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April 3, 2013

VIA E-MAIL AND FEDEX
Connecticut Office of Governmental Accountability
Freedom of Information Commission
18-20 Trinity Street, 1st Floor
Hartford, CT 06106

Re: Appeal from the Office of the Chief Medical Examiner for Release of the Autopsy, Toxicology, and Prescription Drug History Records of Adam Lanza

To the Freedom of Information Commission:

Complainant, AbleChild,[1] hereby formally appeals the decision of the Office of the Chief Medical Examiner (OCME) denying disclosure of its records concerning decedent, Adam Lanza. On March 19, 2013, the OCME denied AbleChild's request to access Adam Lanza's medical records, citing an internal policy that limits such records to all but next of kin and certain attorneys, physicians, insurance agents, and investigative authorities. The OCME's informal policy underlying the agency's decision is void under Connecticut's Uniform Administrative Procedure Act; violates Connecticut's public records law and the legislative intent for that law; and also violates Connecticut common law, Article First, Sections I, IV, and V of the Connecticut State Constitution as well as the First and Fourteenth Amendments to the United States Constitution.

AbleChild is a 501(c)(3) non-profit organization that represents and advocates the interests of parents, caregivers, and children. Incorporated in New York in 2003, AbleChild aims to ensure the safety of caregivers in every state, including Connecticut, when those for whom they give care are diagnosed as mentally ill and are prescribed drug treatments that may induce adverse events that include thoughts of murder, homicide, or suicide. AbleChild functions as a public interest group and media organization. AbleChild requests disclosure of the autopsy, toxicology, and prescription drug records of Adam Lanza so that an evaluation may be made: (1) to determine if those drugs contain agents associated with increased thoughts of

[1] Pursuant to 1-21j-28(a), the Complainant is Sheila Matthews-Gallo on behalf of AbleChild.

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hostility, murder, homicide, and suicide and (2) to determine if such drugs contributed in whole or part to Adam Lanza's commission of murder and suicide. A professional evaluation will then be made to determine if any drug agents in the body of Adam Lanza at the time of his death or in the medical history of Adam Lanza may have contributed to the acts of mass murder and suicide he committed. Information gleaned from that evaluation can then be published to parents, caregivers, law makers, and the public nationwide, thus enabling them to work with health care professionals in choosing safe and effective therapies for the treatment of mental infirmities, to engage in more informed debate on pressing national issues concerning how best to defend public venues from such attacks, and to promote the development of legal means to stem incidents of this kind. The need and interest in obtaining the information and evaluation described is acute and compelling because of a nationwide rash of shootings at schools, theaters, malls, eating establishments, and work places. Certain of those incidents have been correlated with individuals who, at the time of the event or immediately preceding it, were under the influence of certain psychoactive drug agents linked by medical authorities with increased risks of hostility, murder, homicide, and suicide.[2]

AbleChild incorporates its original Request to the OCME into this appeal, and asks that the Freedom of Information Commission (FOIC) immediately overturn the OCME's denial, which is inimical to the most basic constitutional guaranties of free speech and press and hinders awareness, public safety, public policy, political action, and education. AbleChild also requests that the FOIC schedule a hearing as soon as practicable to require the OCME to justify its denial of AbleChild's request. *Wilson v. Freedom of Information Comm'n*, 435 A.2d 353, 362 (Conn.

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[2] *See e.g.* Andy Banker, "SIBA Shooter Should Not Have Been Able To Get A Gun," Fox News, (Fox2Now, St. Louis), January 16, 2013, available at http://fox2now.com/2013/01/16/siba-shooter-should-not-have-been-able-to-get-a-gun/; Joel Moreno, "Doctors amazed that Snohomish girl survived knife attack," KomoNews.com, October 28, 2011, available at http://www.komonews.com/news/local/132829548.html; Diana Hefley, "Snohomish stabbing victims allegedly chosen at random; charges due Wednesday," *HeraldNet.com*, October 25, 2011, Diana Hefley, "Snohomish stabbing victims allegedly chosen at random; charges due Wednesday," *HeraldNet.com*, October 25, 2011, available at http://heraldnet.com/article/20111025/NEWS01/710259877/-1/COMM01; Diana Hefley, "Suspect in stabbings at Snohomish school continues to talk about violent, disturbing acts," *HeraldNet.com*, March 1, 2012, available at http://www.heraldnet.com/article/20120301/NEWS01/703019923; Harriet McLeod, "South Carolina teen faces adult charges for school attack," *Reuters*, March 18, 2011, available at http://www.reuters.com/article/2011/03/18/us-crime-pipebomb-teen-idUSTRE72H7VO20110318; Carol Anne Hunt, "Teenager holds school children hostage in France," *indiepropub.com,* December 13, 2010, available at http://ssristories.com/show.php?item=4698; Nick Allen, "Finland school shooting: Gunman Matti Saari made phone call during slaughter," *The Telegraph*, September 26, 2008, available at http://www.telegraph.co.uk/news/worldnews/europe/finland/3083996/Finland-school-shooting-Gunman-Matti-Saari-made-phone-call-during-slaughter.html; Pablo Lopez, "Autopsy report suggests teen wasn't taking meds properly," The Fresno Bee, May 16, 2008, available at http://ssristories.com/show.php?item=2475; Dave Newbart, "NIU shooter had trace amounts of drugs in system," *The Chicago Sun-Times*, March 15, 2008; Odgren's father says son didn't remember attack," *Telegram.com,* April 21, 2010, available at www.telegram.com/article/20100421/NEWS/100429941/1116; Daphne Bramham, "Teen gunman given Prozac for depression," *Vancouver Sun* April 1, 2005; P.J. Huffstutter, "2nd Teen Is Linked to School Shooting," *Los Angeles Times*, March 29, 2005.

1980) (holding that, "[i]t is the agency that bears the burden of proving the applicability of an exemption, and therefore, the nature of the documents in question").

AbleChild requests an expedited hearing pursuant to Conn. Agencies Regs. § 1-21j-29(b). AbleChild's constitutional right to gather and access public information is guaranteed by the First Amendment. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 2690, 49 L. Ed. 2d 547 (1976). Additionally, chemical substances, components, ingredients and their respective metabolites contained in toxicological samples are lost over time, especially when they are held in improper environments. Time is of the essence to prevent the loss of potentially vital evidence concerning whether agents in certain prescription drugs caused or contributed to Adam Lanza's behavior in the Sandy Hook Elementary School murders.

I. PROCEDURAL BACKGROUND

On March 5, 2013, and pursuant to Connecticut General Statute § 19a-411, AbleChild, via courier, hand-delivered its public records request to the OCME, which is located at 11 Shuttle Road, Farmington, CT 06032. *See* Ex. 1, Affidavit of Chris Angle. In this request AbleChild asked for disclosure of "the complete autopsy report, toxicology report, and prescription drug history" possessed by the OCME concerning the decedent Adam Lanza, as well as:

> all public records and files, as those terms are defined in Conn. Gen. Stat. Ann. § 1-200, concerning or relating to the presence of drugs in Mr. Lanza's serum and organs and concerning or relating to drugs prescribed to Mr. Lanza. For any tests performed on Mr. Lanza's body for which results have not yet been produced by the testing entity, the Parties respectfully request that those results be supplied to them when they are produced to your office.

See Ex. 2, at 1.

On March 19, 2013, the OCME sent a letter to Ms. Mathews-Gallo denying her request. *See* Ex. 3. In its letter, Medical Examiner Dr. H. Wayne Carver stated that AbleChild was not among a small group of individuals to whom the Medical Examiner had chosen to supply the requested information, thus revealing that the information could have been disseminated outside the OCME based on an unarticulated system of preferences. Thus, it appears that the OCME may have divulged the requested information to one or more of the following: next of kin, attorneys involved in litigation or attorneys handling the estate of the deceased, physicians involved in the patient's care, insurance claims agents and investigative authorities. *See* Ex. 3. AbleChild appeals OCME's denial of AbleChild's request under Conn. Gen. Stat. § 1-206(b)(1). This appeal is filed within the thirty-day time limit imposed by Conn. Gen. Stat. § 1-206(b).

II. BASIS OF APPEAL AND COMPLAINT TO THE FOIC

The OCME maintains an informal and inconsistent policy of non-disclosure.[3] That policy violates the state statute and regulations authorizing disclosure of the OCME's records. The OCME's denial violates the Connecticut and United States Constitutions respectively. AbleChild raises six arguments in support of disclosure of Adam Lanza's records:

1. The OCME's informal policy of denying public records requests is a violation of Connecticut's open meetings law under Conn. Gen. Stat. Ann. § 1-225 and the Connecticut Uniform Administrative Procedure Act, Conn. Gen. Stat. Ann. § 4-168(a);

2. The OCME's policy violates Connecticut's public records law and applicable regulations under Conn. Gen. Stat. § 1-210, § 19a-411, and Conn. Agencies Regs. § 19a-401-12;

3. The OCME's policy violates state common law; Article First, Sections 4 and 5 of the State Constitution of the State of Connecticut; and the First Amendment of the United States Constitution;

4. The OCME's policy violates Article First, Section 1 of the Connecticut Constitution and the Equal Protection Clause of the Fourteenth Amendment;

5. The OCME waived any objection to disclosure through repeated, detailed conversations with the media in which the Chief Medical Examiner , Dr. H. Wayne Carver, divulged details about the condition of Adam Lanza's head and brain, as well as questioned whether Adam Lanza's criminal acts were caused by biologic processes and/or psychiatric drugs; and

6. The autopsy records cannot reasonably be considered "medical files" exempt from disclosure under Section § 1-210(b)(2) of Connecticut's public records law.

[3] *See* Ex. 3, Letter from OCME to AbleChild; Ex. 4, Dr. H. Wayne Carver, Letter to Judiciary Committee ("The Office of the Medical Examiner does not now and has never released autopsy reports to the general public"); Ex. 5, Screenshot of the OCME's website ("In accordance with the regulations of the Commission on Medicolegal Investigations, the complete records of all investigations are made available to the family of the deceased, to any federal, state, or municipal governmental agency or public health authority investigating the death, to insurance companies with a legitimate interest in the death; to all parties in civil litigative proceedings, and to treating physicians… Records are not otherwise open to the general public").

III. ARGUMENT

A. THE OCME'S INFORMAL POLICY IS VOID AND UNENFORCEABLE UNDER THE CONNECTICUT UNIFORM ADMINISTRATIVE PROCEDURE ACT AND, THEREFORE, THE OCME IMPROPERLY REJECTED ABLECHILD'S REQUEST

1. The Policy Is Void Under Connecticut's Open Meetings Law Because the Policy Was Implemented Without Following Established Statutory Procedure

Connecticut citizens have a right to notice and attendance at all agency meetings except for executive sessions. Conn. Gen. Stat. Ann. § 1-225 (West); *Glastonbury Educ. Ass'n v. Freedom of Info. Comm'n*, 234 Conn. 704, 712, 663 A.2d 349, 354 (1995). The term "meeting" "means any hearing or other proceeding of a public agency." Conn. Gen. Stat. Ann. § 1-200 (West). In addition to the disclosure of public records, the intent of Connecticut's FOIA statute was to open every public meeting "at all times with certain specific exclusions." *Town of Lebanon v. Wayland*, 467 A.2d 1267, 1270 (Super. Ct. 1983). Each agency must give proper notice of the schedule of its meetings and make available the agenda for each meeting. Conn. Gen. Stat. Ann. § 1-225(a), (b) (West). That includes when an agency promulgates a new regulation or its equivalent. Conn. Gen. Stat. Ann. § 4-168 (West). For each new regulation, the agency must maintain an "official regulation-making" record. Conn. Gen. Stat. Ann. § 4-168b(a) (West). Even "informal procedures" that describe how the public may obtain information held by the agency must follow all rules in the Connecticut Uniform Administrative Procedure Act. *See* Conn. Gen. Stat. Ann. § 4-167(a) (West) ("[E]ach agency shall ... adopt as a regulation a description of ... the methods whereby the public may obtain information or make submissions or requests"; and "rules of practice setting forth the nature and requirements of all formal and informal procedures").

The OCME developed an informal policy that governs access to autopsy records. That policy interpreted the text of the statute in a way that limits access, Conn. Gen. Stat. § 19a-411(b). AbleChild has found no record that the OCME's policy was developed and confirmed through the state open meetings law. If OCME did not satisfy the notice and public meeting requirements of Connecticut's Open Meetings Law the OCME's informal policy is invalid; it thus limited the right of access without public notice or opportunity for participation. The OCME would then have ignored the clear legislative mandate that agency decisions substantively affecting the rights of the public, including the promulgation of a new rule, should be open to public inspection. The policy thereby deprives the public of meaningful participation and debate concerning the benefits and consequences of the agency's policy. The law prohibits an agency from creating new rules behind closed doors. Conn. Gen. Stat. § 1-225(a), (b); Conn. Gen. Stat. Ann. § 4-168. Here, the OCME's policy appears to have been adopted without notice,

comment, or discussion. Absent a showing that these procedural safeguards were followed, the OCME thus violated Connecticut's Open Meetings Law.

2. The OCME Policy Circumvents the Connecticut Uniform Administrative Procedure Act

The OCME's informal policy improperly bars disclosure of the OCME's records because it was not promulgated under Connecticut's Uniform Administrative Procedure Act (CUAPA). Under the CUAPA, a "policy" that functions as an official agency rule is considered a regulation. *See* Conn. Gen. Stat. Ann. § 4-166(13) (West) (defining a "regulation" as: "[e]ach agency statement of general applicability, without regard to its designation, that implements, *interprets*, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency") (emphasis added). The OCME is an applicable administrative agency bound by the CUAPA. *See* Conn. Gen. Stat. Ann. § 4-166 (West) ("'Agency' means each state board, commission, department or officer authorized by law to make regulations or to determine contested cases"); Conn. Gen. Stat. Ann. § 19a-401(a) (West) ("There is established a Commission on Medicolegal Investigations, as an independent administrative commission").

Each agency must follow an established process to enact any new regulation.[4] "It is clear that informal guidelines, promulgated outside the rulemaking framework of the Uniform

[4] Before adopting a proposed regulation, the agency shall "(1) [g]ive at least thirty days' notice by publication in the Connecticut Law Journal of its intended action. The notice shall include (A) either a statement of the terms or of the substance of the proposed regulation or a description sufficiently detailed so as to apprise persons likely to be affected of the issues and subjects involved in the proposed regulation, (B) a statement of the purposes for which the regulation is proposed, (C) a reference to the statutory authority for the proposed regulation, (D) when, where and how interested persons may obtain a copy of the small business impact and regulatory flexibility analyses required pursuant to section 4-168a, and (E) when, where and how interested persons may present their views on the proposed regulation; (2) give notice to each joint standing committee of the General Assembly having cognizance of the subject matter of the proposed regulation; (3) give notice to all persons who have made requests to the agency for advance notice of its regulation-making proceedings...(4) provide a paper copy or electronic version of the proposed regulation to persons requesting it....(5) no later than the date of publication of the notice in the Connecticut Law Journal, prepare a fiscal note, including an estimate of the cost or of the revenue impact (A) on the state or any municipality of the state, and (B) on small businesses in the state, including an estimate of the number of small businesses subject to the proposed regulation and the projected costs, including but not limited to, reporting, recordkeeping and administrative, associated with compliance with the proposed regulation and, if applicable, the regulatory flexibility analysis prepared under section 4-168a...(6) afford all interested persons reasonable opportunity to submit data, views or arguments, orally at a hearing granted under subdivision (7) of this subsection or in writing, and to inspect and copy the fiscal note prepared pursuant to subdivision (5) of this subsection; (7) grant an opportunity to present oral argument if requested by fifteen persons, by a governmental subdivision or agency or by an association having not less than fifteen members, if notice of the request is received by the agency within fourteen days after the date of publication of the notice; and (8) consider fully all written and oral submissions respecting the proposed regulation and revise the fiscal note in accordance with the provisions of subdivision (5) of this subsection to indicate any changes made in the proposed regulation. Conn. Gen. Stat. Ann. § 4-168(a) (West).

