

This guideline was developed as a recommendation for Determination of Death.

A **Standard** is the least minimum level of acceptable performance.

A **Guideline or Principle** is a suggested level of performance, but not a standard.

A **Best Practice** is the most rigorous level of performance and is based on current knowledge without resource limitations. (Shall; cannot deviate from; required)

16 P.S.C.A. § 1227-B: Subpoena and attachment:

The coroner may issue a subpoena and attachment, which shall be served and executed by the sheriff, coroner or coroner's deputy, for the following purposes: (1) A death investigation. (2) To obtain the attendance of an individual who may be necessary to examine as a witness at an inquest. (3) To compel attendance by attachment in a similar manner and extent as a court of common pleas may do in a case pending before the court. (4) To compel the production of the following: (i) A paper. (ii) A document in any form or media, including a medical and mental health record. (iii) Another thing relative to the investigation or inquest.

On July 18, 2024, the Court of Common Pleas of Washington County handed down a very important court opinion, regarding several issues:

1. *"It is clear to this Court that, based upon the aforementioned case law, the Coroner falls within the boundaries of being a criminal justice agency within CHRIA. Further, the legislature expanded the Coroner's subpoena powers on December 24, 2018. Prior thereto, the Coroner was only permitted to subpoena documents for hearings pursuant to 10 P.S. §1245."*

"The coroner shall have the power to issue subpoenas to obtain the attendance of any person whom it may be necessary to examine as a witness at any inquest, and to compel attendance by attachment in like manner and to the same extent as any court of common pleas of this Commonwealth may or can do in cases pending before them, and also compel in like manner the production of all papers and other things relative to such inquest. Such subpoena and attachment shall be served and executed by the sheriff or by the coroner himself or his deputy, as the case may require."

2. *"Further to correct the record, the Coroner shall re-issue amended subpoenas to indicate they are for an investigation, not inquest."*

In the above statute, 16 P.S.C.A. § 1227-B: Subpoena and attachment, it states the Coroner may issue a subpoena and attachment in a death or at an inquest. In this Court's opinion, it made very clear the Coroner needed to re-issue the subpoena because he was requesting documents for an investigation and not for an inquest.

With that being said, it is highly recommended that your Office's subpoenas be revised to reflect a specific subpoena be issued for a death investigation and for an inquest. If an investigation subpoena would lead to the need for an inquest, subsequent inquest subpoenas should be issued.

The 9-page Court opinion from Washington County (see attached) will get much attention across the Commonwealth because it opines the Coroner falls within the boundaries of CHRIA.

CHRIA: Criminal History Records Information Act of January 1980.

Criminal History Record Information - Information collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, dates and notations of arrests, indictments, information or other formal criminal charges and any dispositions arising therefrom. The term does not include intelligence information, investigative information or treatment information, including medical and psychological information, or information and records specified in Section 9104 (relating to scope).

Criminal Justice Agency - Any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform a substantial portion of its annual budget to such function. Criminal justice agencies include, but are not limited to: organized State and municipal police departments, local detention facilities, county regional and State correction facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards and such agencies or subunits thereof, as are declared by the Attorney General to be criminal justice agencies as determined by a review of applicable statutes and the State and Federal constitutions or both. www.attorneygeneral.gov/wp-content/uploads/2018/01/chria.pdf

August 2024

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

Subpoena Duces Tecum to No. MD 589-2024
Chief of Police Matthew Tharp

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ORDER

AND NOW, this 18th day of July, 2024, after reconsideration of its May 28, 2024, Order, it is hereby ORDERED, ADJUDGED, and DECREED that said order is vacated. The Court denies the Motion to Quash. Further, to correct the record, the Coroner shall re-issue anunded subpoenas to indicate they are for an investigation, not inquest. Finally, the Court denies a request to pronounce the Coroner is bound by the restrictions pertaining to dissemination of investigative materials.

By way of further explanation, on April 26, 2024, the Washington County Coroner, S. Timothy Warco served a subpoena duces tecum upon Matthew Tharp, the Police Chief of Mount Pleasant Township. Reply to Motion 10 Quash, Exhibit C. The subpoena states that it is for "the purpose of an inquest upon the death of Mark Miller (born 10/13/1978, deceased 4/3/2024)." [cl.

