

December 13, 2007

The Honorable David W. Phillips
Union County Prosecuting Attorney
Union County Justice Center
221 West Fifth Street, Suite 333
Marysville, Ohio 43040

SYLLABUS:

2007-042

1. A county coroner who performs an autopsy and forensic examination, pursuant to contract with the coroner who has jurisdiction over the case, is not required by R.C. 313.09 to keep the autopsy and examination reports he prepares, but he must keep copies of the reports in conformance with his office's records retention schedule, as filed and approved in accordance with R.C. 149.38.
2. A county coroner who performs an autopsy and forensic examination, pursuant to contract with the coroner who has jurisdiction over the case, is required by R.C. 149.43 to make available to any person for inspection and copying the copies of the autopsy and forensic examination reports that he prepared for the jurisdictional coroner, unless a report is not a public record under a statutorily defined or constitutionally mandated exception.
3. A county coroner who performs an autopsy and forensic examination, pursuant to contract with the coroner who has jurisdiction over the case, has no duty under R.C. 313.10(D) or (E), or R.C. 149.43, to make available to journalists or insurers copies of any records that his office has retained in connection with performance of the contract if the records are not public records.



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OPINION NO. 2007-042

The Honorable David W. Phillips
Union County Prosecuting Attorney
Union County Justice Center
221 West Fifth Street, Suite 333
Marysville, Ohio 43040

Dear Prosecutor Phillips:

You have requested an opinion whether a county coroner who has conducted an autopsy and forensic examination pursuant to contract with the Union County coroner has a duty to disclose, upon the request of any person, the autopsy and examination records he prepared pursuant to the contract. You have explained that the Union County coroner does not have the facilities to conduct autopsies, and thus has entered into a contract with the coroner of another county to conduct autopsies and forensic examinations into deaths occurring in Union County. When an autopsy or forensic examination of a body is needed, the body is transported under the direction of the Union County coroner to the morgue in the other county. That coroner or a deputy coroner autopsies the body. Once the autopsy and examination are complete, the file is forwarded to the Union County coroner, who makes a determination as to the cause of death and maintains the records.

Your specific questions about this arrangement are:

1. Is a coroner who is acting under contract to a coroner with jurisdiction over a death required to keep records pursuant to R.C. 313.09?
2. If so, are those records public records subject to disclosure by the coroner who prepared the records pursuant to contract with the coroner who has jurisdiction over the death?
3. Must a request submitted by a journalist or insurer be submitted to the coroner with jurisdiction over the death?

Duties of a County Coroner

Before turning to your specific questions, we must first discuss the duties of, and nature of the records kept by, a county coroner. The county coroner is a county elected officeholder, R.C. 313.01, who must be notified whenever "any person dies as a result of criminal or other violent means, by casualty, by suicide, or in any suspicious or unusual manner, or when any

person, including a child under two years of age, dies suddenly when in apparent good health, or when any mentally retarded person or developmentally disabled person dies regardless of the circumstances.” R.C. 313.12(A). The coroner with jurisdiction over a case is the “coroner of the county in which death occurs or the dead human body is found.” R.C. 313.01.¹ Upon notification, the coroner or his designee “may go to the dead body and take charge of it.” R.C. 313.13(A). *See also* R.C. 313.11 (no person without an order from the coroner or his designee “shall purposely remove or disturb the body of any person who has died in the manner” described in R.C. 313.12).

The coroner, who must be a licensed physician, R.C. 313.02, “shall perform an autopsy if, in the opinion of the coroner ... an autopsy is necessary.”² R.C. 313.131(B). *See Everman v. Davis*, 54 Ohio App. 3d 119, 122, 561 N.E.2d 547 (Montgomery County 1989) (“[t]he county coroner is a public officer upon whom rests the duty to determine whether an autopsy is necessary. If in his opinion an autopsy is necessary, he is required by law to perform an autopsy, determine the true cause of death and to file a report of his conclusions”).³ *See also* R.C. 313.121 (the coroner “shall” perform an autopsy on a child under two years of age who dies suddenly when in apparent good health); R.C. 313.17 (investigative authority of a county

¹ R.C. 313.01 specifically reads in pertinent part: “As used in the Revised Code, unless the context otherwise requires, ‘coroner’ means the coroner of the county in which death occurs or the dead human body is found.” *See* 1989 Op. Att’y Gen. No. 89-039 at 2-169 (“[t]he definitional portion of R.C. 313.01 expressly assigns jurisdiction. The presence of a dead body or the site of a death in a particular county is the factor that causes a coroner’s jurisdiction to attach in a particular case,” and a coroner’s jurisdiction attaches only if a person dies in a manner described in R.C. 313.12).