Administrative Procedure Act, ... may not be applied as substantive rules." *Hosp. of St. Raphael v. Comm'n on Hospitals & Health Care*, 438 A.2d 103, 107 (Conn. 1980). "Substantive rules" are those that have "a substantial impact on the rights and obligations of parties who may appear before the agency in the future." *Salmon Brook Convalescent Home, Inc. v. Comm'n on Hospitals & Health Care*, 417 A.2d 358, 362 (Conn. 1979). How an agency categorizes a policy is also irrelevant to the question of whether it is a valid regulation. *Id.* (finding that, "[t]he label that the particular agency puts upon its given exercise of administrative power is not, for our purposes, conclusive; rather it is what the agency does in fact") (internal citations omitted); *Lewis-Mota v. Secretary of Labor*, 469 F.2d 478, 481-82 (2d Cir. 1972).

The OCME continues to apply its policy notwithstanding that the FOIC held the policy carries no authority. In *Patrice Courtney and Citizen Publications v. Office of the Chief Medical Examiner*, Docket #FIC 86-128 (1986), the FOIC presided over a contested case in which the plaintiff sought autopsy records of a decedent who was not a family member. The Commission specifically held that "permission for disclosure from the decedent's family is not a statutory precondition for such disclosure, but is merely a practice adopted by the respondent." *Id.* at 3, ¶ 16. The FOIC also noted that the OCME could not circumvent the rulemaking process. *See Id.* at 3, § 17 (holding that, "[i]n the absence of statutory authority, it is concluded that under [1-210] G.S., the respondent [OCME] cannot create a precondition to disclosure of a public record"). The FOIC found that disclosure of the autopsy records, which included "related toxicology and other laboratory reports," was proper.

The Connecticut Supreme Court also held that the OCME's self-implemented policies do not trump the law. *See Aureli v. Dept of Pub. Health and Addiction Services*, 1998 WL 123069, at *3 (unpublished) (holding that OCME's "long standing policy" to simply list acute ethanol intoxication under "Other Significant Conditions" in *all* motor vehicle drivers who die as the result of injury was contrary to statute's mandate that an investigation be conducted prior to such determination). Here, the OCME employs a policy in violation of the requisites in Section § 4-168(a). Conn. Gen. Stat. § 4-168(a). The policy's effects are far-reaching: the OCME *never* discloses its records to the general public (but does selectively release record content, as is the practice of the medical examiner in this case, see below). The OCME has no basis outside of its own unofficial policy to deny disclosure of its records, and, therefore, the records are required to be disclosed. Further, despite being told directly that its policies are invalid, see e.g., *Patrice Courtney; Aureli* at *5 (finding that Dr. Carver's conclusion pursuant to the OCME's policy "is mere assumption and based on nothing but speculation"), the OCME insists upon adherence to the invalid policies by interested members of the public, evidencing a deliberate indifference to the OCME's statutory obligations. Without following the established rule-making procedure of the CUAPA, the "policy" is not a valid regulation nor does it carry the authority of statute or regulation. The policy is unlawful and unenforceable because it violates state law and the OCME's own regulations. The OCME provided no alternative basis for withholding Adam

Lanza's autopsy records. Accordingly, the Commission should order the immediate disclosure of those files.

B. THE OCME'S REFUSAL WAS CONTRARY TO CONNECTICUT'S PUBLIC RECORDS LAW

The OCME's denial of AbleChild's request, predicated on an informal policy that has no binding authority, runs contrary to Connecticut's statutes governing public records. Indeed, under state law, the public need only demonstrate a "legitimate interest" to obtain OCME records. *See* Conn. Agencies Regs. § 19a-401-12. AbleChild has legitimate public safety, research, education, media, and publication interests in these records and, therefore, Connecticut law requires disclosure.

In Connecticut, "there is an 'overarching policy' underlying the Freedom of Information Act (FOIA) favoring the disclosure of public records." *Superintendent of Police of City of Bridgeport v. Freedom of Info. Comm'n*, 609 A.2d 998, 1000 (Conn. 1992).[5] "[I]t is only in the exceptional case that inspection should be denied." *Meriden Record Co. v. Browning*, 294 A.2d 646, 649 (Conn. 1971) (citing *State ex rel. Youmans v. Owens*, 137 N.W.2d 470, 475, 139 N.W.2d 241). Even then, such exceptions to disclosure "must be narrowly construed." *Meriden* at 626. The party claiming the privilege has the burden of proving the exception's applicability. *Wilson v. Freedom of Info. Comm'n*, 435 A.2d 353, 357 (Conn. 1980). "This burden requires the claimant of the exemption to provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested." *City of New Haven v. Freedom of Info. Comm'n*, 205 Conn. 767, 776, 535 A.2d 1297, 1301 (1988).

Connecticut's public records laws governing the OCME are found in Conn. Genn. Stat. Section § 1-210 and Section § 19a-411 respectively. Connecticut's general public records law, Section § 1-210(a), which is the equivalent of the federal Freedom of Information Act, states:

> *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

[5] "Connecticut's right to know law was enacted to expand the common-law right. Under our law, if a document is made, maintained, or kept on file by a governmental body and if it does not fall within certain exceptions, then it must be made available for public inspection, and no showing of interest or special purpose is required. The purpose of the law was ably summarized by Representative Robert B. August, the sponsor of the bills in the House, during the proceeding immediately prior to passage of one of the bills: '(R)ecords of governmental bodies should in general be public unless there was some specific exclusion or unless there were a question of the impairment of the reputation or character of an individual or financial loss to the State.' Senator John H. Filer, the sponsor of the bills in the Senate, clearly indicated in his testimony that the right to know law was designed 'to establish the principle that the government serves best when the people know what appears in its records and that all of its actions are open to the public." *Gold v. McDermott*, 347 A.2d 643, 646 (Super. Ct. 1975) (internal citations omitted).

> 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.

Conn. Gen. State. § 1-210(a) (emphasis added). Section § 19a-411, which controls records held by the OCME, states in pertinent part:

> (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.
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> (b) The report of examination conducted by the Chief 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 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.

Conn. Gen. Stat. § 19a-411 (emphasis added).

Read together, the first sentence of Section § 1-210 and Section § 19a-411 evince the Connecticut General Assembly's intent that OCME provide guidelines for the disclosure of public records in the OCME's possession under certain administrative regulations and other requirements. *Galvin v. Freedom of Information Commission*, 201 Conn. 448, 460, 518 A.2d 64, 70 (1986). Connecticut regulation § 19a-401-12, which discusses OCME records, such as autopsy reports, states that:

> If the requester of the records is a member of the general public, he or she may obtain access to such records if the person has a legitimate interest in the documents and no court has issued an order prohibiting disclosure pursuant to section 19a-411(c) of the Connecticut general statutes.

Conn. Agencies Regs. § 19a-401-12.[6] A "legitimate interest" is a question of fact (*see* Opinion of the Connecticut Attorney General, 1971 WL 21766 (Conn.A.G. (1971)). That question must be decided on a case-by-case basis. *Meriden*, 294 A.2d at 648; *see also* Opinion of the Connecticut Attorney General, 1971 WL 21766 at *1 (finding that manufacturers of the chemical that "may" have caused the death of the decedent have a legitimate product safety interest"). It is well established that"withholding information under FOIA cannot be predicated on the identity of the requester." *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 170 (2004).[7] The OCME's policy is therefore not only at odds with the state Attorney General, but also with the vital requirement that disclosure is not determined on who requests the information. Further, a legitimate interest is likely to be found in all matters concerning serious events of public concern. *See Meriden* at 636 (citing *Rome Sentinel Co. v. Boustedt*, 252 N.Y.S.2d 10, 12 (Sup. Ct. 1964)) (finding that, "[t]he public's right to know and be informed on the activities of public figures is practically absolute unless commercialization may be shown. Even the ordinary citizen may be newsworthy under certain circumstances. Whether the event be a calamity or an honor, it may be one in which his neighbors have a legitimate interest") (internal citations omitted). Here, for AbleChild's caregivers, in particular, and for the public to which it reports in general, there is a compelling need to determine if psychoactive drugs contributed to Lanza's mass murder and suicide, because the safety of those caregivers and of the public in public venues like schools are at stake.

AbleChild has a legitimate interest in obtaining Adam Lanza's autopsy records, complete with results of toxicological tests. AbleChild aims to ensure the safety of caregivers when those for whom they give care are diagnosed as mentally ill and are prescribed drug treatments that may induce adverse events that include thoughts of murder, homicide, or suicide. AbleChild functions in the public interest, as a source for public policy and informed legislative action, and as a media resource organization. It has a keen interest in discovering evidence of the association between use of psychoactive drug agents and incidents of violence, aggression, suicidality and murder. In fulfillment of its mission within Newtown, Connecticut, and in the State of Connecticut and the nation generally, AbleChild has a legitimate interest in accessing the autopsy, toxicology, and prescription drug records of Adam Lanza so that an evaluation may be made to determine if those drugs contain agents associated with increased thoughts of hostility, murder, homicide, and suicide. AbleChild seeks to determine if such drugs contributed

[6] Section § 19a-411(c) states, "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." Conn. Gen. Stat. § 19a-411(c).

[7] Connecticut courts may look to the federal Freedom of Information Act for guidance because "the purposes of the federal act and of [the Connecticut] act are virtually identical." *Bd. of Trustees of Woodstock Acad. v. Freedom of Info. Comm'n*, 436 A.2d 266, 270 (Conn. 1980).

in whole or part to Lanza's commission of murder and suicide.[8] The information, professional assessments of it, and resulting recommendations shall then be published by AbleChild to parents, caregivers, lawmakers, and the public nationwide, thus better enabling them to work with health care professionals and those in government in choosing the best therapies for the treatment of mental health issues. AbleChild anticipates that publications concerning expert findings from the documents obtained will improve public awareness and foster more informed public debate and political decision-making concerning how best to stem future incidents of this kind.

Additionally, under the Code of Federal Regulations, drug manufacturers are required to report to the Food and Drug Administration alleged adverse events arising from the drugs they produce, thereby enabling FDA to engage in post-marketing surveillance of drugs. *See* 21 CFR § 310.305, 21 CFR § 314.80(c). "Adverse event" means "any health-related event associated with the use of a non-prescription drug that is adverse, including- (a) an event occurring from an overdose of the drug, whether accidental or intentional; (b) an event occurring from abuse of the drug; (c) an event occurring from withdrawal from the drug; and (d) any failure of expected pharamacological action of the drug." 21 USC § 379aa(a)(1). Records of adverse events must be kept for a period of ten years. 21 CFR § 310.305(f), 21 CFR § 314.80(i). Drug manufacturers might learn of unintended and/or unexpected adverse events of their drugs that must be disclosed to the FDA and the public. In fulfillment of its mission to ensure the protection of caregivers, AbleChild will inform each drug manufacturer concerned of its expert assessment of the extent to which psychoactive drug agents may have contributed to Lanza's murder and suicide. That information would then be reportable by the drug manufacturers to the FDA for agency evaluation within the context of its post-marketing surveillance of drugs.

The OCME had no basis to deny AbleChild's request that overcomes AbleChild's countervailing interests in obtaining the information requested. Moreover, by failing to even address AbleChild's interests, OCME's categorical non-disclosure policy is squarely at odds with Section § 19a-411's guarantee that, "*[a]ny person* may obtain copies of such records upon

[8] The OCME has publicly admitted that it regards determining whether psychoactive drugs contributed to Adam Lanza's acts of murder and suicide to be of legitimate interest. In addition to the OCME making statements to the press about Adam Lanza's autopsy records, the agency has also reportedly distributed samples of Adam Lanza's DNA to the University of Connecticut outside the ambit of its unofficial disclosure policy. *See* Ex. 8, available at http://abcnews.go.com/US/dna-newtown-shooter-adam-lanza-studied-geneticists/story?id=18069343. Any argument that disclosure to the University is proper under OCME's informal policy must be rejected given that disclosure to "a public authority, professional, medical,...or scientific body or university or similar body" may only occur if the identity of the deceased person, or any reference to such identity, remains confidential and not published. Conn. Agencies Regs. § 19a-401-12(c)(1). Not only has the OCME publically commented on its choice to give samples of Adam Lanza's DNA to the University, but the University itself issued a press release about the endeavor. *See* Ex. 9, available at http://today.uconn.edu/blog/2013/01/uconn-news-roundup-12213/. Further, AbleChild knows of no mechanism where the OCME may unilaterally disclose its records to a university or similar organization absent an official records request from the university or organization itself.

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." Conn. Gen. Stat. § 19a-411(b) (emphasis added). An agency's informal practice that unreasonably contravenes the plain language of a statute cannot be upheld. *See Connecticut Ass'n of Not-For-Profit Providers for the Aging v. Dep't of Soc. Services*, 709 A.2d 1116, 1125 (Conn. 1998) (declaring as impermissible an agency's reimbursement methodology that was not included among the applicable statute's unambiguous directives, and finding that, "[t]he department's interpretation imports ambiguity where none is apparent, and engrafts language onto the statute that appears nowhere in the text"); *Teresa T. v. Ragaglia*, 865 A.2d 428, 441 (Conn. 2005) ("A policy manual provision that is inconsistent with a state statute or regulation regarding the same subject matter shall not govern interpretation of that statute or regulation"). AbleChild has demonstrated its legitimate interest, and, as such, the OCME is obliged to release to AbleChild the requested records in OCME's possession. Further delay of disclosure is an illegal, unconstitutional restraint on the ability to obtain public records that could be instrumental in explaining why a person might commit such horrific acts of violence, and for preventing such acts from happening in the future.

C. THE OCME'S POLICY OF NON-DISCLOSURE IS A VIOLATION OF STATE COMMON LAW, THE CONNECTICUT CONSTITUTION, AND THE FIRST AMENDMENT

1. The OCME's Informal Policy Is an Unconstitutional Prior Restraint that Violates AbleChild's Right to Gather Information, Which Is Essential to Place a Critical Check on Government and Legal Measures

Assuming the OCME created its policy through proper procedures, that policy would deny all disclosure of its records to the public.[9] The OCME instead selectively allows only family and similarly associated persons to access public records concerning a decedent, even when the decedent's acts have caused injury to the general public and even when access to the information is indispensable to the exercise of the franchise and to informed public policy.[10] The OCME also selectively divulged information from the autopsy report and medical records of this

[9] *See* Ex. 3, Letter from OCME to AbleChild; Ex. 4, Dr. H. Wayne Carver, Letter to Judiciary Committee ("The Office of the Medical Examiner does not now and has never released autopsy reports to the general public"). Ex. 5, Screenshot of the OCME's website ("In accordance with the regulations of the Commission on Medicolegal Investigations, the complete records of all investigations are made available to the family of the deceased, to any federal, state, or municipal governmental agency or public health authority investigating the death, to insurance companies with a legitimate interest in the death; to all parties in civil litigative proceedings, and to treating physicians...Records are not otherwise open to the general public").