In the original Motion to Quash Subpoenas, the Mount Pleasant Township Police Department (Township) requested the following relief from the Court: issue an order stating the Township "need not comply with the Subpoena," that the "Coroner is required to confer with the District Attorney and Obtain the District Attorney's approval," and that the Township cannot be "compelled to appear and give testimony" at an inquest "without the District Attorney's approval." It did not request that this Court Make a finding that the "Coroner is bound by the restrictions pertaining to prohibited dissemination of investigative materials, as required by CHRIA." Motion for Clarification and Reconsideration, If 12, A court may not grant a party relief that is beyond what that party requests. See Marks v. Bell Telephone co. of Pennsylvania, 33 1 A.2d 424, 43 1 , n.9 (Pa, 1975).

" The subpoenas issued state that they are for an inquest. The Coroner's counsel, Timothy Uhrich, informed the Court that this was an error, and that the subpoena should have been marked as an investigative subpoena. In other words, it was to be issued under 16 Pa. C.S.A. 1227-B(1), not 16 Pa. C.S.A. s⁵ 1227-B(2). See infra. The Court, therefore, will be issuing its determination based upon the subpoenas being issued for investigating to determine the cause and manner of death under 16 Pa. C.S.A. 1228-B(1), and not an inquest for criminal purposes based on 16 Pa. C.S.A. §1226-B(2). To ensure the integrity of the record, the Coroner shall, therefore, file corrected subpoenas.

Chief Tharp was directed to provide the following no later than Monday, May 13, 2024, to the

Coroner, or suffer penalty:

1. Any video or audio recordings taken or caused to be taken by the Department and its Officers (including personnel-worn cameras and dashboard — or vehicle mounted cameras);
2. Any official police reports and supplemental reports.

Id. On May 14, 2024, Mount Pleasant Township (Township) presented this Court with a Motion to Quash Subpoenas. The Coroner provided the Court with a Reply to Motion to Quash.¹ The parties scheduled the matter for presentation on May 17, 2024, at which time neither party presented any testimony, just argument.

The Township argued that the documents the Coroner seeks fall under the protection of the Criminal History Records Information Act (CHRIA), only criminal justice agencies, as defined by CHRIA, are entitled to possess those documents, and the Coroner is not a criminal justice agency under CHRIA. On the other hand, it is the Coroner's position that he is a criminal justice agency under CHRIA, and the documents are not protected by CHRIA. The Township notes that the District Attorney has not been consulted in this matter, which is required by statute. The Coroner responds that it would be "patently absurd to suggest the Coroner would require the consent of a district attorney to convene an inquest into any matter that arises under the jurisdiction of the Coroner." Reply to Motion 10 Quash, 111 2.

It is not in dispute that the decedent died in a one-vehicle accident in which he was the operator, following pursuit by Township police. The Coroner has not issued a final death certificate. Reply 10 Motion 10 Quash, Exhibit B. The "noncertified" death certificate is still pending for a determination regarding the "immediate cause" of death. Id. It is the Coroner's position that he has the power to investigate the cause of a death, as well as its manner, and that he has the power to subpoena information in order to do same. 16 Pa.C.S.A. s^s 121 8-B; 16 Pa.C.S.A. SS 1227-B. Therefore, the Coroner should, for instance, be able to investigate whether mechanical issues contributed to the crash.

Relevant to the issue at bar, the Code states the following regarding a Coroner's investigative duties:

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

- (1) A sudden death not caused by a readily recognizable disease or, if the cause of death cannot be properly certified, by a physician on the basis of prior recent Medical attendance.

¹ The Coroner argued that this Court did not have jurisdiction to quash a subpoena issued by him. Although the Court was unable to unearth any appellate case on the issue, it did locate a common pleas case, and the trial court exercised its power to quash. *In re Coroner's Inquest Subpoena Duces Tecum*, 41 Pa. D. & C.3d 547, 550 (Pa. com. Pl. 1986).