² An “autopsy” is defined for purposes of R.C. Chapter 313 in R.C. 313.123(A)(1) as:

the external and internal examination of the body of a deceased person, including, but not limited to, gross visual inspection and dissection of the body and its internal organs, photographic or narrative documentation of findings, microscopic, radiological, toxicological, chemical, or other laboratory analyses performed in the discretion of the examining individual upon tissues, organs, blood, other bodily fluids, gases, or any other specimens and the retention for diagnostic and documentary purposes of tissues, organs, blood, other bodily fluids, gases, or any other specimens as the examining individual considers necessary to establish and defend against challenges to the cause and manner of death of the deceased person.

³ *See also* 2001 Op. Att’y Gen. No. 2001-010 at 2-57 (“[t]he primary duty of a county coroner is to determine the cause of death of any person who has died in a manner described in R.C. 313.12”).

coroner).⁴ The coroner must fill in the cause of death on the death certificate in cases coming under his jurisdiction, R.C. 313.09, and “[t]he cause of death and the manner and mode in which the death occurred, as delivered by the coroner and incorporated in the coroner’s verdict and in the death certificate ... shall be the legally accepted manner and mode in which such death occurred, and the legally accepted cause of death,” unless the court of common pleas, after a hearing, “directs the coroner to change his decision.” R.C. 313.19. *See* R.C. 3705.16 (certification of cause of death and signing of medical certificate of death). *See also* R.C. 313.15 (all dead bodies in the custody of the coroner must be held until the coroner, after consulting with the county prosecutor and law enforcement officers, “has decided that it is no longer necessary to hold such body to enable him to decide on a diagnosis giving a reasonable and true cause of death, or to decide that such body is no longer necessary to assist any of such officials in his duties”).

“[S]uitable quarters, laboratories, and equipment necessary for the proper performance of the duties of the coroner” may be established in the county seat, and “[s]uch quarters shall be known as the coroner’s office, laboratory, and county morgue.” R.C. 313.07. In counties in which a morgue is established, the coroner is the “official custodian of the morgue.” R.C. 313.08(A). Specific provision is made for counties that have no coroner’s laboratory or whose laboratory “does not have the equipment or personnel to follow the protocol established by rule of the public health council.” R.C. 313.16. In such counties, “the coroner may request a coroner of a county in which such a laboratory is established or that has a laboratory able to follow the public health council’s protocol to perform necessary laboratory examinations.” *Id.* *See also* R.C. 313.161 (“[w]henever an autopsy is performed, and the injury causing death occurred within the boundaries of a county other than the one in which the autopsy was performed, such other county shall pay the costs of the autopsy”). Indeed, a coroner may request the coroner of another county to conduct an autopsy even where the requesting coroner has sufficient laboratory facilities to do so. *State v. Cooper*, 52 Ohio St. 2d 163, 168-69, 370 N.E.2d 725 (1977).⁵

⁴ *See* 1989 Op. Att’y Gen. No. 89-039 at 2-169 (“[t]o make the required determinations” as to cause, manner, and mode of death, “a coroner has broad authority to gather information and to hold an inquest.... As part of the investigation, a coroner is specifically empowered to conduct an autopsy”); 1988 Op. Att’y Gen. No. 88-035 at 2-158 (“R.C. Chapter 313 gives the coroner broad discretion in the investigation and determination of the cause, manner, and mode of an unexplained death in his county”).