[10] Ex. 5, Screenshot of the OCME's website; Ex. 6, OCME Brochure ("The remainder of the findings in the autopsy report is a medical record. These are available to the next of kin and those with written permission from the next of kin").

decedent in response to certain media inquiries.[11] This policy denies access to the OCME's records before even a proper request can be submitted. Such a scheme is a prior restraint on First Amendment rights. *See Ward v. Rock Against Racism*, 491 U.S. 781, 795, 109 S. Ct. 2746, 2756 (1989) (holding that a prior restraint exists when "the challenged regulation *authorizes* suppression of speech in advance of its expression") (emphasis added).

The United States Supreme Court recognizes a constitutional right to gather information under the First Amendment. *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972) (holding that, "without some protection for seeking out the news, freedom of the press could be eviscerated"). The checking value of the First Amendment to challenge government and its measures has been deemed a core First Amendment value indispensable to functional democracy. *See* A. Meiklejohn, Political Freedom: The Constitutional Powers of the People 9 (1960) (noting that, "[g]overnments...derive their just powers from the consent of the governed. If that consent be lacking, governments have no just powers"); *see also Roth v. United States*, 354 U.S. 476, 484 (1957) (holding that the First Amendment "was fashioned to [ensure] unfettered exchange of ideas for the bringing about of political and social changes desired by the people"); *see also Stromberg v. California*, 283 U.S. 359, 369 (1931) (finding, "[t]he maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system"); *see also New York Times Co. v. Sullivan*, 367 U.S. 254, 270 (1964) (reminding that there exists "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials"). "In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors... Only a free and unrestrained press can effectively expose deception in government," *New York Times Co. v. U.S.*, 403 U.S. 713, 717 (1971) (Black, J., concurring). The prohibition of the right to criticize government and its measures, based on reasonable access to information concerning the workings of government, is considered a prior restraint, which carries "a heavy presumption against its constitutional validity." *United States v. Sherman*, 581 F.2d 1358, 1361 (9th 1978). Indeed, "it has been generally, if not universally, considered that it is the chief purpose of the guaranty [of liberty of the press] to prevent previous restraints upon publication." *Near v. Minnesota*, 283 U.S. 697, 713 (1931). The Supreme Court has condemned most all prior

[11] *See* Ex. 8 (Last visited Mar. 22, 2013); *see* Ex. 10, available at http://www.nydailynews.com/news/national/lanza-brain-appears-normal-conn-doctor-article-1.1238602 (last visited April 2, 2013); *see* Ex. 11, available at http://www.huffingtonpost.com/2012/12/19/adam-lanza-motive_n_2332641.html?view=print&comm_ref=false (last visited April 2, 2013). This account was reiterated by CBS News, available at http://www.cbsnews.com/8301-204_162-57559983/medical-examiner-seeks-genetic-clues-to-adam-lanzas-motives/.

restraints against the discovery of public information. *See New York Times Co. v. U.S.*, 403 U.S. at 735-26 (1971) (J. Brennan concurring):

> [T[he First Amendment tolerates absolutely no prior judicial restraints of the press predicated upon surmise or conjecture that untoward consequences may result. Our cases, it is true, have indicated that there is a single, extremely narrow class of cases in which the First Amendment's ban on prior judicial restraint may be overridden. Our cases have thus far indicated that such cases may arise only when the Nation is at war.

The Connecticut Constitution similarly guarantees liberty of speech and the press for its citizens: "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty." Conn. Const. art. I, § 4. It also prohibits laws that abridge those rights: "No law shall ever be passed to curtail or restrain the liberty of speech or of the press." Conn. Const. art. I, § 5. "The Constitution of Connecticut, article first, § 4, directly prohibits any prior restraints on speech...Unlike the first amendment to the United States Constitution, the Connecticut provision makes no reference to legislative action....the protections to free speech afforded under the Connecticut Constitution are more expansive than those conferred by the federal constitution." *Whitnum v. Robinson*, FSTCV125013822S, 2012 WL 1511376 (Conn. Super. Ct. Apr. 10, 2012). "[Liberty of the Press] recognizes the free expression of opinion on matters of church or state as essential to the successful operation of free government, and it also recognizes the free expression of opinion on any subject as essential to a condition of civil liberty." *State v. McKee*, 46 A. 409, 413 (Conn. 1900).

Here, the OCME uses its policy to prevent the public's ability to gather and evaluate information indispensable to placing a critical democratic check on the exercise of legislative power and public policy in response to the Sandy Hook Elementary School murders. Only a fully informed public can hold elected officials to account on such matters of public concern, which include the legal measures that will be taken to avert another catastrophic event like the murders and suicide that occurred at Sandy Hook Elementary School. The OCME allows only family and similarly associated persons to access the OCME's records concerning a decedent and divulges information selectively to certain media. Maintaining a functional policy of non-disclosure, except upon political impulse extinguishes the freedom to discuss, debate, and indeed speak on all information relevant to public policy and thus erects an unconstitutional prior restraint. The United States and Connecticut Constitutions guarantee AbleChild the means and ability to stay well-informed of government decision-making. This knowledge will help ensure that state and local governments, and indeed the federal government, are better informed *before* enacting laws, for example, on means to stem future attacks. Similarly, this information will offer insight to the public about psychoactive drugs and the effects of such drugs.

2. The OCME's Policy Violates AbleChild's Common Law and Constitutional Right to Access Information

AbleChild has a right to access Adam Lanza's autopsy records under Connecticut common law as well as the Connecticut and the United States Constitutions respectively. That right may only be abridged upon the government's demonstration that the law satisfies strict scrutiny, i.e. that the limitation to speech is narrowly tailored to meet a compelling government interest. *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 607 (1982) (affirming right of access to criminal trials). The OCME has not met that burden.

Connecticut recognizes the common law right of access to judicial documents and records. *See Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 970 A.2d 656, 677 (Conn. 2009). There is a "strong presumption of openness of judicial proceedings." *Doe v. Connecticut Bar Examining Comm.*, 818 A.2d 14, 30 (Conn. 2003). Judicial documents provide "a surrogate to assist the public in monitoring the judicial process when it cannot be present." *Rosado,* 970 A.2d at 677-678. Under state common law, a "judicial record" is defined as "any document filed with the court that the court reasonably could rely on in support of its adjudicatory function." *Id.* at 682. Such documents may include motions and exhibits. *Id.* at 685. This right may also apply to those documents that are not yet of public record, but would inevitably become so. *See e.g. State v. Ross*, 543 A.2d 284, 285 (Conn. 1988) (granting access to reporter's transcript notwithstanding that it had not yet been filed with the court).[12]

In addition to the common law right, the United States Supreme Court recognizes a right of access under the First Amendment to criminal trials. *Globe Newspaper*, 457 U.S. at 604 (holding that, "Underlying the First Amendment right of access to criminal trials is the common understanding that a major purpose of that Amendment was to protect the free discussion of governmental affairs") (citing *Mills v. Alabama*, 384 U.S. 214, 218 (1966)). The First Amendment also protects access to judicial records that are "derived from or a necessary corollary of the capacity to attend the relevant proceedings." *In re New York Times Co. to Unseal Wiretap & Search Warrant Materials*, 577 F.3d 401, 409 (2d Cir. 2009) (internal citations omitted); *see also United States v. Suarez,* 880 F.2d 626, 630–31 (2d Cir.1989) (explaining that the qualified First Amendment right of access applies to "documents filed in connection with

[12] The federal common law depends on a balancing test to determine whether a right to privacy outweighs the need for disclosure. See *United States v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir. 1995) (holding that, "[i]f release is likely to cause persons in the particular or future cases to resist involvement where cooperation is desirable, that effect should be weighed against the presumption of access"). Connecticut does not require this extra step. *See Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 970 A.2d 656, 686 (Conn. 2009) (finding that, "[t]he defendants cite no controlling authority nor do they offer any persuasive rationale why this test should either be engrafted onto our rules of practice or supersede those rules as defined in the Practice Book. It is axiomatic that courts in Connecticut adjudicating matters of state law are not bound by a test that a federal court must apply. In Connecticut, the rules of practice and procedure are defined in our Practice Book and controlling case law. Accordingly, we reject this claim").

criminal proceedings"). Connecticut recognizes that right under the First Amendment. *See Rosado*, 970 A.2d at 673 (recognizing that the intervenors in that case "did not assert any first amendment right of access to the documents in question. We therefore confine our analysis to the presumption of access as provided by the rules of practice in light of the common law").

In Connecticut, records of the medical examiner have long been held to be judicial records. In *Daly v. Dimock*, 12 A. 405 (1887), the Connecticut Supreme Court (then as the Supreme Court of Errors of Connecticut) found that as it related to the results of the coroner's inquests:

> For the purposes of this case, we may concede that the duties of a coroner are of a judicial nature, and that the verdicts of juries and the findings of coroners are, in a general sense, matters of record. They are results and conclusions of judicial proceedings, and are clearly analogous to verdicts and judgments in ordinary courts of justice...It is enough for our present purpose to say that it is a public document, relating to matters of public interest, and required by law to be kept a public officer who is the custodian of the records of judicial proceedings and other public documents....In the absence of any limitation or restriction, we must assume that it was intended that they might be examined by any and all person interested in the subject-matter... In the absence of legislation to that effect, we cannot say that they are for the exclusive use of one person or officer, or that any one person or class of persons may not inspect or use them. The writing in question relates to the prosecution of an indictment before the superior court.

Id. at 406. To this day it is Connecticut law that "[t]he 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*." Conn. Gen. Stat. § 19a-411 (emphasis added). Additionally, in Connecticut, a coroner "is a judicial officer." *State v. Kelley*, 203 A.2d 613, 614 (1964) (finding that a coroner "is charged with the duty, under certain circumstances, of making all proper inquiry respecting the cause and manner of death").[13] AbleChild thus has both a common law and constitutional right to access the findings of the OCME in Adam Lanza's autopsy records.

[13] Conn. Gen. Stat. § 19a-407(a).provides that "All law enforcement officers, state's attorneys, prosecuting attorneys, other officials, physicians, funeral directors, embalmers and other person shall...assist in making dead bodies and related evidence available to that office for investigation and postmortem examinations...and shall cooperate fully with said office in making the investigations and examinations herein provided for. In conducting such investigations or examinations, the Chief Medical Examiner may issue subpoenas requiring the production of

A court's conclusion that a qualified First Amendment right of access to certain judicial documents exists does not end the inquiry:

> The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.

Press-Enter. Co. v. Superior Court of California, Riverside County, 464 U.S. 501, 510 (1984). Blanket non-disclosure rules, such as the OCME policy at issue here, do not satisfy the standard. *See Globe Newspaper Co.*, at 607-608 (finding that although a mandatory closure rule during the testimony of minor victims in criminal sex-offense trials had a compelling interest (the well-being of minor victims), its mandatory nature was not narrowly tailored and also ignored the fact that "the circumstances of the particular case may affect the significance of the interest"). Here, the OCME categorically refuses all access to its records by the public absent a familial or similar relationship to the deceased.[14]

The OCME's records are "judicial records." State law requires that such records, including the OCME's "final report and detailed findings," be accessible to the public. As such, a First Amendment right of access to this information exists. The OCME must therefore satisfy strict scrutiny to meet its burden to justify non-disclosure, and it cannot do so on this record. The OCME has provided no explanation of its interest, let alone a compelling one, for its policy of imposing a categorical ban on release of a decedent's medical records in an instance where the decedent has committed mass murder and suicide, and the OCME has offered no explanation of how its interest is narrowly tailored.

D. THE OCME'S POLICY VIOLATES ARTICLE FIRST, SECTION 1 OF THE CONSTITUTION OF THE STATE OF CONNECTICUT AND THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

The OCME's policy draws a stark line between those who may have access to autopsy records and those who may not. The OCME conditions access to autopsy records based on the identity of the requestor and, specifically, on those persons who have a familial or similar tie to the decedent. The general public is excluded from access. This scheme violates the general

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medical reports, records or other documents concerning the death under investigation and compelling the attendance and testimony of any person having pertinent knowledge of such death." Conn. Gen. Stat. § 19a-407(a).

[14] *See* Ex. 3; *see also* Ex. 4; *see also* Ex. 5.

public's right to access information that, in the case of a mass murder, has at least as much significance, if not more, to the bereaved community as it does for the bereaved family. The scheme thus violates the First Amendment. Additionally, the OCME's policy violates the similar promises of equality granted under Article First, Section 1 of the Connecticut Constitution because the informal practice has no legitimate public purpose.

1. The Policy Violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution

"No State shall...deny to any person within its jurisdiction the equal protection of the laws." USCA CONST Amend. XIV. Equal protection violations that impair a fundamental right are subject to strict scrutiny. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16 (1973); *Dandamudi v. Tisch*, 686 F.3d 66, 72 (2d Cir. 2012). Strict scrutiny is "the most rigorous form of constitutional inquiry." *Pedersen v. Office of Pers. Mgmt.*, 881 F. Supp. 2d 294, 298 (D. Conn. 2012). Laws analyzed under strict scrutiny "are constitutional only if they are narrowly tailored measures that further compelling governmental interests." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227, 115 S. Ct. 2097, 2113, 132 L. Ed. 2d 158 (1995). First Amendment rights are considered fundamental for purposes of equal protection analysis. *See Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 101, 92 S. Ct. 2286, 2293, 33 L. Ed. 2d 212 (1972) (holding, "The Equal Protection Clause requires that statutes affecting First Amendment interests be narrowly tailored to their legitimate objectives"). "[I]f a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end." *Romer v. Evans*, 517 U.S. 620, 631, 116 S. Ct. 1620, 1627, 134 L. Ed. 2d 855 (1996).

The OCME's policy burdens AbleChild's First Amendment right to access autopsy records, which are considered judicial documents in Connecticut. Accordingly, the OCME must defend its policy under strict scrutiny and demonstrate that it is narrowly tailored to meet a legitimate interest. The OCME cannot meet that burden. In its letter to AbleChild, the OCME did not include its rationale for allowing only family and similarly situated individuals to access autopsy records. *See* Ex. 3. Even if this decision was based on concerns of privacy or ensuring access to the bereaved,[15] the method of filtering disclosure is not tailored to such a goal in the context of a mass murder. The OCME employs a blanket policy and makes no attempt to analyze individual requests for autopsy records on a case-by-case basis. Further, the policy is to the detriment of the vast majority of all other parties whose children, spouses, or relatives were murdered and of the community at large that would retain a "legitimate interest" in obtaining the autopsy records of a mass murderer. Even if the FOIC were to find that strict scrutiny should not

[15] The CT Registrar of Vital Statistics offered such rationale in *Meriden Record Co. v. Browning*, 6 Conn. Cir. Ct. 633, 637, 294 A.2d 646, 647-48 (1971). The plaintiff in *Meriden* however, sought the records through Connecticut's public records act, and not based on First Amendment grounds.

apply, however, the policy would not withstand a lower level of scrutiny. The OCME's policy of refusing to disclose autopsy reports to nearly everyone who asks cannot rationally be related to protecting alleged privacy rights of a select few individuals and any whom the OCME might subsequently allow without prior notice and comment. The OCME's position is seemingly based on the idea that *all* next of kin would object to a decedent's records on the basis of privacy concerns. Notwithstanding that the OCME may seek "the vindication of privacy rights that cannot effectively be asserted under the Freedom of Information Act," *Galvin*, 518 A.2d at 71, that does not mean that the OCME may assert a blanket denial of access in every case. The OCME's policy unfairly withholds autopsy records from a public that is keenly interested in what was a mass murder. OCME's policy of blanket non-disclosure is not narrowly tailored to meet any purported interest, even if based on privacy concerns, and therefore violates AbleChild's right to equal protection under the Fourteenth Amendment.

