description of money and other property found with the body. The verdict and written docket are public records and may be viewed or obtained by request to the coroner, pursuant to W.S. 16-4-202.

(b) Except as provided in subsections (c), (d), (e), (g) and (o) of this section a toxicology report, a photograph, video recording or audio recording made at the scene of the death or made in the course of a postmortem examination or autopsy made or caused by a coroner shall be confidential and are not public records.

(c) A surviving spouse, surviving parent, an adult child, personal representative, legal representative, or a legal guardian may:

(i) View and copy a toxicology report, a photograph or video recording made at the scene of the death or made in the course of a postmortem examination or autopsy made by or caused by a coroner; and

(ii) Listen to and copy an audio recording made at the scene of the death or made in the course of a postmortem examination or autopsy made by or caused by a coroner.

(d) Upon making a written request, a law enforcement entity of the state of Wyoming or United States government, a district attorney, the United States attorney for the district of Wyoming, a county, state or federal public health agency, a board licensing health care professionals under title 33 of the Wyoming statutes, the division responsible for administering the Wyoming Workers' Compensation Act, the state occupational epidemiologist, the department and the division responsible for administering the Wyoming Occupational Health and Safety Act, the office of the inspector of mines, insurance companies with legitimate interest in the death, all parties in civil litigation proceedings with legitimate interest in the death or a treating physician, while in performance of his official duty may:

(i) View and copy a toxicology report, photograph or video recording made at the scene of the death or made in the course of a postmortem examination or autopsy made by or caused by a coroner; and

(ii) Listen to and copy an audio recording made at the scene of the death or made in the course of a postmortem examination or autopsy made by or caused by a coroner.

(e) Unless otherwise required in the performance of official duties, the identity of the deceased shall remain confidential in any record obtained under subsection (d) of this section.

(f) The coroner having custody of a toxicology report, a photograph, a video recording or an audio recording made at any scene of the death or made in the course of a postmortem

examination or autopsy may allow the use for case consultation with an appropriate expert. The coroner may also allow the use of a toxicology report, a photograph, a video recording or an audio recording made at the scene of the death or made in the course of a postmortem examination or autopsy by legitimate scientific research organizations or for training purposes provided the identity of the decedent is not published or otherwise made public.

(g) A court upon showing of good cause, may issue an order authorizing a person to:

(i) View or copy a toxicology report, photograph or video recording made at the scene of the death or made in the course of a postmortem examination or autopsy made or caused by a coroner; and

(ii) Listen to and copy an audio recording made at the scene of the death or made in the course of a postmortem examination or autopsy made or caused by a coroner.

(h) In determining good cause under subsection (g) of this section, the court shall consider:

(i) Whether the disclosure is necessary for the public evaluation of governmental performance;

(ii) The seriousness of the intrusion into the family's privacy;

(iii) Whether the disclosure of the toxicology report, photograph, video recording or audio recording is by the least intrusive means available; and

(iv) The availability of similar information in other public records regardless of form.

(j) A surviving spouse shall be given reasonable notice and a copy of any petition filed with the court under subsection (g) of this section and reasonable opportunity to be present and be heard on the matter. If there is no surviving spouse, the notice of the petition being filed and the opportunity to be heard shall be given to the deceased's parents and if the deceased has no living parent, the notice of the petition being filed and the opportunity to be heard shall be given to the adult children of the deceased or legal guardian, personal representative or legal representative of the children of the deceased.

(k) A coroner or coroner's designee that knowingly violates this section shall be guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than one thousand dollars (\$1,000.00), or both.

(m) A person who knowingly or purposefully uses the information in a manner other than the specified purpose for which it was released or violates a court order issued under subsection (g) of this section is guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than one thousand dollars (\$1,000.00), or both.

(n) In all cases, the viewing, copying, listening to, or other handling of a toxicology report, photograph, video recording, or audio recording made at a scene of the death or made in the course of a postmortem examination or autopsy made or caused by a coroner shall be under the direct supervision of the coroner, or the coroner's designee, who is the custodian of the record.

(o) In the event that the coroner, or the coroner's designee, determines that a person's death was caused by an infectious disease, biological toxin or any other cause which may constitute a public health emergency as defined in W.S. 35-4-115(a)(i), the coroner shall release to the state health officer or his designee all information and records required under W.S. 35-4-107. If the

state health official or his designee determines upon an examination of the results of the autopsy and the toxicology report that a public health emergency may in fact exist, he shall release the appropriate information to the general public as provided by department of health rules and regulations.

W. S. 1977 § 7-4-105, WY ST § 7-4-105

Current through the 2016 Budget Session