⁵ *State v. Cooper*, 52 Ohio St. 2d 163, 370 N.E.2d 725 (1977) is a capital case in which the death penalty was imposed on the defendant. The death penalty was later vacated by the U.S. Supreme Court, based on its holding in *Lockett v. Ohio*, 438 U.S. 586 (1978) that Ohio’s death penalty statute was, at that time, unconstitutional. *Cooper v. Ohio*, 438 U.S. 911 (1978).

Records of a County Coroner

The county coroner is required to keep in his office “a complete record” of “all cases coming under his jurisdiction.” R.C. 313.09. *See* R.C. 313.01 and note 1, *supra*. The records must “state the name, if known, of every deceased person as described in [R.C. 313.12], the place where the body was found, date of death, cause of death, and all other available information.” R.C. 313.09. “All records of the coroner are the property of the county.” *Id.* Whenever the coroner performs an autopsy, a “detailed description of the observations written during the progress of such autopsy, or as soon after such autopsy as reasonably possible, and the conclusions drawn from the observations shall be filed in the office of the coroner.” R.C. 313.13(A). The “report of the coroner” and the “detailed findings of the autopsy” must be attached to the record of each case. R.C. 313.09.

Most of the records in a coroner’s office, including the “detailed descriptions of the observations written during the progress of an autopsy and the conclusions drawn from those observations” (autopsy observations and conclusions), are public records. R.C. 313.10(A)(1).⁶ The coroner’s public records are “open to inspection by the public, and any person may receive a copy of any such record or part of it upon demand in writing, accompanied by payment of a record retrieval and copying fee, at the rate of twenty-five cents per page or a minimum fee of one dollar.” R.C. 313.10(B). Several types of records in a coroner’s office, however, are statutorily deemed not to be public records, including preliminary autopsy and investigative notes and findings made by the coroner, photographs of a decedent taken by the coroner, suicide notes, and a decedent’s medical and psychiatric records.⁷ R.C. 313.10(A)(2).

⁶ The specific provision in R.C. 313.10(A)(1) identifying as public records “the detailed descriptions of the observations written during the progress of an autopsy and the conclusions drawn from those observations filed in the office of the coroner under [R.C. 313.13(A)]” was enacted only recently. Am. Sub. H.B. 235, 126th Gen. A. (2006) (eff. Aug. 17, 2006). Before the enactment of Am. Sub. H.B. 235, however, R.C. 313.10 provided generally that “records of the coroner, made personally by the coroner or by anyone acting under the coroner’s direction or supervision, are public records.” 1999-2000 Ohio Laws, Part III, 5407, 5409 (Sub. H.B. 499, eff. Feb. 13, 2001). The courts considered autopsy records to be public records even without the express language added by Am. Sub. H.B. 235 (with the exception discussed in note 12, *infra*). *State ex rel. Findlay Publishing Co. v. Schroeder*, 76 Ohio St. 3d 580, 669 N.E.2d 835 (1996).

⁷ *See* R.C. 313.091 (in connection with the performance of his duties, a coroner may request to inspect and receive a copy of a decedent’s medical and psychiatric records, and “[a]ny medical or psychiatric record provided to a coroner ... under this section is not a public record subject to [R.C. 149.43]”).

Question #1—The Duty of a County Coroner to Keep Records**R.C. 313.09**

We turn now to your first question, whether a coroner, who performs an autopsy and forensic examination pursuant to contract with the coroner who has jurisdiction over the case, is required by R.C. 313.09 to keep the records his office prepares documenting the autopsy and examination. As noted above, R.C. 313.09 requires a coroner to “keep a complete record of ... all cases *coming under his jurisdiction*,” and to attach to the record of each case the “report of the coroner and the detailed findings of the autopsy.” (Emphasis added.) By its own terms, R.C. 313.09 imposes a duty to keep the records of a case on the coroner who has jurisdiction in that case, with no mention of a coroner who has performed the autopsy pursuant to contract with the jurisdictional coroner. *See also* R.C. 313.01, note 1, *supra*. Furthermore, the other duties imposed on a coroner under R.C. 313.09 clearly apply only to the jurisdictional coroner. *See generally First Federal Savings & Loan Ass’n v. Evatt*, 143 Ohio St. 243, 249, 54 N.E.2d 795 (1944) (“[i]t is axiomatic that all parts of a statute shall be construed together”). For example, “the coroner” must “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.” (Emphasis added.) Also, “the coroner” has the authority under R.C. 313.09 to request the appropriate law enforcement officials “to furnish more information or make further investigation.” These provisions require the exercise of a high degree of discretion by a coroner who has detailed knowledge of, and is responsible for investigating, the case. They logically apply to the coroner who has jurisdiction and is responsible for determining cause of death, but have no reasonable application to a coroner who has only limited contractual responsibilities in the matter.