2. The Policy Violates Article First, Section 1 of the Connecticut Constitution

Article First, Section 1 of the Constitution of the State of Connecticut guarantees that, "All men when they form a social compact, are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community." Conn. Const. art. I, § 1. "This constitutional provision prohibits the adoption of legislation that has no public purpose but operates to confer private gain on an individual or group." *Beccia v. City of Waterbury*, 470 A.2d 1202, 1207 (Conn. 1984). "This provision has a like meaning to that which prohibits the states from denying to any person the equal protection of the laws, contained in the fourteenth amendment to the constitution of the United States." *Barnes v. City of New Haven*, 98 A.2d 523, 527 (Conn. 1953). "A state statute is invalid under this clause only if it directs the granting of an emolument or privilege to an individual or class without any purpose, expressed or apparent, to serve the public welfare thereby." *Comm'r of Pub. Works v. City of Middletown*, 731 A.2d 749, 757 (Conn. 1999) (internal citations omitted). "[A]n act serves a public purpose under article first, § 1, when it promote[s] the welfare of the state; or when the principal reason for the appropriation is to benefit the public." *Id.* (internal citations omitted).

The OCME's policy should be found in violation of the Connecticut Constitution because the policy intentionally grants a privilege to certain individuals to the exclusion of all others. Additionally, the OCME's policy has no legitimate public purpose. Even privacy interests that may exist for certain autopsy records cannot create a larger "public purpose" for inhibiting all other persons from exercising the right to access such information under constitutional, statutory, and common law guarantees. Indeed, the OCME seemingly restricts all access to autopsy records notwithstanding a "legitimate interest" advanced by the requestor as required by statute and the OCME's own regulations. *See* Conn. Gen. Stat. §19a-411(b); Conn. Agencies Regs. § 19a-401-12. The public is not aided by such a purpose. It is unfairly and prejudicially hindered by it.

E. THE OFFICE OF THE CHIEF MEDICAL EXAMINER HAS WAIVED ANY OBJECTION TO DISCLOSURE BY PLACING SELECT INFORMATION FROM THE AUTOPSY RECORD OF ADAM LANZA IN THE PUBLIC DOMAIN

The Chief Medical Examiner, Dr. Carver, has publically discussed pertinent excerpts from certain of the documents that AbleChild seeks, thereby waiving any claim of exemption under Sections § 19a-411 or § 1-210. Specifically, Dr. Carver has made repeated statements concerning the autopsy and toxicology of Adam Lanza.[16] Under the "public domain doctrine," documents and materials that could otherwise be exempted from disclosure lose their "protective cloak" once "disclosed and preserved in a permanent public record." *Cottone v. Reno*, 193 F.3d 550, 554 (1999). "[O]nce the State has gone public with information which could have previously been protected from disclosure under [the law's] exemptions, no further purpose is served by preventing full access to the desired documents or information." *Downs v. Austin*, 522 So. 2d 931, 935 (Fla. Dist. Ct. App. 1988). The U.S. Court of Appeals for the D.C. Circuit holds that for the public domain doctrine to apply, "the specific information sought must have already been disclosed and preserved in a permanent public record." *Students Against Genocide v. Dep't of State*, 257 F.3d 828, 836 (D.C. Cir. 2001) (internal citations omitted). Conversely, the United States Court of Appeals for the Ninth Circuit has recently ruled that full release is justified following a selective release on a case-by-case basis. *See Watkins v. U.S. Bureau of Customs & Border Prot.*, 643 F.3d 1189, 1197-98 (9th Cir. 2011) (explaining that, "When an agency freely discloses to a third party confidential information covered by a FOIA exemption without limiting the third-party's ability to further disseminate the information then the agency waives the ability to claim an exemption to a FOIA request for the disclosed information" *Watkins* at 1198.

In the January 11, 2013 online edition of the *Connecticut Post*, reporter Michael P. Mayko authored the article "M.E.: Lanza's brain appeared normal," which lists several quotes directly from Dr. Carver. Specficailly, Dr. Carver is quoted as stating that Adam Lanza's brain showed "no tumor ... no gross deformity," and that, "[w]e measured his head and it fell in the normal range." (This was in response to a question based on suspicions that, based on published photos, Adam Lanza might have suffered from "Fragile X Syndrome" (the most common known genetic cause of autism or autism spectrum disorders, which results in a large forehead or face).[17] Carver admitted that the results of toxicology tests might provide "potential

[16] Dr. Carver has actually commented on his autopsies of Adam Lanza, Adam Lanza's mother, and certain of the minor victims. *See* Ex. 12, available at http://newtown.patch.com/articles/police-no-motive-emerging-in-newtown-school-shooting (last visited April 2, 2013); *see also* Ex. 13, available at http://articles.latimes.com/print/2012/dec/16/nation/la-na-nn-connecticut-shooting-lanza-autopsy-20121216. (last visited April 2, 2013).

[17] *See* Ex. 14, available at http://www.ctpost.com/local/article/M-E-Lanza-s-brain-appeared-normal-4183530.php. (last visited April 2, 2013).

information" into "the motives of the deadly shooter."[18] For this reason, the toxicology tests will also search for, in particular, drugs that might "affect behavior, which include psychiatric medications used to treat anxiety, seizures, and other issues."[19] Carver reportedly hopes that the "presence or absence" of such drugs could provide "potentially valuable information." *Id.* Additionally, Dr. Carver directly placed Adam Lanza's autopsy and his possible genetic abnormalities into the public eye. Dr. Carver commented that "he [Dr. Carver] hopes Adam Lanza's biology will help explain why [he] went on a deadly rampage."[20] That same report quoted Dr. Carver as saying, "I'm exploring with the department of genetics what might be possible, if anything is possible...Is there any identifiable disease associated with this behavior?"

Dr. Carver has specifically commented on the details of his autopsy findings and directly addressed his expert opinion on the integrity and characteristics of Adam Lanza's brain and head respectively. Dr. Carver has gone further by postulating a possible link between Lanza's murderous acts and his internal processes at the time of committing those acts. Dr. Carver also seeks to directly answer whether psychiatric drugs or other substances were a reason for Adam Lanza's violence. The media maintains an intense, persistent focus on the Newtown tragedy, and any information is quickly circulated around the world via all forms of electronic media. At the center of attention, Dr. Carver had to have known that each of his pronouncements would be widely disseminated. He cannot now claim a power to selectively excerpt information to disseminate via chosen media and a power to deny all others access to the same information. He cannot exercise censorship discretion by releasing some of the information from Adam Lanza's autopsy record, but deny access to all other information in Adam Lanza's autopsy record.

F. THE OCME MAY NOT WITHHOLD ITS RECORDS UNDER PUBLIC RECORDS EXEMPTION § 1-210(B)(2)

Autopsy reports are not "medical files" in the context of Connecticut's public records exemption under § 1-210(b)(2).[21] Indeed, no court has held that records of the OCME are somehow also to be considered "medical files" under § 1-210(b)(2).[22] Such a contention

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[18] *See* Ex. 15, at http://www.policymic.com/articles/22740/adam-lanza-s-brain-shows-nothing-unusual-says-autopsy (last visited April 2, 2013).

[19] *See* Ex. 14.

[20] *See* Ex. 11. This account was reiterated by CBS News at http://www.cbsnews.com/8301-204_162-57559983/medical-examiner-seeks-genetic-clues-to-adam-lanzas-motives/ (last visited April 2, 2013).

[21] In its letter of denial to AbleChild, the OCME did not make this argument and it is unknown whether the agency will do so in this case. The OCME has however, previously made this argument. *See Patrice Courtney and Citizen Publications v. Office of the Chief Medical Examiner*, Docket #FIC 86-128. It also makes such an assertion in its employment practice memoranda. *See* Ex. 7, "Guidelines for Assistant Medical Examiners," at 8 ("The policy of the Office of the Chief Medical Examiner is that the investigation information related to an individual's cause and manner of death is treated as a medical record").

[22] AbleChild does point out however, that Connecticut state courts have considered cases in which a "death record" was originally found by an agency to be a medical record. The question of whether such a record was a medical record however, was not a matter questioned on appeal. For example, in *Meriden*, the Circuit Court noted

frustrates basic concepts of statutory construction; ignores the General Assembly's intent to except certain records held by the medical examiner from § 1-210; and subordinates a state statute and the will of the citizens of Connecticut to an agency's informal, internal policy. Further, even if its records could be considered "medical files," the OCME cannot also demonstrate that disclosure of Adam Lanza's files would result in an invasion of personal privacy.

1. Autopsy Records Are Not "Medical Files"

Equating OCME records with "medical files" misinterprets the relevant authorization statutes under § 19a-411 and § 1-210 respectively. "The legislature is always presumed to have created a harmonious and consistent body of law." *Felican Sisters of St. Francis of Connecticut, Inc., v. Historic District Commission of the Town of Enfield*, 284 Conn. 838, 850-51, 937 A.2d 39 (2008). In Connecticut, "the general rules of statutory construction apply to the Freedom of Information Act, just as they apply to other statutes." *Woodbridge Town Plan & Zoning Comm'n v. Freedom of Info. Comm'n*, CV 950374751, 1996 WL 62643 (Conn. Super. Ct. Jan. 25, 1996). Further, the Supreme Court of Connecticut recognizes the tenet, *expressio unius est exclusion alterius*, ("the expression of one thing is the exclusion of another"). *Felican Sisters of St. Francis of Connecticut, Inc., v. Historic District Commission of the Town of Enfield*, 937 A.2d 39 (2008). There is no reason for the Connecticut General Assembly to definitively exclude certain types of documents from disclosure, such as autopsy records, under § 1-210(b) if the legislative body's intent was to allow for disclosure under § 19a-411. Further, Section § 1-210(a) begins with the acknowledgement that other statutes would provide for disclosure of specific categories of records, and that such records would be governed by the rules established in their respective authorization acts. Indeed, the Connecticut Supreme Court has found that, "there may be cases in which a wise public policy would seem to require that facts and circumstances ascertained by the state, in the court of its investigation by the coroner, should not be made public...If such discretion is desirable, it will be for the legislature to make provision for it." *Dimock*, 12 A. at 407. The General Assembly expressly provided circumstances for the OCME's records' disclosure under § 19a-411, and as such, the OCME's records are not "medical records."

The intent of Connecticut's General Assembly, expressed through § 19a-411, was to make autopsy records separate from "medical files" under § 1-210(b)(2). Section § 19a-411 "incorporates *only* those provisions of 1-19 [now § 1-210] *that are not inconsistent* with the

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that the commissioner of health denied access to the requested death record and certificate because the record "is a medical file and is not a public record under s 1-19 of the General Statutes" *Meriden* at 634. In a footnote, the court expressly advised that it took no position on this and other underlying facts because both parties stipulated to the facts on appeal. The court held therefore, it "does not consider nor decide the plea in abatement, the demurrer to the plea in abatement, etc. The court followed the theory adopted by the parties and has decided the case on the merits." *Id.* at 638, n. 2. Further, upon information and belief, the FOIC has only once made such a finding in an older contested case. *See Patrice Courtney and Citizen Publications*, at 2, ¶ 12. Such a categorization has never been validated by any Connecticut court.

former statute's restrictions on disclosure. These provisions include, but are not limited to, the exceptions to disclosure set forth in § 1-19(b), insofar as they apply to the types of records covered by § 19a-411." *Galvin*, 518 A.2d at 70.[23] Finding that OCME records are synonymous with "medical records" would result in inconsistent statutes: the records would be exempted under § 1-210(b)(2), yet be available to the public upon a showing of a legitimate interest under Section § 19a-411. If the Connecticut General Assembly had wanted to categorize autopsy records as "medical files," it would have expressly done so. Other jurisdictions have written their statutes in like manner and do not recognize "autopsy records" as "medical files."[24]

2. Even if Autopsy Records Were "Medical Files," Disclosure Would Not Constitute an Invasion of Personal Privacy

Even if the OCME's records could be categorized as "medical files" under Section § 1-210(b)(2), the OCME must still demonstrate that disclosure would constitute an invasion of privacy. Conn. Gen. Stat. § 1-210(b)(2). Disclosure is prohibited "only when the information sought by a request does not pertain to legitimate matters of public concern and is highly offensive to a reasonable person." *Perkins v. Freedom of Information Comm'n.*, 635 A.2d 783, 791 (Conn. 1993). Both of these criteria must be established by the party seeking the records' exemption for disclosure to be withheld. "Pursuant to *Perkins,* even materials in the personnel or similar files of public employees that are *not* of legitimate public interest must be disclosed unless the materials at issue are also found to contain information that is "highly offensive" to a reasonable person." *Dep't of Pub. Safety, Div. of State Police v. Freedom of Info. Comm'n,*, 698 A.2d 803, 809 (Conn. 1997). To make this determination, Connecticut law considers the potential for embarrassment and whether a person originally gave the information to the government agency with the reasonable expectation that the material would be considered private. *Chairman, Criminal Justice Com'n v. Freedom of Information Com'n*, 585 A.2d 96 99 (Conn. 1991).

The effects of Adam Lanza's horrendous acts directly affected an entire community, the acts took place in a community gathering place, a public school, and the acts reverberated around

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[23] The court advised in its footnote that it was not asked to evaluate the applicability of subsection (b)(2), and therefore offered no opinion on the issue. *Galvin*, 518 A.2d at 71, n. 10. The question likely to be posed in such scenario would be whether subsection (b)(2) is inconsistent with the ME regulations.

[24] As an example, Oregon's public records law states, "Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505." ORS 192.420. Under ORS 192.501(36), the legislature chose to exempt "A medical examiner's report, autopsy report or laboratory report ordered by a medical examiner under ORS 146.117." Notwithstanding, the ME report may be disclosed if "the public interest requires disclosure in the particular instance." ORS 192.501. The OR legislature, however, also distinguished a "medical examiner's report" from other types of documents. For example, it chose to specifically exempt personnel discipline records under ORS 192.501(12) and information in a person, medical, or similar file if such disclosure would constitute an reasonable invasion of privacy unless "the public interest by clear and convincing evidence requires disclosure in the particular instance." ORS 192.502.

the world, taking center stage in all major national and international media.[25] The public anxiously awaits disclosure of each and every detail that may indicate why Adam Lanza committed his offenses. School shootings and plots to commit them are repeated offenses occurring across the nation. There are fewer topics of greater public concern. Ensuring that officials arrive at sound, fully informed conclusions is an essential public concern. Likewise, ensuring that the public is fully informed of all factors that may contribute to these horrific events is essential to responsible exercise of the franchise, to critical examination of government and its measures. Adam Lanza chose to commit a public act of violence injecting himself, his motivations, and the catalysts for those acts and motivations into the public eye.