(3) A death occurring as a result of violence or trauma, whether apparently homicidal, suicidal or accidental, including, but not limited to, a death due to Mechanical, thermal, chemical, electrical or radiational injury, drowning, cave-in or subsidence.

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

(1) The cause and Manner of the death.

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

(c) Requirements. --As part of an investigation under subsection (a), the coroner shall determine the identity of the deceased and notify the next of kin of the deceased.

16 Pa. C.S.A. ss 1218-B. During the investigation, the Coroner is entitled to issues subpoenas and attachments.

The coroner may issue a subpoena and attachment, which shall be served and executed by the sheriff, coroner or coroner's deputy, for the following purposes: (1) A death investigation.

(2) To obtain the attendance of an individual who may be necessary to examine as a witness at an inquest.

(3) To compel attendance by attachment in a similar manner and extent as a court of common pleas may do in a case pending before the court.

(4) To compel the production of the following:

(i) A paper.

(ii) A document in any form or media, including a medical and mental health record.

(iii) Another thing relative to the investigation or inquest,

16 Pa. C.S.A. 1227-13.

With respect to the specific documents the Coroner seeks, CHRIA states the following about information in central repositories or automated systems:

Investigative and information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties, and the request is based upon a name, fingerprints, modus operandi, genetic typing, voice print or other identifying characteristic.

18 Pa. C.S.A. 9106. Investigative information is defined as "[i]nformation assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information." 18 Pa.C.S.A. 9102. However, there appears to be a conflict within the statute's definition of "Criminal history record information," which states:

Information collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, dates and notations of arrests,

indictments, information or other formal criminal charges and any dispositions arising therefrom. The term does not include intelligence information, investigative information or treatment information, including medical and psychological information, or information and records specified in section 9104 (relating to scope).

18 Pa. C.S.A, 9102 (emphasis added). That being said, the Pennsylvania Supreme Court has been instructive on this matter, and it has ruled that police M V Rs are not per se investigative information.

In the case of *Pennsylvania State Police v. Grove*, Grove sent a request to the Pennsylvania State Police (PSP) for "a copy of the police report, and any video/audio recordings taken by the officers" at the scene of a two-vehicle accident. *Id.*, 161 Pa. 3d 877, 880 (Pa. 2017). PSP denied Grove's request on the basis the recordings were exempt from any public disclosure as: (1) "criminal investigative records" under Section 708(b)(16) of the RTKL, and "investigative information" under Section 9106(c)(4) of CHRIA[.]" *Id.* at 881.

the Commonwealth Court noted first that "the mere fact that a record has some connection to a criminal proceeding does not automatically exempt it under . . . CHRIA. *Pennsylvania State Police v. Grove*, 161 Pa. 3d 877, 1108 (Pa. Comm. Ct. 2015), *aff'd in part* (, *rev'd in part*, 640 Pa. 1, 161 A.3d 877 (2017). It determined that the video portion of the M VR was not investigative information and was not protected by CHRIA. "M V Rs are created to document troopers' performance of their duties in responding to emergencies and in their interactions with members of the public, not merely or primarily to document, assemble or report on evidence of a crime or possible crime." *Id.* Moreover, the Court noted instances where M V Rs do not contain investigative material, such as "directions to motorists in a traffic stop or at an accident scene, police pursuits, and prisoner transports." *Id.* Therefore, an M VR itself is not an investigative material exempt from disclosure under CHRIA, but it can be considered investigative material if they contain "witness interviews, interrogations, intoxication testing and other investigative work." *Id.*, at 1108-09.