Therefore, R.C. 313.09 does not apply to a coroner whose responsibilities are limited to performing an autopsy and forensic examination pursuant to contract with the coroner who has jurisdiction over the case.

R.C. 149.011, R.C. 149.351, R.C. 149.38

This does not, however, end our analysis of the broader issue raised by your inquiry—the extent of a contracting coroner’s obligation to retain records documenting his performance of the contract, including the retention of copies of the autopsy and forensic examination reports generated by his office pursuant to the contract, the originals of which are sent to the jurisdictional coroner. Not only are autopsy observations and conclusions public records according to R.C. 313.10, but they are “records” for purposes of R.C. Chapter 149, which governs the manner in which a public office must manage its records.⁸

⁸ *See* note 12, and accompanying text, *infra* (discussing the nature of autopsy records as public records under R.C. 149.43).

A “record” includes “any document, device, or item, regardless of physical form or characteristic, including an electronic record[,] ... *created* or received by or coming under the jurisdiction of *any public office* of the state or its political subdivisions, *which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.*”⁹ (Emphasis added.) R.C. 149.011(G). Autopsy and forensic examination reports created by a coroner pursuant to contract with another coroner serve to document the functions, procedures, operations, and activities of the contracting coroner’s office—specifically performance of the contract. Indeed, the execution of a coroner’s contractual duties is as much a part of the operations of his office as the performance of his duties with respect to cases coming under his own jurisdiction. Furthermore, the fact that the contracting coroner keeps a *copy* of an autopsy or forensic examination report that his office prepared, rather than the original, is of no consequence—the copy of an original record is, itself, a record. *See* 1960 Op. Att’y Gen. No. 1348, p. 335, 340 (in cases ““where the original of a document is sent out of a state office and a copy is retained ... the retained copy is the record”) (citation and internal quotation marks omitted). Copies of autopsy and examination reports that were generated by a coroner pursuant to contract are, therefore, records of his office for purposes of R.C. Chapter 149.

Every county office is required to maintain its records in accordance with the “schedules of records retention and disposition” that the office must create and file for approval with the county records commission, Ohio Historical Society, and Auditor of State.¹⁰ R.C. 149.38. A public office is prohibited from removing, destroying, mutilating, transferring, or otherwise

⁹ For purposes of R.C. Chapter 149, a “public office” includes any “political subdivision” and any office “established by the laws of this state for the exercise of any function of government.” R.C. 149.011(A). The office of county coroner is a “public office” for purposes of R.C. Chapter 149. *See State ex rel. Findlay Publishing Co. v. Schroeder.*

¹⁰ Each county must have a records commission, the function of which is “to provide rules for retention and disposal of records of the county.” R.C. 149.38. The records commission is also required “to review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by county offices.” *Id.* Once the records commission approves an application for the one-time disposal of obsolete records or a records retention schedule, the commission must send the application or schedule to the Ohio Historical Society for review. *Id.* The Ohio Historical Society must then forward the application or schedule to the Auditor of State for approval. *Id.* Before an office may dispose of public records, the records commission must notify the Ohio Historical Society and various other entities who may select for preservation records of “continuing historical value.” *Id.* *Cf. State ex rel. Dispatch Printing Co. v. City of Columbus*, 90 Ohio St. 3d 39, 42-43, 734 N.E.2d 797 (2000) (nothing in R.C. Chapter 149 “mandates disposal of public records;” while R.C. Chapter 149 requires “agencies to provide rules and review procedures for public record disposal, it does not require the disposal of public records at any specified intervals of time”). Note that most of these provisions apply to a public office’s “records,” and not solely to its “public records.”