Understanding and evaluating OCME's investigative processes, decision-making and overall handling of an important matter such as this is also a legitimate public interest. *See Tompkins v. Freedom of Info. Comm'n*, 46 A.3d 291, 299 (Conn. 2012) (affirming on that basis the FOIC's finding that disclosure of officer's termination records, including instant message conversations, did not constitute a violation of personal privacy. Additionally, such material is not offensive to a reasonable person. *See Rocque v. Freedom of Information Commission*, 774 A.2d 957, 967 (Conn. 2001).

IV. CONCLUSION

For the reasons stated above, AbleChild respectfully asks the FOIC to overturn the OCME's decision to deny access to all of its records concerning Adam Lanza. The denial is not only contrary to Connecticut statutes and regulations, but also violates Connecticut common law and the Connecticut and United States Constitutions. The OCME's policy was never developed pursuant to the CUAPA and contravenes the plain language and intent of Connecticut's public records law.

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[25] *See e.g.*, Ex. 16, James, Barron, *Nations Reels After Gunman Massacres 20 Children at School in Connecticut*, N.Y. TIMES, Dec. 14, 2012, available at http://www.nytimes.com/2012/12/15/nyregion/shooting-reported-at-connecticut-elementary-school.html?pagewanted=all&_r=0 (last visited April 2, 2013); Ex. 17, "Connecticut school shooting: Children among 27 killed, BBC NEWS, Dec. 15, 2012, available at http://www.bbc.co.uk/news/world-us-canada-20730717 (last visited April 2, 2013); Ex. 18, Josie Ensor and Raf Sanchez, *Connecticut school shooting: Dec. 15 as it happened*, THE TELEGRAPH (London), Dec. 15, 2012, available at http://www.telegraph.co.uk/news/worldnews/northamerica/usa/9746267/Connecticut-school-shooting-live.html (last visited April 2, 2013).

Respectfully Submitted,

By Connecticut Counsel for AbleChild:

By: */s/ Kevin D. Heitke*
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DATED: 4/03/13

By: */s/ Jonathan W. Emord*

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Attorneys for AbleChild

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2013, a copy of the foregoing, **ABLECHILD'S APPEAL TO THE CONNECTICUT FREEDOM OF INFORMATION COMMISSION,** was electronically delivered and mailed to the following:

Connecticut Freedom of Information Commission
18-20 Trinity St
Hartford, CT 06106
Ph: (860) 566-5682

Dr. H. Wayne Carver
Office of the Chief Medical Examiner
11 Shuttle Road
Farmington, CT 06032
Ph: (860) 679-3980

Jonathan W. Emord
Emord & Associates, P.C.
11808 Wolf Run Lane
Clifton, VA 20124
Ph: (202) 466-6937

/s/ Kevin D. Heitke
Kevin D. Heitke, Esq.

EXHIBIT 1

Affidavit of Process Server

(NAME OF COURT)

AbleChild.org VS Office of the chief Medical Examiner

PLAINTIFF/PETITIONER | DEFENDANT/RESPONDENT | CASE NUMBER

I Chris Angle, **being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service.**

Service: I served H. Wayne Carver II, M.D.
NAME OF PERSON / ENTITY BEING SERVED

with (list documents) Petition

by leaving with Linda Sylvia (NAME) Executive Secretary (RELATIONSHIP) At

☐ Residence _____ (ADDRESS) _____ (CITY / STATE)

☑ Business 11 Shuttle Road (ADDRESS) Farmington, CT 06032-1939 (CITY / STATE)

On 03/05/2013 (DATE) AT ~ 12:22 p.m. (TIME)

☐ Inquired if subject was a member of the U.S. Military and was informed they are not.

Thereafter copies of the documents were mailed by prepaid, first class mail on _____ (DATE)

from _____ (CITY) (STATE) (ZIP)

Manner of Service:

☐ **Personal:** By personally delivering copies to the person being served.

☐ **Substituted at Residence:** By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of 16 and explaining the general nature of the papers.

☑ **Substituted at Business:** By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.

☐ **Posting:** By posting copies in a conspicuous manner to the front door of the person/entity being served.

Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

☐ **Unknown at Address** ☐ **Moved, Left no Forwarding** ☐ **Service Cancelled by Litigant** ☐ **Unable to Serve in Timely Fashion**
☐ **Address Does Not Exist** ☐ **Other** _____

Service Attempts: Service was attempted on: (1) _____ (DATE) (TIME) (2) _____ (DATE) (TIME)

(3) _____ (DATE) (TIME) (4) _____ (DATE) (TIME) (5) _____ (DATE) (TIME)

Description:. Age 50 Sex F Race W Height 5'5" Weight 140 Hair blk Beard n Glasses y

_____
SIGNATURE OF PROCESS SERVER

SUBSCRIBED AND SWORN to before me this 7th day of March, 20 13, by C. Angle,
Proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

HUI-MIN HUANG
Notary Public, State of Connecticut
My Commission Expires Apr. 30, 2015

_____
SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC for the state of Connecticut

EXHIBIT 2

Ablechild.org
Parents for Label and Drug Free Education

VIA

HAND DELIVERY
H. Wayne Carver II, M.D.
Chief Medical Examiner
Office of the Chief Medical Examiner
11 Shuttle Road
Farmington, Connecticut 06032

Re: Request for release of the autopsy, toxicology, and prescription drug history records of Adam Lanza

March 5, 2013

Dear Dr. Carver:

Pursuant to Connecticut General Statute Sections § 19a-411 and § 1-200, and § 1-210; Article I, Sections 4 and 5 of the Constitution of the State of Connecticut, Conn. Const. art. I, § 4, § 5; and the First Amendment to the United States Constitution, USCA CONST Amend. I, AbleChild, on behalf of itself and petitioners from Newtown, Connecticut (see attached) (hereinafter collectively "the Parties"), respectfully request the immediate release of the complete autopsy report, toxicology report, and prescription drug history possessed by your office for and concerning the decedent Adam Lanza.

On information and belief, Mr. Lanza's birthdate is April 22, 1992, and his place of death was Newtown, CT. In particular, the Parties seek all public records and files, as those terms are defined in Conn. Gen. Stat. Ann. § 1-200, concerning or relating to the presence of drugs in Mr. Lanza's serum and organs and concerning or relating to drugs prescribed to Mr. Lanza. For any tests performed on Mr. Lanza's body for which results have not yet been produced by the testing entity, the Parties respectfully request that those results be supplied to them when they are produced to your office. The Parties will pay for copies of the requested reports, records and files.

The Parties have a legitimate interest in the information sought. AbleChild is a 501(c)(3) non-profit organization that represents and advocates the interests of parents, caregivers, and children. Incorporated in New York in 2003, AbleChild aims to ensure the safety of caregivers when those for whom they give care are diagnosed as mentally ill and are prescribed drug treatments that may induce adverse events that include thoughts of murder, homicide, or suicide. In fulfillment of its mission within Newtown, Connecticut, and in Connecticut and the nation generally, AbleChild has a legitimate interest in accessing the autopsy, toxicology, and prescription drug records of Adam Lanza so that an evaluation may be made to determine if those drugs contain agents that have been associated with increased thoughts of murder, homicide, and suicide and to determine if such drugs may have contributed in whole or part to his commission of murder and his suicide. The information, professional assessments of it, and

resulting recommendations from it shall then be published by AbleChild to parents, caregivers, and the public nationwide, thus better enabling them to work with health care professionals in choosing the best therapies for the treatment of mental problems and to promote more informed debate on measures to stem future incidents of this kind.

Under Connecticut law, requests for autopsy, toxicology, and prescription drug records are obtainable by members of the general public and the media upon a demonstration of "legitimate interest." Conn. Agencies Regs. § 19a-401-12. Based on the foregoing, there is undoubtedly a legitimate interest for this organization to obtain the requested information. Ablechild functions as public interest group and as a media resource organization. It has a keen interest in discovering evidence of the association between use of psychoactive drug agents and incidents of violence, aggression suicide and murder. It has a keen interest in publishing findings concerning Mr. Lanza's use of psychoactive drugs, if any, and whether agents in those drugs have been linked to increased thoughts of hostility, aggression, suicidality and murder. Ablechild anticipates that publications of the kind they intend will help improve public awareness and foster more informed public debate and political decision-making concerning how best to stem future incidents of this kind.

In Connecticut, "there is an 'overarching policy' underlying the Freedom of Information Act (FOIA) favoring the disclosure of public records." *Superintendent of Police of City of Bridgeport v. Freedom of Info. Comm'n*, 609 A.2d 998, 1000 (Conn. 1992). "[I]t is only in the exceptional case that inspection should be denied." *Meriden Record Co. v. Browning*, 6 Conn. Cir. Ct. 633, 637, 294 A.2d 646, 649 (1971) (citing *State ex rel. Youmans v. Owens*, 137 N.W.2d 470, 475, 139 N.W.2d 241). Such exceptions to disclosure "must be narrowly construed." *Meriden* at 626. The party claiming the privilege has the burden of proving the exception's applicability. *Wilson v. Freedom of Info. Comm'n*, 435 A.2d 353, 357 (Conn. 1980).

A legitimate government interest is even more likely to be found for matters that concern serious events of public concern. *See Meriden* at 636 (citing *Rome Sentinel Co. v. Boustedt*, 252 N.Y.S.2d 10, 12 (Sup. Ct. 1964)) (finding that, "The public's right to know and be informed on the activities of public figures is practically absolute unless commercialization may be shown. Even the ordinary citizen may be newsworthy under certain circumstances. Whether the event be a calamity or an honor, it may be one in which his neighbors have a legitimate interest") (internal citations omitted).

Likewise, under Article I, Sections 4 and 5 of the Connecticut Constitution there is a right to know indispensable to the public's ability to question actions of public officials (here, those in government responsible for authorizing distribution and use of drugs that may include hazardous psychoactive agents) that trumps administrative convenience, particularly in contexts where there is no compelling need for confidentiality. *See* Conn. Const. art. I, § 4 ("Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty"); Conn. Const. art. I, § 5 ("No law shall ever be passed to curtail or restrain the liberty of speech or of the press"); *see Maher v. Freedom of Info. Comm'n*, 472 A.2d 321, 325 (Conn. 1984) (emphasizing that § 1-210 first reflects "the public's right to know what its agencies are doing"); *see also Woodcock v. Journal Pub. Co., Inc.*, 230 Conn. 525, 549, 646 A.2d 92, 103 (1994) (finding that while public criticism "can be hard on public officials, it is

simply the price that must be paid in order to protect our democracy"); *Dow v. New Haven Indep., Inc.*, 549 A.2d 683, 689 (Super. Ct. 1987) (emphasizing the "profound commitment to freedom of the press," the court espoused that, "The right to discuss public matters stands in part on the necessity of that right to the operation of a government by the people....It must be kept in mind that criticism of those responsible for government operations must be free, lest criticism of government itself be penalized") (citing *Rosenblatt v. Baer,* 383 U.S. 75, 85, 86 S.Ct. 669, [676] (1966)." *Brown v. K.N.D. Corporation*, 529 A.2d 1292 (Conn. 1987)). *State v. McKee*, 46 A. 409, 414 (Conn. 1900) (noting that, "The general right to disseminate opinions on all subjects was probably specified mainly to emphasize the strong necessity to a free government of criticism of public men and measures").

The First Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, U.S. Const. amend. XIV, § 1, also prohibits state action that bars public and media access to information necessary for the effective public evaluation of acts taken by public officials. The Parties have a right to access the autopsy, toxicological, and prescription drug records of Mr. Lanza as members of the press, for each intend to aid the public in comprehending potential causes of Mr. Lanza's murders and suicide. *New York Times Co. v. United States*, 403 U.S. 713, 717, 91 S. Ct. 2140, 2143 (1971) (J. Black concurring) (holding that, "The First Amendment…gave the free press the protection it must have to fulfill its essential role in our democracy…The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government"); *Id.* at 724 (J. Douglas concurring) (reminding that, "It is common knowledge that the First Amendment was adopted against the widespread use of the common law of seditious libel to punish the dissemination of material that is embarrassing to the powers-that-be"); *Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations*, 413 U.S. 376, 382, 93 S. Ct. 2553, 2557 (1973) (citing *New York Times Co. v. United States*, and noting that, "The durability of our system of self-government hinges upon the preservation of these freedoms").

Disclosure is sought without delay. The information is indispensable to political decision making and public debate related to a continuing series of school shootings and acts of mass violence across the country: Dec. 14, 2012, Sandy Hook Elementary School; April 2, 2012, Oikos University; February 27, 2012, Chardon High School; May 10, 2011, San Jose State University; January 5, 2011, Millard South High School; April 10, 2009, Henry Ford Community College; April 16, 2007, Virginia Tech University; Oct. 2, 2006, Amish School Shooting (PA); April 20, 1999, Columbine High School; Mar. 24, 1998, Westside Middle School (AR); February 19, 1997, Bethel High School (AK). Many of those and other shootings have been committed by individuals who were medicated with psychoactive drugs. The pattern, potentially repeated here, invites serious inquiry into whether those drugs are in whole or part responsible for affecting changes in perception that may have led to increased thoughts of hostility, aggression, suicidality and murder in the people committing the crimes. Exercise of any check by the public through their elected representatives on actions to be taken will depend very heavily on the extent to which the public is fully informed of the potential causes for these murders.

This office may have waived objections for disclosure through communication with the media shortly after the autopsy was performed on Mr. Lanza's body. In the January 11, 2013 online edition of the *Connecticut Post*, reporter Michael P. Mayko authored, "M.E.: Lanza's brain

appeared normal." The aricle lists several quotes from your office. Specficailly, Mr. Mayko quotes you as stating that Mr. Lanza's brain showed "no tumor ... no gross deformity," and that , "We measured his head and it fell in the normal range." (This was in response to a question based on suspicions that, based on published photos, Mr. Lanza might have suffered from "Fragile X syndrome" [the most common known genetic cause of autism or autism spectrum disorders], which results in a large forehead or big face).[1] Another report of the same interview noted that you mentioned that the results of toxicology tests might provide "potential information" into "the motives of the deadly shooter." [2]

For the foregoing reasons, the Parties respectfully ask that the documents requested be released at the earliest possible moment and in no event later than March 10, 2013, the statutory deadline for response. Conn. Gen. Stat. Ann. § 1-206(a) ("Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request").

Please send the complete autopsy report, toxicology report, and prescription drug histories requested herein for Mr. Lanza to the Parties at the following address:

AbleChild
Attn: Sheila Matthews-Gallo
19 Washington Avenue
Westport, CT 06880

Thank you.

Sincerely,

_____
Sheila Matthews - Gallo
Co-Founder, AbleChild

[1] *See* http://www.ctpost.com/local/article/M-E-Lanza-s-brain-appeared-normal-4183530.php.