The Supreme Court sustained the Commonwealth Court's conclusions on this matter. After noting that the PSP had the burden to prove by a preponderance of evidence which of its records were exempt from disclosure, and that exemptions disclosure are to be narrowly construed, it ruled that "M V Rs do not, generally, constitute per se protected 'investigative information,' and therefore the question of whether information captured on a particular M VR is to be excluded from public access under CHRIA must be determined on a case-by case basis." *Grove*, 161 A.3d at 885, 895. "MVRs are created in many instances that plainly do not involve criminal activity, and may ultimately be used in civil proceedings, administrative enforcement and disciplinary actions." *Id.* Therefore, court must judge each case based upon the facts because where recordings evidence "nothing more than what a bystander would observe[,]" they may not be given protections under CHRIA. *Id.* at 894-95. ⁴

Herein, Township has the burden to "demonstrate [that] a record falls within [an] exemption." [d. It's Motion to Quash does not indicate that the public area footage in the video

In Grove, the video was not used to determine whether charges should be brought against the parties involved in the accident, rather witness statements and interviews conducted by the PSP; the video did not show the accident. Grove, 161 A.3d at 894-95.

pertains to a criminal investigation -the Township is conducting or conducted. The Township has not alleged or argued that the video contained "criminal investigative information" as defined by 18 Pa. C.S.A. 9102. Supra. Because the MVR of the pursuit depicts "nothing more than what a bystander would observe [,]" the CHRIA criminal investigation exemptions do not apply to the footage of public areas. *Id.*; Borough of Pottstown v. Suber-Aponie, 202 A.3d 1739 185 (Pa. Comm. Ct. 2019). As the Commonwealth Court in Grove stated, "MVR equipment is activated when an officer's siren or emergency lights are turned on, a non-investigatory event." Grove, 161 A.3d at 1108, "MVRs do not, generally, constitute per se protected 'investigative information,'" Grove, 161 A.3d at 895. As for the audio portion, the same would be protected if the video included the questioning of any witnesses. *Id.* at 1108-09. Otherwise, the audio is not protected under CI-IRIA. Without any testimonial evidence, however, this Court is unable to provide any definitive ruling unless a coroner is considered a criminal justice agency pursuant to CHRIA. 18 Pa.C.S.A. 9102, 9106.

Regarding the police reports the Coroner subpoenaed from the Township, the Commonwealth Court has clearly ruled that police incident reports are considered investigative and, therefore, exempt from disclosure under CHRIA if they are more than a chronological listing of arrests (police blotters). A true police incident report contains investigative materials and victim information; the report describes an investigation into alleged criminal activity. *Pennsylvania State Police v. O/1 Q/ Open Recs.*, 5 A.3d 473, 481 (Pa. Comm. Ct. 2010). Such documents are only accessible to criminal justice agencies under CHRIA. 18 Pa.C.S.A. §§9102, 9106.

CHRIA defines a criminal justice agency as follows:

Any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function. Criminal justice agencies include, but are not limited to: organized State and Municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards, the facilities and administrative offices of the Department of Public Welfare that provide care, guidance and control to adjudicated delinquents, and such agencies or subunits thereof, as are declared by the Attorney General to be criminal justice agencies as determined by a review of applicable statutes and the State and Federal Constitutions or both. ♡

18 Pa. C.S.A. 9102.

The Township argued that the Coroner is not a criminal justice agency. It argues that the District Attorney, the Attorney General, municipal police departments, and probation offices are examples of criminal justice agencies, but not coroners. "This Court, however, believes that there is evidence to the contrary.

[A] coroner in Pennsylvania has powers which in fact make him part of the Commonwealth's criminal investigation team. 16 P.S. ss 1237 authorizes a coroner to investigate suspicious deaths in order to determine whether there is sufficient evidence of criminal acts to justify the holding of an inquest. If the

coroner conducts an inquest, 16 P.S. 1245 confers power upon the coroner to issue subpoenas and attachments to obtain the attendance of witnesses and the production of documents. If the coroner concludes after an inquest that the death resulted from criminal conduct, he may act as a committing Magistrate. Finally, 16 P.S. 1242 directs the coroner, during the course of his investigation, to consult with the District Attorney. Given these statutory and common law powers, we will assume that a coroner investigating a suspicious death has the same status as a police officer investigating any suspected crime.

COM. v. Anderson, 385 A.2d 365, 371—72 (Pa. Super. 1978)(en banc)(citations omitted). ²Importantly, this definition of criminal justice agencies merely provides examples, and it is without specific limitation. Additional appellate support for this proposition is found in a more recent decision and with equal emphasis.