damaging or disposing of the office's records, "except as provided by law or under the rules adopted by" the appropriate records commission. R.C. 149.351. *See Keller v. City of Columbus*, 100 Ohio St. 3d 192, 2003-Ohio-5599, 797 N.E.2d 964, at ¶32 ("destruction of a record not authorized by commission rule or otherwise permitted by law is a violation of R.C. 149.351(A)"); *State ex rel. Miami Valley Broadcasting Corp. v. Davis*, 158 Ohio App. 3d 98, 2004-Ohio-3860, 814 N.E.2d 88 (Montgomery County), at ¶¶15-16 (a clerk of court is prohibited by R.C. 149.351(A) from removing stricken exhibits from a court's case file). *See also Kish v. City of Akron*, 109 Ohio St. 3d 162, 2006-Ohio-1244, 846 N.E.2d 811, at ¶18 (the proscriptions of R.C. 149.351 are "[i]n recognition that the right of access to government records is a hollow one if records are not preserved for review"). Thus, the duty of a county coroner to copy the reports that he prepares and sends to other coroners pursuant to contract, and the period of time during which the coroner must keep these copies, are governed by his office's records retention schedule, as filed and approved in accordance with R.C. 149.38. Although a contract between the coroners may address certain issues surrounding the reports, such as the time within which the reports must be prepared and forwarded to the coroner with jurisdiction, it may include no provision that conflicts with R.C. 149.38 or R.C. 149.351. *See Keller* at ¶23 ("any provision in a collective bargaining agreement that establishes a schedule for the destruction of public records is unenforceable if it conflicts with or fails to comport with all of the dictates of the Public Records Act").

Thus, in response to your first question, a coroner who performs an autopsy and forensic examination under contract with the coroner who has jurisdiction over the case is not required by R.C. 313.09 to keep the autopsy and examination reports he prepares for the jurisdictional coroner, but he must keep copies of the reports in conformance with his office's records retention schedule.

Question #2—The Duty of a County Coroner to Disclose Records

Your second question is whether the contracting coroner must disclose to any person, upon request, copies of the reports that he has prepared for the Union County coroner.

R.C. 313.10

Division (B) of R.C. 313.10 states that "[a]ll records in the coroner's office that are public records are open to inspection by the public, and any person may receive a copy of any such record or part of it upon demand in writing, accompanied by payment of a record retrieval and copying fee, at the rate of twenty-five cents per page or a minimum fee of one dollar." In light of R.C. 313.01, note 1, *supra*, we start with the supposition that R.C. 313.10 applies to the records in the office of the coroner who has jurisdiction over the case. Further, limiting the application of R.C. 313.10 to the jurisdictional coroner is supported by other language in R.C. 313.10. For example, the coroner must "provide a copy of the full and complete records of the coroner with respect to a decedent to a person who makes a written request as the next of kin of the decedent." R.C. 313.10(C)(1). The "full and complete records of the coroner" include the

autopsy observations and conclusions, preliminary autopsy and investigative notes and findings, photographs of the decedent taken by the coroner, suicide notes, and medical and psychiatric records provided to the coroner under R.C. 313.091. R.C. 313.10(G)(1). Not only is it unlikely that a contracting coroner would have all of this information in his office, it is unreasonable to impose on anyone other than the jurisdictional coroner the duty to supply these records to the decedent's next of kin.

Furthermore, because both statutes govern a coroner's records, R.C. 313.10 should be read *in pari materia* with R.C. 313.09, which as discussed above, applies only to the coroner with jurisdiction over a case. *See generally Bobb v. Marchant*, 14 Ohio St. 3d 1, 3, 469 N.E.2d 847 (1984) (“[s]tatutes relating to the same subject matter should be construed *in pari materia*”) (citation omitted). R.C. 313.10, like R.C. 313.09, directs its requirements to the coroner with jurisdiction, and includes no language suggesting that the context might require otherwise. *See* R.C. 313.01.

R.C. 149.43

Even though R.C. 313.10 applies only to the jurisdictional coroner, the contracting coroner, as a public office, is nonetheless still bound by the requirements of R.C. Chapter 149, including R.C. 149.43 that requires a public office to make its “public records” available to any person for inspection and copying. *See* note 9, *supra*.