[2] *See* http://www.policymic.com/articles/22740/adam-lanza-s-brain-shows-nothing-unusual-says-autopsy.

EXHIBIT 3

STATE OF CONNECTICUT
OFFICE OF THE CHIEF MEDICAL EXAMINER
11 Shuttle Rd., Farmington, CT 06032-1939
Telephone: (860) 679-3980 Fax: (860) 679-1257

March 19, 2013

AbleChild
Attn: Sheila Matthews-Gallo
19 Washington Avenue
Westport, CT 06880

Re: Request for Records on Adam Lanza

Dear Ms. Matthews-Gallo:

This letter acknowledges your request for the above-cited records pursuant to the CT FOIA. Access to these records is governed by statutes and regulations under the jurisdiction of the Commission of Medicolegal Investigations, Conn. Gen. Stat. § 19a-400 et. seq. and Regs. Of Conn State Agencies §19a-401-1 et. seq. These records are not subject to the statutes and regulations under the jurisdiction of the Freedom of Information Commission, Conn. Gen. Stat. §1-200 et. seq.

Records are available to next of kin, attorneys involved in litigation or attorneys handling the estate of the deceased, as well as physicians involved in the patient's care, insurance claims agents and investigative authorities. The request you sent does not apply to our records.

Please feel free to contact me if you have further questions.

Sincerely,

H. Wayne Carver II, M.D.
Chief Medical Examiner

HWC/ls

EXHIBIT 4

STATE OF CONNECTICUT
OFFICE OF THE CHIEF MEDICAL EXAMINER
11 Shuttle Rd., Farmington, CT 06032-1939
Telephone: (860) 679-3980 Fax: (860) 679-1257

February 25, 2011

To: Chairman, Coleman, Chairman, Fox and Honorable Members of the Judiciary Committee

From: Dr. H. Wayne Carver, Chief Medical Examiner

Re: Raised Bill No. 1054, An Act Concerning the Disclosure of Autopsy Reports

The Office of the Chief Medical Examiner would like to take the opportunity to comment on Raised Bill 1054. This Bill would prevent the Office of the Chief Medical Examiner from unilaterally disclosing autopsy reports on pediatric homicides to the general public. The Office of the Chief Medical Examiner as an institution and I, are very concerned about the privacy rights of individuals who are examined through our office and particularly with respect to homicide victims whose family find their privacy and grieving invaded by the curious public.

I believe that the proposed legislation is however, redundant of current statute, regulations and practices. The Office of the Chief Medical Examiner does not now and has never released autopsy reports to the general public, let alone autopsy reports of a pediatric homicide victim.

Under current statutes and regulations autopsy reports are available to the next of kin, to lawyers on either side of a civil or criminal preceding, physicians who cared for the individual in life, insurance companies who have policies concerning the deceased, and government officials who need the report to execute their fiduciary responsibility. Most commonly are investigating police officers but also including such entities as DCF, Child Advocate, Department of Public Health, etc. The Medical Examiner's law specifically forbids any of these institutions from secondary re-releasing of the autopsy report.

Autopsy Reports can be made available to the general public through three mechanisms:

1. The next of kin elect to voluntarily give their copy of the report to a member of the press or some other entity which would make it broadly available. This is a situation which obviously would not be addressed by the current proposed legislation, I would also add parenthetically that has never been done in the twenty-nine (29) years I have been associated with the office.

2. If an autopsy report is entered into evidence in a trial and there is a conviction,

the autopsy report along with all other records entered into evidence is available to the public thru the Clerk of the Court. Again, this has to my knowledge never been done during my tenure at the office

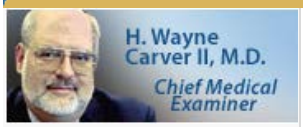
3. Under separate statutory provisions autopsy reports are available to the general public if the decedent was in the custody of the State at the time of the death CGS 19a-411-(b). This has only been done once during my tenure.

Finally, the committee should be aware that the State's Attorney's have the right to petition the court to seal autopsy records in the case of a homicide. In order to comply with this statutory right, the Office of the Chief Medical Examiner informs the State's Attorney's Office whenever a request is made for a homicide and inquires whether or not they intent to so petition. I know of only two cases in which such an order to seal was issued.

Again, I wish to emphasize that the rights of the surviving next of kin and the impact of autopsy reports on their privacy and grief, is of the utmost importantance to the Office of the Chief Medical Examiner. I do however; believe that the current statutory and regulatory scheme covers the issues that I perceived to be addressed by the proposed legislation.

EXHIBIT 5

OFFICE OF THE CHIEF MEDICAL EXAMINER



Frequently Asked Questions
Administrative Reports
Annual Statistics
Feedback Form
Of Interest To

Frequently Asked Questions

What deaths are reportable? This Office investigates fatalities in the following categories: death due to any form of injury, whether resulting from accident, suicide, or homicide; sudden or unexpected deaths not due to readily recognizable disease; deaths occurring under suspicious circumstances (e.g., child abuse); deaths of any individual whose body is to be disposed of in a manner which will render it unavailable for later examination; deaths at or related to the workplace; deaths due to disease which might constitute a threat to the public health.

On what types of deaths are autopsies performed? Autopsies are performed on all homicide victims and gunshot victims. In addition, the vast majority of pedestrians, Sudden Infant Death Syndrome, overdoses, industrial accidents, sudden and otherwise unexplained deaths under the age of 45 and a variety of other types of cases are subject to autopsy examination.

Who has access to the autopsy report? In accordance with the regulations of the Commission on Medicolegal Investigations, the complete records of all investigations are made available to the family of the deceased, to any federal, state or municipal governmental agency or public health authority investigating the death; to insurance companies with a legitimate interest in the death; to all parties in civil litigative proceedings, and to treating physicians. In addition, records may be made available to any other individual with the written consent of the family or by court order. Legitimate scientific research organizations may also have access to the records provided the identity of the decedents are not published or otherwise made public. Records are not otherwise open to the general public.

How can I obtain a copy of the report? Send a written request to the Office of the Chief Medical Examiner, Medical Records Unit, 11 Shuttle Road, Farmington, CT 06032. Your request must include:

- Your name, address and telephone where you can be reached between 1:00pm and 3:00pm EST
- The name of the deceased and date of death
- Your relationship to the deceased
- The signature of the requesting party

Can I request copies of records via e-mail? Unfortunately, we cannot honor e-mail requests for medical records at this time.

How much does it cost for a copy of the records? The charge is $2.13 per page and an additional $5.32 if you require a true copy certification. Reports typically range from four to seven pages.

Should I send money now? Do not include payment with your initial request. When your request is received, you will be advised, in writing, of the status of the report. If the report ***is*** complete, you will receive an invoice stating the amount due. If the report ***is not*** complete, your request will be acknowledged and you will be notified as soon as it is complete.

Are there any other charges that I should be aware of? Specific documents are required for cases which are to be cremated. There is a $150.00 fee for this which is usually handled through the funeral director of the family's choice. Other than this and the charge for records as described above, there are no charges to the family for the services of the Office of the Chief Medical Examiner.

Who can I call if I have questions about an autopsy report I have received? Contact the Chief Medical Examiner's Office at (860) 679-3980 and ask for the pathologist who performed the autopsy.

How can I get a copy of a Death Certificate? The Office of the Chief Medical Examiner cannot provide copies of death certificates. Copies of death certificates must be obtained from the Registrar of Vital Statistics of the town in which the death occurred.

How do I make arrangements for a deceased to be released from the Office of the Chief Medical Examiner? The family should make contact with a funeral home of their choice. The funeral home will make the arrangements for the removal from OCME. Usually the removal can be made within a day of the death, however if necessary, the deceased may remain at OCME while the final arrangements are being completed.

What if the funeral is being held out of state? Families who wish to have the funeral and burial in another state should contact their funeral director of choice in that state. Most funeral directors have professional connections with funeral directors here in Connecticut. Any out of state funeral director who has questions on how to proceed may call OCME at (860) 679-3980 for assistance.

See also: OCME brochures.

Content Last Modified on 2/26/2013 9:45:24 AM

Printable Version

EXHIBIT 6

What if I need help?

The most important thing to keep in mind is that there are resources in the community available to you and your family. The best thing that you can do for the person who has died is to take care of yourselves and then take care of the final arrangements for your loved one. There are a lot of decisions that need to be made and it is important that you rely on your circle of friends and family for support during this difficult time.

What if I have questions about the examination and/or the autopsy report?

On the back of this brochure there are several numbers for support and assistance. If you have specific questions or concerns, please bring them to our attention either now or when you feel it appropriate to do so. The office operates 24 hours a day, every day. You can call the office and request to speak or meet with the doctor that has performed the examination.
The Commission on Medicolegal Investigations holds five (5) meetings a year. These meetings are open to the public. The March meeting is the Annual Open Meeting with the opportunity for you to address the Commission. You can call the office for the scheduled meeting dates and times.

For statewide information about bereavement services, support groups, & other community services.

Infoline
2-1-1 or Toll free
1-800-203-1234
http://www.infoline.org

Office of Victim Services
1-800-822-8428 Toll free
(860) 747-3994

Survivors of Homicide
1-888-833-4764 Toll free
(860) 257-7388

MADD-CT Chapter
1-800-544-3690 Toll free

Crime victims and/or the surviving members of a crime victim's family have important rights in Connecticut, including the right to be treated fairly and with respect. If you feel your rights have been or are being violated, contact:

The Office of the Victim Advocate
505 Hudson Street
Hartford, CT 06106
(860) 550-6632
1-888-771-3126 Toll free

STATE OF CONNECTICUT

Information for families from the
OFFICE OF THE CHIEF MEDICAL EXAMINER

H. WAYNE CARVER II, M.D.
CHIEF MEDICAL EXAMINER

11 SHUTTLE ROAD
FARMINGTON, CT 06032
(860) 679-3980
1-800-842-8820 TOLL FREE
(860) 679-1257 FAX
http://www.state.ct.us/ocme/

Please accept our sincere condolences on the loss of your loved one. We recognize that the loss brings deep sorrow and is one of the most stressful times in life.

What is the Office of the Chief Medical Examiner?

The Office of the Chief Medical Examiner is a medicolegal office charged by Connecticut laws to investigate all human deaths in the following categories: (1) Violent deaths, whether apparently homicidal, suicidal, or accidental; (2) sudden or unexpected deaths not caused by readily recognizable disease; (3) deaths under suspicious circumstances; (4) deaths of persons whose bodies are to be cremated; (5) deaths related to disease resulting from employment; (6) deaths related to disease which might constitute a threat to public health. The Chief Medical Examiner provides accurate certification of the cause and manner of death. The Chief Medical Examiner may require autopsies in connection with deaths in the preceding categories when it appears warranted for proper investigation.

Who calls the Chief Medical Examiner?

All law enforcement officers, state's attorney, prosecuting attorneys, other officials, physicians, funeral directors, embalmers and other persons are required to promptly notify the Office of the Chief Medical Examiner of any death coming to their attention which is subject to investigation by the Chief Medical Examiner. In cases of apparent homicide, suicide, or accidental death, the scene of the event shall not be disturbed until authorized by the Chief Medical Examiner.

What is an autopsy?

An autopsy is a systematic examination of the deceased to determine the cause and manner of death. The body is inspected both externally and/or internally in order to discover and document injury or disease. Specimens of vital organs and body fluids may be taken to conduct toxicological tests. These tests do not delay the release of the body to the next of kin. However, the results of such testing may take several weeks to become available.

What needs to be done?

Identification is necessary to provide proof that the individual reported to the Office of the Chief Medical Examiner, is that person. In most cases, identification is not required to be made onsite at the Office of the Chief Medical Examiner and can be done by viewing at the funeral home or through other methods which don't directly involve the family. The Office of the Chief Medical Examiner recognizes that it is very difficult for families to come to the Office to make identification. When such a procedure is necessary, every effort is made to perform the identification in a way, which will place as little burden as possible on the family. The closest next of kin is not required to identify the body. A friend, co-worker, or more distant relative can do this task if it would contribute to the comfort of the immediate family. Visual identification at the Office of the Chief Medical Examiner is performed through the use of a closed circuit television system. If the family has special concerns or requests, please discuss them with the pathologist or investigator on duty, or your funeral director may inquire on your behalf.

What happens next?

The next thing for you to do is to contact the Funeral Director of your choice. If you are not sure, you may want to ask a friend or clergy. We do suggest that you take some time in selecting a Funeral Director. You will need to meet with the Funeral Director and discuss the final arrangements for your loved one. There are a lot of decisions to be made, so you may want family members, close friends, or clergy to accompany you. Once the arrangements have been decided, the Funeral Director will take care of your loved one.

Do I have to pay the Medical Examiner?

In cases of cremation, there is a $150.00 cremation fee (effective July 1, 2011) charged and handled through the Funeral Director. There are no other charges to the family for the services of the Office of the Chief Medical Examiner.

How do I get a copy of the autopsy report and death certificate?

A form will accompany the body to the funeral home. You will need to complete this form and submit it to the Office of the Chief Medical Examiner to obtain a copy of the autopsy report. There is a small processing fee for copies of the autopsy records. The Funeral Director is required to file the death certificate with the Town Clerk where the death occurred. The Funeral Director can assist you in obtaining additional copies. Copies of the death certificate **must** be obtained through the Registrar of Vital Statistics in that town.

Who can obtain copies of these reports?

The information placed on a death certificate is a public record by law. This includes the name of the deceased, the cause of death, and the manner of death. The remainder of the findings in the autopsy report is a medical record. These are available to the next of kin and those with written permission from the next of kin. Others that may obtain a copy of the autopsy report include treating physicians who have an association with the death, police departments and other agencies who need the report in order to complete an investigation into the individual's death, lawyers who are involved in criminal or civil litigation involving the death and insurance companies.

What happens to the personal property?

The personal property of the deceased is inventoried by the Office of the Chief Medical Examiner and given to the Funeral Director when the body is taken to the funeral home. The Office makes an inventory list of all items that are with or on the deceased. In some cases, the hospital or police will secure personal property. If a crime is involved with the individual's death, it may be necessary for the police to take possession of some or all of the personal items.

EXHIBIT 7

STATE OF CONNECTICUT
OFFICE OF THE CHIEF MEDICAL EXAMINER
11 Shuttle Rd., Farmington, CT 06032-1939
Telephone: (860) 679-3980 Fax: (860) 679-1257

DUTIES OF THE ASSISTANT MEDICAL EXAMINER

The following is provided as general guidelines for *Assistant Medical Examiners* to assist them in performing their duties. The most important thing to remember is that there is a staff forensic pathologist on-call at all times to assist you.

1. The *Assistant Medical Examiner (*AME) is not an employee of the Office of the Chief Medical Examiner of the State of Connecticut. The AME is regarded as a vendor (a consultant) who acts as the eyes and ears of the physicians at the Central Office of the Chief Medical Examiner located in Farmington.

2. The *Assistant Medical Examiner* is required to have a valid license to practice medicine and surgery in the State of Connecticut. The office cannot pay the licensure fees for the *Assistant Medical Examiners*. While you are functioning as an *Assistant Medical Examiner,* your professional actions are insured by the State of Connecticut under the principles of the "faithful servant".

