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LANCASTER COUNTY COURTHOUSE
50 NORTH DUKE STREET
PO Box 83480
LANCASTER, PA 17608-3480

May 6, 2009

Bill Keisling
c/o Yardbird Books

Dear Mr. Keisling:

Thank you for writing to the Lancaster County District Attorney's Office with your request for information pursuant to the Pennsylvania Right to Know law (hereinafter, RTK law). **65 P.S. § 67.101 et seq.** On April 22, 2009, you requested:

[a]ll autopsy and forensic records, including any and all notes, records, and correspondence, in the homicide of Jonathan Luna, who was found murdered outside of Denver, PA, Lancaster County, on December 4, 2003. Please be as complete as possible.

First, please be advised that the investigation into the death of Jonathan Luna is a joint investigation by the Federal Bureau of Investigation-Baltimore Office and the Pennsylvania State Police. The Federal Bureau of Investigation is the primary investigating agency. The Lancaster County District Attorney's Office has been apprised regarding the investigation by the primary investigating agency only because Lancaster County is the jurisdiction where the death occurred. The Luna death remains an open investigation.

Your request is denied based on several reasons as detailed herein. First, regarding the autopsy report, the request is denied under the RTK law and the law enforcement privilege in that this is an open and ongoing criminal investigation. **65 P.S. 67.708(b)(16)(vi)(A,B,C,D)**. Specifically, conversations with the Chief of the Violent Crimes Unit/Supervisor of the Luna investigation for the United States Attorney's Office for the Eastern District of Pennsylvania have revealed that the Luna investigation is an open and ongoing federal criminal investigation in which the leads are continuously being developed and additionally that the Luna case is part of

an open federal grand jury investigation afforded secrecy under federal grand jury proceedings. **F.R.CrimP. 6¹**. Furthermore, releasing the autopsy report, considering the highly confidential facts within that report, would definitively and negatively impact the Luna investigation currently and into the future. **65 P.S. 67.708(b)(16)(vi)**.

Moreover, because the Luna case is an open federal grand jury case, the records and materials of the case are afforded protection of the secrecy of the federal grand jury process which should preclude release under Pennsylvania's RTK law. Additionally, the request for the autopsy report is denied pursuant to RTK Exception **65 P.S. 67.708(b)(20)** which specifically provides that autopsy reports and the attendant records are an exception to RTK² and **65 P.S. 67.708(b)(16)** which protects all criminal investigative records. Further, the request violates the Pennsylvania Criminal History Record Information Act. (Hereinafter, CHRIA), at **18 Pa.C.S.A. § 9101 et seq.**, and **§§ 9102, 9106(c)(4)**, See also; **In RE: Cullen**, 2007 Pa. D&C Dec. LEXIS 1 (Lehigh Cnty. 2007).

Your request for forensic records, notes and correspondence which we interpret as a request for criminal investigative records is denied based on all of the above stated reasons in the denial of the autopsy report including but not limited to the RTK law Exception **65 P.S. § 67.708(b)(16) generally and specifically Section 708(b)(16)(ii)** and additionally based on Attorney Work Product privilege. See also **Section 708(b)(10)(i)**.

You have a right to appeal the denial of the requested information in writing. Because you have requested both criminal investigative material and an autopsy report, you must file two separate appeals with two separate offices, as follows:

1. How to appeal the denial of the autopsy report:

You have the right to appeal the denial of the autopsy report in writing to Terry Mutchler, Executive Director, Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120. If you choose to file an appeal of the denial of the

¹**65 P.S. § 67.708(b)(16)(iv)**.

²Your request has been made solely under the Right to Know Law, the Coroner's Act is not relevant to the request. See **Penn Jersey Advance, Inc. v. Grim**, 962 A.2d 632 n.2 (Pa. 2009)(Supreme Court expresses no opinion as to relationship between RTK law in Pennsylvania and the Coroner's Act). Moreover, a search by this office revealed that no information on the death of Jonathan Luna exists in the records of the Lancaster County Prothonotary's Office. Accordingly, because this autopsy report has not been filed with the Lancaster County Prothonotary's Office it is not governed by the Coroner's Act and it is not a public record. It is, therefore, protected under the RTK law **65 P.S. § 67.708(20)(In the Matter of: Jack Brubaker, v. County of Lancaster**, AP 2009-0104 (Office of Open Records, April 17, 2009)).

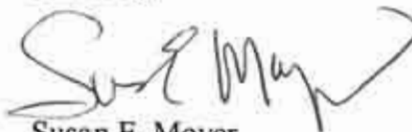
autopsy report you must do so within 15 business days of the mailing date of this letter. See 65 P.S. § 67.1101.

2. How to appeal the denial of criminal investigative material:

You have a right to appeal the denial of the forensic (criminal investigative records) including any and all notes, records, and correspondence requested information, in writing to Christopher Larsen, Lancaster County District Attorney's Office, 50 North Duke Street, P.O. Box 83480, Lancaster, PA 17608-3480. If you choose to file an appeal of the denial of the criminal investigative material you must do so within 15 business days of the mailing date of this letter. See 65 P.S. § 67.1101.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Susan E. Moyer", with a stylized flourish at the end.

Susan E. Moyer
Assistant District Attorney/Right to Know Officer
Lancaster County District Attorney's Office
50 North Duke Street
P.O. Box 83480
Lancaster, PA 17608-3480