A record “kept” by a public office is a “public record,” unless it falls within an exception prescribed by statute (or constitutional principles). R.C. 149.43(A). *See generally State ex rel. Cincinnati Enquirer v. Cincinnati Bd. of Education*, 99 Ohio St. 3d 6, 2003-Ohio-2260, 788 N.E.2d 629, at ¶11 (“‘[k]ept’ is the past participle of ‘keep,’ which in this context [of R.C. 149.43] means ‘preserve,’ ‘maintain,’ ‘hold,’ ‘detain,’ or ‘retain or continue to have in one’s possession or power esp. by conscious or purposive policy’”). As discussed above, a copy of an autopsy or forensic examination report that was generated by a coroner pursuant to contract is a “record” of the office of the contracting coroner because it documents the office’s performance of the contract; thus, the copy is a “public record” where kept by the coroner who performed the contract and generated the report, unless it falls within one of the exceptions to the definition of “public record.” *See, e.g.,* note 12, *infra*.

Thus, the contracting coroner has a duty to make the copies of the autopsy and examination reports that his office keeps available to any person for inspection and copying in accordance with R.C. 149.43(B), unless a particular report falls within an exception and is not a public record.¹¹ These responsibilities are imposed upon him by R.C. 149.43, and exist separate

¹¹ As discussed under Question #1, a county coroner is required to keep the records of his office, including copies of reports he prepared for another coroner pursuant to contract, in accordance with the office’s records retention schedule. If a public office keeps a public record past the time it was to be destroyed under the office’s retention schedule, however, it remains a

and apart from his contractual responsibilities with the Union County coroner and independently of R.C. 313.10.

The Union County coroner has expressed two concerns about this result. First, the coroner contends that the records created by the contracting coroner are preliminary records, and thus are not public records. Division (A)(2)(a) of R.C. 313.10 provides that “preliminary autopsy and investigative notes and findings made by the coroner or by anyone acting under the coroner’s direction or supervision” are not public records. *See* R.C. 149.43(A)(1)(v) (“records the release of which is prohibited by state or federal law” are not public records for purposes of R.C. 149.43). Whether the reports generated by the contracting coroner constitute the “detailed descriptions of the observations written during the progress of an autopsy and the conclusions drawn from those observations filed in the office of the coroner”—which are public records—or are “preliminary autopsy and investigative notes and findings”—which are not public records—will depend on the terms of each particular contract, and the nature of each report prepared pursuant thereto. The nature of the work to be performed by the contracting coroner should be expressly and clearly addressed in the contract so that both coroners are of the same understanding as to the status of any writings prepared by the contracting coroner. It is a matter upon which we cannot opine in the abstract.

The Union County coroner’s second concern is that certain autopsy reports (and copies thereof) are not public records because they are specific investigatory work product, and he believes that the “coroner of the jurisdiction of the crime would be in the best position to determine whether the investigatory work product exception applied.”¹² R.C. 149.43(B) requires

public record and is subject to R.C. 149.43. *State ex rel. Dispatch Printing Co. v. City of Columbus*, 90 Ohio St. 3d at 41.

¹² In *State ex rel. Dayton Newspapers, Inc. v. Rauch*, 12 Ohio St. 3d 100, 465 N.E.2d 458 (1984), the court found that autopsy records and reports on homicide victims are not public records because they are “specific investigatory work product” and meet the exception for “confidential law enforcement investigatory records” under R.C. 149.43(A)(2)(c). *See also State ex rel. Cleveland Police Patrolmen’s Ass’n v. City of Cleveland*, 84 Ohio St. 3d 310, 311-12, 703 N.E.2d 796 (1999) (a record that is determined to be exempt as work product continues “to be exempt until all criminal proceedings are completed” or “when the criminal defendant who is the subject of the records agrees not to pursue any further proceeding that might result in a new criminal trial, *e.g.*, appeal or postconviction relief”). *Cf. State ex rel. Findlay Publishing Co. v. Schroeder* (a coroner’s records on suicide victims are public records [although suicide notes are now not public records under Am. Sub. H.B. 235]).