This Court has recognized that a coroner in Pennsylvania has powers that make the coroner part of the Commonwealth's criminal investigation team. For instance, a coroner is charged with investigating [acts and circumstances of deaths occurring under suspicious circumstances, including those in which drugs may have had a direct bearing on the outcome. "The purpose of the investigation shall be to determine the cause of any such death and to determine whether or not there is sufficient reason for the coroner to believe that any such death may have resulted from criminal acts or criminal neglect of persons other than the deceased." 16 P.S. § 1237(b). Further, "[i]n the exercise of [the coroner's duties], the coroner shall, so far as may be practicable, consult and advise with the district attorney." 16 P.S. § 1242.

Int. of J.N.W., 197 A.3d 274, 282-83 (Pa. super. 2013)(citations omitted),

It is clear to this Court that, based upon the aforementioned case law, the Coroner falls within the boundaries of being a justice agency within CHRIA. Further, the legislature expanded the Coroner's subpoena powers on December 24, 2018. Prior thereto, the Coroner was only permitted to subpoena documents for hearings pursuant to 16 P.S. §§ 1245.

The coroner shall have power to issue subpoenas to obtain the attendance of any person whom it may be necessary to examine as a witness at any inquest, and to compel attendance by attachment in like manner and to the same extent as any court of common pleas of this Commonwealth may or can do in cases pending before them, and also to compel in like manner the production of all papers and other things relative to such inquest. Such subpoena and attachment shall be served and executed by the sheriff or by the coroner himself or his deputy, as the case may require.

Id. Thereafter, this section was amended and recodified to permit the Coroner to subpoena documents unrelated to an inquest hearing, which is the case herein. ³ "The coroner may issue a subpoena and attachment, which shall be served and executed by the sheriff, coroner or coroner's deputy, for [a] death investigation." 16 P.S. § 1227-

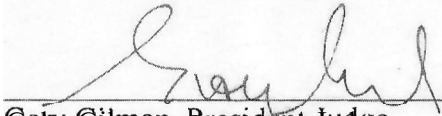
² 'Except as modified by statute, the powers and duties of a coroner remain what they were at common law[.]' 18 C.J.S. Coroners 8. There is no language in title 16 P.S., Ch. 1, Art. X II-B stating that the coroner's common law powers were being abrogated.

³ For a thorough and exhaustive history of the coroner's office, see *CODI. v. Guy*, 41 Pa. Dist. & Co. R.2d 151

(Ally.Cty. 1966), The Pennsylvania Supreme Court cited *Guy* as authority on this matter by stating, 'Common Pleas Judge Aldisert (now Of the United States Court Of Appeals for the Third Circuit) in a learned historical opinion . . . demonstrated that since its inception in 1276, the office of coroner has been investigative in nature, as well as judicial; it is an office designed to protect the public welfare, and, for this purpose, includes the powers Of a committing magistrate.' *Cont. v. Sullivan*, 286 A.2d 898, 901 (Pa. 1971). Statutorily,

Finally, the Township argues that it is imperative that the Coroner consult the District Attorney before he issues any subpoena. The Code states, "In the exercise of duties under this article, the coroner shall consult with and advise the district attorney as may be practicable. The district attorney may act as counsel to the coroner in matters relating to inquests." 16 P.S. §1224-B. The statute, however, does not state when the Coroner must make his/her consultation during his investigation. More importantly, the statute does not require consultation before the Coroner determines he/she is duty bound to conduct an investigation. Simply stated, there is no statute that requires the District Attorneys imprimatur in order for the Coroner to move forward. Nevertheless, if "practicable," the Coroner must "consult with and advise" the District Attorney at some point before the investigation concludes. Id. ⁴

BY THE COURT:


Galy Gilman, President Judge

Distribution:

Paul D. Krepps, Esquire

Timothy G, Uhrich, Esquire

magistrate is a member of Pennsylvania's minor judiciary, and the minor judiciary is expressly noted as a criminal justice agency under CHRIA. See 75 Pa. CaS,A. 9002; 18 Pa. C.S.A. 9102.

The Court's research did not reveal any appellate or trial court decision on the issue of a coroner failing to advise and consult the district attorney.

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