1. The "practice" of the *Assistant Medical Examiner* is akin to a private medical practice, which needs to be nurtured. You should contact the local police, hospital practices and funeral homes to inform them of your availability. The OCME will send written notification of your appointment to the state's attorneys, police, hospitals, registrars and other AMEs who also cover the areas.

2. If the *Assistant Medical Examiner* is going to be unavailable for more than one day, the Office of the Chief Medical Examiner should be notified.

3. Information is the most important aspect of any death investigation and that is primarily the responsibility of the *Assistant Medical Examiner.* Interviews with family, police, treating physicians, and review of any appropriate medical record should serve as the source for any information included in the written report.

4. The second most important duty of the *Assistant Medical Examiner* is contact with the families of the deceased. If the local AME knows an autopsy is going to be performed, it is his/her responsibility to make a "diligent effort" to contact the families and inform them that a postmortem examination is to be performed at the Office of the Chief Medical Examiner.

5. Thirdly, it is important to make visits to scenes at where deceased individuals lay in order to document the nature of the death, the position of the body and the postmortem changes (livor, rigor and algor). If the *Assistant Medical Examiner* is unable to respond to a scene because of professional or personal conflicts, we ask that they call the Office of the Chief Medical Examiner. The *Assistant Medical Examiner* can gather the information via telephone and examine the body at his/her convenience over the next 24 hours.

REPORTABLE DEATHS:

The Office of the Chief Medical Examiner functions under a system of reportable deaths. Criteria for reporting a death are designed to be broad, overlapping and inclusive (about half the deaths that occur in this state are "reportable". If a case is "reportable", it must be reported. Anyone who has knowledge of a reportable case is a mandated reporter. All reported cases are given a case number and a permanent record is kept of that fact and how the disposition was made.

However, just because a case is reportable does not mean that an autopsy is performed, nor does it mean a Medical Examiner Death Certificate (grey/white) is to be issued. Approximately one-third of the cases reported to the Office of the Chief Medical Examiner are reported for one or more of the following criteria but are returned to the private practitioner for certification (pink/white death certificate).

The following deaths are "reportable":

1. Resulting from or related to:
   An accident, homicide or suicide, including but not limited to, death from physical, chemical, thermal, electrical or radiation injury.

   a. Poisoning, drug abuse or addiction.
   b. Criminal abortion – whether apparently self-induced or not.
   c. Diseases which might constitute a threat to public health.
   d. Diseases resulting from employment.
   e. Sudden infant death syndrome.

2. Death occurring suddenly and unexpectedly, not caused by readily recognized disease and including deaths occurring:

   a. Unattended (any death that occurs outside of the hospital).
   b. On arrival (D.O.A.'s) or within 24-hours of admission to hospital, including stillborn infants.
   a. Under anesthesia, in an operating room or recovery room, following transfusion or during diagnostic or therapeutic procedures.

In any instance in which death occurs under any of these circumstances, the death must be reported to the Office of the Chief Medical Examiner, regardless of the length of time between the event and death. Any person who has knowledge of a death must report it.

3. Deaths in which the body is to be cremated.

4. If you or anyone who is consulting you is unsure whether or not a death should be reported, the death should be reported and a case number assigned. It is always preferable to assign a case number to a death, have a decision by the OCME physician on-call and return the jurisdiction to the private physician than to try to get the case reported and assume jurisdiction after the fact.

CASES WHICH WILL REQUIRE AN EXAMINATION AT OCME:

1. All homicides or suspected homicides.
2. All deaths in police custody.
3. All drivers.
4. All passengers.
5. All pedestrians.
6. All gunshot wounds.
7. All deaths where drugs or alcohol are suspected to be the cause of death.
8. All deaths at the work place.
9. All deaths of children less than 12 months of age.
10. All hangings.
11. All carbon monoxide poisonings.
12. All suspicious deaths.

HOMICIDES:

All homicides or suspected homicide cases will have an autopsy examination at the Office of the Chief Medical Examiner regardless of the time between injury and death (seconds, minutes, years or decades).

The *Assistant Medical Examiner* may participate in the scene investigation but an *Assistant Medical Examiner* cannot sign a death certificate where "Homicide" is the "Manner of Death".

SUICIDES:

Almost all suicides come to the Office of the Chief Medical Examiner. If the staff medical examiner on-call feels that the deceased does not need to be brought to the Office of the Chief Medical Examiner (the most common reason is that the deceased has been hospitalized or sufficient laboratory data has been obtained to establish a reasonable cause of death with the appropriate circumstances), the forensic pathologist will instruct the *Assistant Medical Examiner* on the wording of the death certificate.

Suicide notes are treated as evidence. Families can get copies from the police. A copy of the note should be sent to this office. All trace evidence is collected and secured by the local police department who then will send it to whatever laboratory they feel can provide the information needed. The only biologic material we have jurisdiction over is related to postmortem toxicology.

ACCIDENTS:

Essentially all traumatic deaths are brought to the Office of the Chief Medical Examiner. However, there may be instances when the physician on-call feels that it is not necessary for whatever reason (e.g. hospital stay, the family is objecting to an autopsy examination). We may defer and have the *Assistant Medical Examiner* sign the death certificate. Death certificates with a traumatic cause of death are not natural and the wording for "Cause of Death" and "Manner of Death" should be discussed with the forensic pathologist on-call.

NATURAL DEATHS:

Most natural deaths will be signed out by the *Assistant Medical Examiner* after a thorough investigation and discussion with the on-call physician at OCME. These would include deaths where there is no private physician, deaths in the work place that are clearly natural and it is felt that an autopsy examination is not required, and intraoperative deaths where there has been no suggestion of misadventure.

SCENARIOS:

A) NO-CASE:

A "no-case" designates that the death has been reported to the Office of the Chief Medical Examiner under one of the criteria described above. The death must be a natural death and there must be a private physician to certify the death. In these cases, the *Assistant Medical Examiner* or forensic pathologist may "decline jurisdiction" and make the death a "No Case".

There are some deaths, which are obviously natural deaths and are obviously under the care of a physician, which by default, come under the jurisdiction of the Office of the Chief Medical Examiner. For example, staff physicians of United States Veterans Administration Hospitals do not sign death certificates on patients who die outside of the facility. There is absolutely no appeal to this. Therefore, if the patient dies of natural disease and has received primary care from the Veterans Administration, the *Assistant Medical Examiner* must sign the death certificate.

Similarly, there are people who die of natural disease whose physicians are licensed in another state but not licensed in Connecticut. These situations crop up around our borders. In these cases, the death certificate must be signed by an *Assistant Medical Examiner*.

Occasionally private physicians, who are licensed in Connecticut, are not available because they are out of state, or a considerable distance from where the person died. There are also a small number of physicians who simply refuse to sign their death certificates. In these situations, every effort should be made to encourage the private physician to fulfill his/her duty to their patient. However, the Office of the Chief Medical Examiner will not stand by and allow misbehavior on the part of a private physician to unduly interrupt the family's funeral plans or other needs surrounding a death. In some of these situations, it will be appropriate to have the *Assistant Medical Examiner* sign the death certificate. In such cases the pathologist on-call should be consulted before assuming jurisdiction and signing the death certificate.

Occasionally you may be asked to investigate the circumstances surrounding an individual's death that may take some time until you actually discover that a private physician exists that is available to sign the death certificate. Unfortunately most of these cases cannot be billed. There may be circumstances, however, where a significant amount of investigation has occurred and with consultation of the forensic pathologist on-call, a medical examiner's death certificate may be signed and an invoice submitted. On rare occasions we may ask that a report be submitted even if a private sector death certificate has been issued. Consult with the pathologist on-call in these situations.

B) CREMATION:

Cremation as a means of disposal of human remains is becoming increasingly popular. Cremation certificates are required for the cremation of all bodies in which either a fetal death certificate or a regular death certificate (private sector or medical examiner) has been issued. A body must be examined and the circumstances surrounding that individual's death must be looked into prior to the permanent disposal of these remains. The funeral director must have a cremation certificate, signed by a medical examiner, in order to obtain a cremation permit that is required by the crematorium.

If a Medical Examiner Death Certificate has been issued, the cremation certificate should be issued by the same medical examiner. *Assistant Medical Examiners* should not issue cremation certificates on cases examined at the Office of the Chief Medical Examiner unless specific arrangements are made in advance with the doctor on-call.

Fetal death certificates are not required on stillborn infants under 20-weeks gestation (or under 500-grams if an accurate history of gestational age is not available). On rare occasions a family may request that such a stillborn infant be buried in a registered grave or cremated. In these cases a fetal death certificate will be required. If the obstetrician is not willing to provide a fetal death certificate, the *Assistant Medical Examiner* may do so. The side of the fetal death certificate should be annotated "Less than 20 weeks gestation, certificate issued for burial (or cremation) purpose only". Similarly, families will sometimes request the body of a stillborn infant over 20 weeks be cremated. In such cases, a cremation certificate is required as well as the fetal death certificate. The fetal death certificate should be obtained from the obstetrician and the cremation certificate issued by the *Assistant Medical Examiner.* A brief ME Report form should be submitted.

Cremation certificates for stillborn fetuses less than 20-weeks gestation do not come under the legal mandate of the Office and are provided as a courtesy. The estate should not be charged for the Office of the Chief Medical Examiner services in these cases. For stillborn fetuses over 20-weeks gestation, the cremation fee (currently $75) must be charged. Unfortunately, there are no statutory or regulatory allowances to waive the fee. For these situations in less than 20-weeks gestation stillborns, we personally ask that the *Assistant Medical Examiners* provide these services on a pro bono basis.

Live born babies under 20-weeks gestation require both birth and death certificates.

Please remember that the purpose of cremation examinations is to identify cases that should be brought into the medical examiner system for various reasons (usually because the death is traumatic in origin). The goal is to see to it that the examinations and/or certification by the Office of the Chief Medical Examiner is properly performed **before** the cremation permit is issued and most especially before the cremation occurs. Most common situations are those in which people die of the delayed complications of traumatic brain injury, spinal cord injury or fractures of the hip. For whatever reason, the primary physician does not realize that the case should be reported to the medical examiner and signs a civilian death certificate. When such situations are identified, a cremation certificate should not be issued until such time as the proper death certificate has been previously or simultaneously issued. Consultation with the on-call pathologist is strongly urged in these situations.

Cremation Investigation Procedures:

1. Once authorization is received by the Office of the Chief Medical Examiner in Farmington, make arrangements with the funeral home to **view the body** at the facility or at the hospital prior to the body being removed.

2. Contact the certifying physician as soon as possible to ascertain the clinical history and the fact that no trauma is associated with the death. If the death certificate is clearly inaccurate and trauma is associated with the death that had not previously been reported, then a medical examiner's death certificate is required. Consult with the on-call physician at OCME. The pink (private sector) death certificate should be voided and forwarded to this office with your report.

3. Examine the body and if there is no evidence of injury that is not fully explainable by the cause of death indicated on the death certificate, then a cremation certificate may be signed. If the examination reveals questions that cannot be answered by reviewing the death certification, a "hold" can be placed on the cremation and further investigation by the *Assistant Medical Examiner* or contact with the Office of the Chief Medical Examiner can be made for further deposition.

4. Once you are satisfied that there is no further need of the body, you may sign and issue the cremation certificate (green form VS-47). No check needs to be collected unless the cremation is for an out of state funeral home. All CT. funeral homes are automatically billed for the cremation fee.

5. Complete the ME Report form indicating the history with the basic demographics and the important words, "No trauma noted historically or on examination."

6. **It is vitally important that you complete these reports in a timely fashion** and send them along with the check from the funeral director(if applicable) to the Office of the Chief Medical Examiner expeditiously. The State Auditors, which review our records every two years, look with great disfavor either on checks being retained or reports/billings being delayed for prolonged period of time. Also, virtually all banking institutions refuse to process checks 120 days after issue. Such "stale" checks cause a great deal of

embarrassment and extra work for our staff and for the funeral home involved. Every effort should be made to avoid this. ME Reports and cremation checks should be forwarded to this office within a 14-30 day window from the date you performed the service.

C) SCENE INVESTIGATIONS:

When an *Assistant Medical Examiner* responds to a scene, information is recorded, such as the demographic, the address of the deceased if different from the address of the death, the identification of the person who pronounced the person dead. The person who determines death does not have to be a physician, and can be a RN, paramedic/EMT or police officers so trained. Gather as much data about the circumstances as possible, including important information such as when the person was last reliably known to be alive and when they were found dead and whether they were taking any medications. Describe in general terms the position of the body and if the postmortem changes (rigor and livor) are appropriate for that position. Describe any identifying factors such as age, race, sex, height, weight, tattoos or needle tracks. If the death is the type requiring a postmortem examination at the Office of the Chief Medical Examiner, it is not necessary to examine the body and the words "See autopsy report" are sufficient for that area of the ME Report form.

D) HOSPITAL DEATHS:

The ME-103 Hospital Report of Death is filled out by the admitting or medical records department of the hospital and the treating physician. Additional information on the ME Report form is filled out by the assistant medical examiner, including a brief description of the body. If possible, indicate the hospital medical record number under the informant box. If this information could be communicated it would be of great value for future investigation or in obtaining medical records.

ME Report forms should be sent to the Office of the Chief Medical Examiner with the invoice in an expeditious fashion.

SERVICES:

The Office of the Chief Medical Examiner, by statute, has jurisdiction over all sudden, unexpected and traumatic deaths in the State of Connecticut. The *Assistant Medical Examiner* is not bound by any specific geography and may cover multiple towns and even counties. **Please advise this office of your availability and geographic range.**

The Office of the Chief Medical Examiner also offers Clinical Forensic Pathology Consultations. If police or other agencies require an examination or photographs of a live individual, several of the staff forensic pathologists are willing and capable of documenting the injuries and correlating a particular scenario with those injuries to answer specific questions.

Occasionally local police officers will have a question as to whether some biologic material is human or non-human. We encourage the police to bring that material to the Office of the

Chief Medical Examiner for our examination. A case number will be assigned and a permanent record is retained. Most of the time the local medical examiner is capable of answering these questions; however, we find that if this material is not disposed of by us, it may turn up again in the same or another jurisdiction by another reporting agency.

DEALING WITH THE MEDIA:

The policy of the Office of the Chief Medical Examiner is that the investigation information related to an individual's cause and manner of death is treated as a medical record. Regulations of the Commission of Medicolegal Investigations clearly state that many people have access to the records (next-of-kin, treating physicians, state's attorneys and public defenders, any criminal or civil attorney involved in litigation involving the death, local, state and federal police departments and other investigative agencies, and insurance companies involved with the death). Because the death certificate is a public document, the print, audio and visual media should have access, in a timely fashion, to whatever has been placed on the death certificate. Individual details about findings from an examination, and any laboratory tests that are not to be placed on a death certification are confidential (Connecticut State Supreme Court, Galvin v. Connecticut FOI, 1986). In general, it is preferable to refer all media inquiries directly to the Central Office.

DEATH CERTIFICATES:

The death certificate is the single most important document we produce. Not only is it used for a wide variety of both legal and social purposes, it is frequently the first and only document representing our office that the next of kin and other interested parties come in contact with. There are three kinds of death certificates used in this state: fetal, civilian (private sector) and medical examiner.