As discussed in note 6, *supra*, at the time *Rauch* was decided, R.C. 313.10 stated generally that the “records of the coroner, made personally by the coroner or by anyone acting under the coroner’s direction or supervision, are public records,” but Am. Sub. H.B. 235 amended R.C. 313.10 in 2006 to explicitly declare that “*the detailed descriptions of the*

that public records be “*promptly* prepared and made available for inspection to any person.” (Emphasis added.) See generally *State ex rel. Wadd v. City of Cleveland*, 81 Ohio St. 3d 50, 52, 689 N.E.2d 25 (1998) (“[w]hen records are available for public inspection and copying is often as important as *what* records are available”). “However, R.C. 149.43(A) envisions an opportunity on the part of the public office to examine records prior to inspection in order to make appropriate redactions of exempt materials.” *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St. 3d 619, 623, 640 N.E.2d 174 (1994). See also *State ex rel. Wadd v. City of Cleveland*, 81 Ohio St. 3d at 53 (the “word ‘promptly’ is not defined in R.C. 149.43,” but given “its usual, normal, or customary meaning” means “‘without delay and with reasonable speed’ and its meaning ‘depends largely on the facts in each case’”). If need be, the contracting coroner, consistently with R.C. 149.43, may take time to consult with the Union County coroner about the status of a report as a public record before deciding whether to release, redact, or withhold a copy thereof.

If they wish, the coroners may address such a process in their contract, although the terms of the contract may not conflict with the public records law, and could not, for example, include an agreement that the contracting county would not release copies of the reports maintained by his office regardless of their status as a public record. See *State ex rel. Gannett Satellite Information Network v. Shirey*, 78 Ohio St. 3d 400, 403, 678 N.E.2d 557 (1997) (city’s contract with a private entity providing resumes were confidential and the property of the private entity “did not alter the public nature of resumes and documents submitted by applicants” for the position).

We do not disagree with the Union County coroner’s assertion that the coroner with jurisdiction over a case is in the best position to determine whether a particular autopsy report is a confidential law enforcement investigatory record, and we recognize that the need for the contracting coroner to consult with the Union County coroner prior to releasing a copy of a report on a decedent whose case is under the jurisdiction of the Union County coroner may cause some administrative inconvenience. Nonetheless, the terms of R.C. 149.43, as well as the judicial admonition that the strong public policy served by the public records act dictates that it be liberally construed in favor of openness, compel our conclusion. See *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St. 3d at 624 (although R.C. 149.43(B) “seems to force public offices to keep some sort of dual system” whereby the office must make a copy of the original file and make redactions on the copies before allowing public inspection, “any arguable burden in this regard is mandated by R.C. 149.43(B)’s requirement that ‘governmental units shall maintain public records in a manner that they can be made available for inspection in accordance

observations written during the progress of an autopsy and the conclusions drawn from those observations filed in the office of the coroner under [R.C. 313.13(A)], made personally by the coroner or by anyone acting under the coroner’s direction or supervision, are public records.” (Emphasis added.) We are unaware of any judicial decision analyzing the impact of Am. Sub. H.B. 235, if any, on the holding in *Rauch*, and will assume, for the purpose of answering your question, that autopsy reports on homicide victims are still considered not to be public records.

with this division,¹³ and because “any doubt in construing R.C. 149.43(B) must be resolved in favor of disclosure of public records”) (footnote added)). *See also Kish* at ¶¶14-19.

In response to your second question, a contracting coroner is required by R.C. 149.43 to make available to any person for inspection and copying the copies of the autopsy and forensic examination reports that he prepared for the jurisdictional coroner, unless a report falls within a statutorily defined or constitutionally mandated exception and is not a public record.

Question #3—Journalist and Insurer Exceptions

Your third question is whether a records request made by a journalist or insurer pursuant to R.C. 313.10(D) or (E) (respectively) must be submitted to the jurisdictional coroner, or whether a journalist or insurer instead may submit the request to a contracting coroner. As noted above, preliminary autopsy and investigative notes and findings, photographs of a decedent made by the coroner, suicide notes, and the decedent’s medical and psychiatric records that have been provided to the coroner are not public records. R.C. 313.10(A)(2). A journalist may, however, submit a written request “to the coroner” “to view preliminary autopsy and investigative notes and findings, suicide notes, or photographs of the decedent.” R.C. 313.10(D). The request must state that “the granting of the request would be in the best interest of the public,” and must be granted by the coroner. *Id.* (Although a journalist may view these records, he may not copy them. *Id.*) An insurer may submit a written request “to the coroner” “to obtain a copy of the full and complete records of the coroner with respect to a deceased person”—the coroner must also grant this request. R.C. 313.10(E).¹⁴

As discussed above, the responsibilities imposed upon “the coroner” under R.C. 313.10 apply to the coroner with jurisdiction, and not to a coroner who contracts with the jurisdictional coroner. A contracting coroner’s duty to release the records it keeps emanates from R.C. 149.43, and not R.C. 313.10. If a record is not a public record for purposes of R.C. 149.43, then the contracting coroner has no duty generally to make it available for inspection and copying, and R.C. 149.43 contains no specific provision for a coroner to make records that are not public

¹³ Substantially similar language is now found in R.C. 149.43(B)(2). Sub. H.B. 9, 126th Gen. A. (2006) (eff. Sept. 29, 2007).

¹⁴ As discussed above, the “full and complete records of the coroner” include the autopsy observations and conclusions, preliminary autopsy and investigative notes and findings, photographs of the decedent taken by the coroner, suicide notes, and medical and psychiatric records provided to the coroner under R.C. 313.091. R.C. 313.10(G)(1). The autopsy observations and conclusions are public records, the rest of the items are not. As noted above, a decedent’s next of kin may also submit a written request and receive a copy of the “full and complete records of the coroner” regarding their decedent. R.C. 313.10(C).

records available to a journalist or insurer.¹⁵ Cf. R.C. 149.43(A)(1)(p) and (B)(9) (residential and familial information about a peace officer or other named law enforcement or public safety official is not a public record, but a public office that employs a peace officer or other named official must disclose to a journalist, upon written request, “the address of the actual personal residence” of the employee and, if the employee’s “spouse, former spouse, or child is employed by a public office, the name and address of the employer of the [employee’s] spouse, former spouse, or child”). Therefore, a coroner who has performed an autopsy and forensic examination pursuant to contract with the jurisdictional coroner has no duty to make available to journalists or insurers copies of any reports that his office has retained in connection with performance of the contract if the records are not public records.

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. A county coroner who performs an autopsy and forensic examination, pursuant to contract with the coroner who has jurisdiction over the case, is not required by R.C. 313.09 to keep the autopsy and examination reports he prepares, but he must keep copies of the reports in conformance with his office’s records retention schedule, as filed and approved in accordance with R.C. 149.38.
2. A county coroner who performs an autopsy and forensic examination, pursuant to contract with the coroner who has jurisdiction over the case, is required by R.C. 149.43 to make available to any person for inspection and copying the copies of the autopsy and forensic examination reports that he prepared for the jurisdictional coroner, unless a report is not a public record under a statutorily defined or constitutionally mandated exception.
3. A county coroner who performs an autopsy and forensic examination, pursuant to contract with the coroner who has jurisdiction over the case, has no duty under R.C. 313.10(D) or (E), or R.C. 149.43, to make

¹⁵ To the extent that a journalist or insurer is requesting a *public* record in the office of the contracting coroner, the coroner would be required to provide the same access to the journalist or insurer as to any other person in accordance with R.C. 149.43, as discussed in connection with Question #2. See generally *State ex rel. Steckman v. Jackson*, 70 Ohio St. 3d 420, 427, 639 N.E.2d 83 (1994) (anyone is permitted to obtain records that fall under R.C. 149.43); 2006 Op. Att’y Gen. No. 2006-038.

available to journalists or insurers copies of any records that his office has retained in connection with performance of the contract if the records are not public records.

Respectfully,

A handwritten signature in black ink, appearing to read "Marc Dann". The signature is fluid and cursive, with the first name "Marc" and the last name "Dann" clearly distinguishable.

MARC DANN
Attorney General