Fetal death certificates are used for stillborn infants. If the infant, regardless of gestational age or size, is live born, it must have both a birth certificate and a death certificate. If the infant is stillborn and over 20-weeks gestation by history, a Fetal Death Certificate must be issued. If the gestational age cannot be determined accurately, it is appropriate to estimate the gestational age by weight. Specifically, if the gestational age is not known or cannot be properly estimated, and the fetus weighs over 500 grams, it is assumed that the gestational age is greater than 20-weeks and a fetal death certificate will signed. If the gestational age is not known and the fetus weighs less than 500 grams, it is assumed that the gestational age is less than 20-weeks and a fetal death certificate will not be issued.

There are two types of death certificates: the VS-4 (regular, civilian, private sector or pink death certificate) and the VS-4 ME (Medical Examiner or gray death certificate). Civilian death certificates (VS-4) are used for non-medical examiner cases. The vast majority of assistant medical examiners have occasion to issue the VS-4 certificates as part of their private practice. *Assistant Medical Examiners* are required to issue the VS-4 ME certificates in medical examiner cases.

Under no circumstances should a civilian (VS-4) death certificate be used for medical examiner purposes or should a medical examiner (VS-4 ME) death certificate be used for civilian purposes.

The medical examiner death certificate has boxes, which are shaded gray. The Office of the Chief Medical Examiner and the AME has responsibility for filling out all the gray areas.

The cause of death should concentrate on the underlying disease processes and not on the fatal mechanism (i.e., occlusive coronary arteriosclerosis is an appropriate cause of death; cardiac dysrhythmia is not).

The manner of death section is peculiar to medical examiner death certificates. It does not appear on the civilian death certificate. Box #44 should be filled out in all cases with either "natural", "accident", "suicide" "homicide" or "undetermined". For all practical purposes, cases in which it is appropriate to put "homicide" or "undetermined" in this box will be handled at the central office.

If "natural" is entered in box #44, boxes #45-51 should not be filled out. If "suicide" or "accident" is entered in box #44, boxes #45-51 must be completed.

The date of injury section (#45) should be the date on which the person was injured; the time of injury (#46) needs only to be either "a.m." or "p.m." Box 50, how injury occurred, should be succinct as possible and limited to such terms as "fall", "passenger in two vehicle collision", etc. Place of injury (#47) should be a general description of the location, such as roadway, yard, residence, etc. Location (#48) is normally a street address if in a building or the name of the street if on a roadway, as well as the town, state and zip code, if you know it.

It is important that all appropriate boxes be filled out. In situations where "accident" or "suicide" is entered in box 44 and boxes 45-51 are left blank the death certificate will be referred to the Chief Medical Examiner for amendment. Ideally, this should occur as infrequently as possible. The sections labeled "approximate interval between onset and death" are traditionally not filled out on medical examiner's death certificates.

Abbreviations should not be used on death certificates, except for recognized abbreviations in street addresses, such as "Rd." for road or "CT" for Connecticut or recognized academic titles such as "MD" or "DO". Abbreviations for disease processes, even widely accepted ones such as ASCVD, are in truth colloquialisms, which arose in the hospitals in which we did our residency. Because of this there is no universally recognized standardization. Writing out terms rather than using abbreviations obviates any possibility of misinterpretation.

The importance of properly completing a death certificate cannot be stressed enough. Every effort should be made to make the death certificate as legible as possible. Whenever available, a typewriter is preferable to handwritten entries.

ME REPORT FORMS (http://www.state.ct.us/ocme):

Like death certificates, the Report of Investigation/ME-102 and Hospital Report of Death/ME-103 are official documents and extremely important. Every effort should be made to be clear, succinct and legible. Again, typewritten documents are preferable to handwritten. As in death certificates, abbreviations should be scrupulously avoided. You should also bear in mind that these will be official records and are subject to copying and distribution to any one who has a right to a copy of the autopsy report. Because of this, editorialization and blame placing (infrequent but unfortunately all too common a practice) should be assiduously avoided. Please relate only factual information as gleaned from your investigation. It is important to relay as much information as possible. Entries into the ME Reports are subject to the same or more intense review than entries made in hospital charts and should be approached with the same degree of care and professionalism.

INVOICES:

The invoice form requires your name, address, and tax identification or social security number. On the upper right hand side is a place where a personal identifier of your own can be entered (that will be printed on the check). A sample of a properly completed invoice is attached. This allows for you to match the checks you get with the invoices that go with them. Occasionally your total and the check total may not necessarily agree due to errors or the occasional disallowance of a particular charge. Mileage can be charged at the currently approved rate as well as such things as phone calls. Please be advised that losses related to death investigation such as shoes or clothing cannot be paid by the Office of the Chief Medical Examiner.

CONFLICT OF INTEREST:

Concepts of conflict of interest in the public sector are not always intuitively obvious to those whose business has traditionally been in the private sector. The following is provided for your guidance.

a. Private patients – on occasion you will be asked to perform the functions of an *Assistant Medical Examiner* and find out that the deceased is one of your private patients. These cases should be referred to another *Assistant Medical Examiner* for processing. This is readily done in areas where there are multiple *Assistant Medical Examiners*. Sometimes you will need to refer this to the pathologist on-call for resolution. The most common situation will be a private patient who has died under reporting criteria, usually dead on arrival or at home. The "no case" designation needs to be made before you can sign the death certificate in your capacity as a private physician. This can easily be done by the pathologist on-call at the start of the next business day if appropriate. If one of your patient dies of traumatic injury, the body will, in the vast majority of cases, be transported to the Office. Special considerations and special situations should be discussed with the doctor on-call.

b. Hospital pathologists – several *Assistant Medical Examiners* are anatomic pathologists. They should not function as an *Assistant Medical Examiner* on cases in which they are performing a consent autopsy. In all cases in which a consent autopsy is performed, it

is assumed that the cause of death is non-traumatic prior to the start of the autopsy. Connecticut law allows the prosecting pathologist to sign a death certificate in his/her capacity as an attending physician when he/she performs a consent autopsy. This should be done on the private sector/civilian (VS-4) death certificate. A medical examiner death certificate should not be used.

On rare occasions, previously unanticipated traumatic cause of death will be discovered during the course of a consent autopsy. Such cases should be referred to the pathologist on-call as soon as the situation comes to light. In all cases, another *Assistant Medical Examiner* or Office pathologist will complete the death certificate.

c. *Assistant Medical Examiners* are occasionally asked by lawyers to consult and/or testify in either civil or criminal matters. It is always best to refer these matters to the forensic pathologist who did the examination at the Office of the Chief Medical Examiner. As a vendor offering services to the Office of the Chief Medical Examiner, your obligation to this office is complete when you have submitted your report, it has been accepted and you have been paid. Therefore, you are free to enter any usual professional relationship you feel appropriate when consulting for an attorney or testifying in court. Specifically, you are free to bill those attorneys a reasonable charge for your consultation or time for court appearance.

Any questions or concerns regarding conflict of interest or ethical guidelines for state service should be referred to the Chief Medical Examiner.

MOST IMPORTANT:
A Forensic Pathologist is always available at the Office of the Chief Medical Examiner. **CALL EARLY – CALL OFTEN** and insist on speaking directly with the physician on-call to discuss any aspect of the case, especially the wording of the death certificate.

Visit our website: http://www.state.ct.us/ocme

1-800-842-8820 (toll-free in Connecticut)
1-(860) 679-3980 (local area)

H. Wayne Carver II, M.D.
Chief Medical Examiner

and

Edward T. McDonough, M.D.
Deputy Chief Medical Examiner

EXHIBIT 8

DNA of Newtown Shooter Adam Lanza to Be Studied by Geneticists

By SHUSHANNAH WALSHE
Dece. 27, 2012—

abcnews.go.com

Study of Killer's DNA May Be the First of Its Kind

Geneticists have been asked to study the DNA of Adam Lanza, the Connecticut man whose shooting rampage killed 27 people, including an entire first grade class.

The study, which experts believe may be the first of its kind, is expected to be looking for abnormalities or mutations in Lanza's DNA.

Connecticut Medical Examiner H. Wayne Carver has reached out to University of Connecticut's geneticists to conduct the study.

University of Connecticut spokesperson Tom Green says Carver "has asked for help from our department of genetics" and they are "willing to give any assistance they can."

Green said he could not provide details on the project, but said it has not begun and they are "standing by waiting to assist in any way we can."

Lanza, 20, carried out the massacre at Sandy Hook Elementary School in Newtown, Conn., just days before Christmas. His motives for the slaughter remain a mystery.

Geneticists not directly involved in the study said they are likely looking at Lanza's DNA to detect a mutation or abnormality that could increase the risk of aggressive or violent behavior. They could analyze Lanza's entire genome in great detail and try to find unexpected mutations.

This seems to be the first time a study of this nature has been conducted, but it raises concerns in some geneticists and others in the field that there could be a stigma attached to people with these genetic characteristics if they are able to be narrowed down.

Arthur Beaudet, a professor at Baylor College of Medicine, said the University of Connecticut geneticists are most likely trying to "detect clear abnormalities of what we would call a mutation in a gene…or gene abnormalities and there are some abnormalities that are related to aggressive behavior."

"They might look for mutations that might be associated with mental illnesses and ones that might also increase the risk for violence," said Beaudet, who is also the chairman of Baylor College of Medicine's department of molecular and human genetics.

Beaudet believes geneticists should be doing this type of research because there are "some mutations that are known to be associated with at least aggressive behavior if not violent behavior."

"I don't think any one of these mutations would explain all of (the mass shooters), but some of them would have mutations that might be causing both schizophrenia and related schizophrenia violent behavior," Beaudet said. "I think we could learn more about it and we should learn more about it."

Beaudet noted that studying the genes of murderers is controversial because there is a risk that those with similar genetic characteristics could possibly be discriminated against or stigmatized, but he still thinks the research would be helpful even if only a "fraction" may have the abnormality or mutation.

"Not all of these people will have identifiable genetic abnormalities," Beaudet said, adding that even if a genetic abnormality is found it may not be related to a "specific risk."

"By studying genetic abnormalities we can learn more about conditions better and who is at risk and what might be dramatic treatments," Beaudet said, adding if the gene abnormality is defined the "treatment to stop" other mass shootings or "decrease the risk is much approved."

Others in the field aren't so sure.

Dr. Harold Bursztajn, a professor of psychiatry at Harvard Medical School, is a leader in his field on this issue writing extensively on genetic discrimination. He questions what the University of Connecticut researchers could "even be looking for at this point."

"Given how wide the net would have to be cast and given the problem of false positives in testing it is much more likely we would go ahead and find some misleading genetic markers, which would later be proven false while unnecessarily stigmatizing a very large group of people," Bursztajn said.

Bursztajn also cautions there are other risks to this kind of study: that other warning signs could be ignored.

"It's too risky from the stand point of unduly stigmatizing people, but also from distracting us from real red flags to prevent violence from occurring," Bursztajn said. "The last thing we need when people are in the midst of grief is offering people quick fixes which may help our anxiety, but can be counterproductive to our long term safety and ethics."

Bursztajn is also the president of the American Unit of the United Nations Educational, Scientific and Cultural Organization (UNESCO) Bioethics Chair and in that role he teaches health care professionals about responsible genetic education including the history of eugenics in this country in the 1920s and Nazi Germany. He cautions against the slippery slope that the kind of research that could be involved in the University of Connecticut's study could lead to.

Dr. Heidi Tissenbaum, a geneticist at the University of Massachusetts medical school, agrees the research is risky saying an accurate study just cannot be completed on one person.

"The problem is there might be a genetic component, but we don't have enough of a sample size," Tissenbaum said. "I think it's much more than a simple genetic answer, but an interplay between genetics and environment."

"One sample, what's that going to tell you," Tissenbaum said, referring to Lanza's DNA. "You never do an experiment with one, you can't conclude anything… The question is what are they comparing his DNA against? Are they going to control to random people? Matching for age or society? We just don't have enough (of a sample)."

Tissenbaum says the rush to study his DNA may simply be because "people are hurting so much they would like to find a quick answer."

"Even identical twins are different and they have identical DNA," Tissenbaum noted.

ABC News' Dr. Amish Patel contributed to this story.

UCONN TODAY

UConn News Roundup 1/22/13

January 22, 2013 By: Tracy Anderson '10 MA Category: Nation & World (0) Comments

UConn is on the move – and the media are taking notice.

From the expertise of our faculty to the achievements of our students, UConn's reputation is spreading locally, nationally, and globally. Take a look at this roundup of some recent major stories.

Skip Your Workout When You Have the Flu
It may seem harmless to keep up your exercise regimen even when feeling the effects of the flu, but Thomas Trojian, director of injury prevention at the UConn Health Center, warns against it in this recent ***Wall Street Journal*** article. Read the story.

Despite Obama's Presidency, Racial Divide Still Exists
Jelani Cobb, director of UConn's Institute of African-American Studies, comments in the ***Boston Globe*** on the effect of President Obama's reelection on racial equality in America. Read the story.

Geneticists Examining Killer's DNA
A recent article from ***CNN*** notes that a team of UConn geneticists is working with the state medical examiner's office to study Newtown shooter Adam Lanza's DNA. Read the story.

Genomics Powerhouse in the Making?
Hartford Magazine featured The Jackson Laboratory's new facility at UConn, as well as their collaborative work on the human genome here in Connecticut. Read the story.

A Better Night's Sleep May be Just in Your Head
A review of studies by a group of researchers that included UConn assistant professor of biostatistics Tania Huedo-Medina found that half of the effects of sleeping pills are due to the placebo effect. The *British Medical Journal* study, reported in the ***Huffington Post***, goes on to talk about the dangerous effects of sleeping pills. Read the story.

Looking for more UConn news coverage like this? Keep reading UConn Today and follow UConn on Facebook and Twitter for daily news, photos, and more.

EXHIBIT 10

DAILY NEWS

U.S

Adam Lanza, shooter in Sandy Hook Elementary massacre, found to have no brain deformitites: medical examiner

Dr. H. Wayne Carver II said the 20-year-old gunman who killed 20 children and six educators in Newtown, Conn. appeared to have a normal brain without abnormalities.

THE ASSOCIATED PRESS

PUBLISHED: FRIDAY, JANUARY 11, 2013, 8:12 PM

UPDATED: FRIDAY, JANUARY 11, 2013, 8:12 PM

ABC NEWS EXCLUSIVE

Doctors have concluded there was nothing visibly unusual about the brain of Adam Lanza, the disturbed gunman who killed 20 children and six educators at a Newtown, Conn. elementary school Dec. 14 before turning the gun on himself.

Connecticut's chief medical examiner says he doubts toxicological tests and genetic analysis of the body of the gunman who fatally shot 20 children and six educators at an elementary school will explain his actions.

The Hearst Connecticut Media Group reported Friday that Dr. H. Wayne Carver II, who autopsied the body of the gunman Adam Lanza, said an examination of Lanza's brain showed nothing unusual.

"It's a fishing expedition," he said. "I don't think we'll find answers. But that doesn't mean you don't look."

Carver said Lanza's brain showed no tumor or gross deformity, though he didn't expect to find a gross deformity.

"That would be associated with very severe disabilities," he said.

ADAM LANZA WORE EARPLUGS, RELOADED QUICKLY AND SHOT UP CARS IN THE PARKING LOT

People who suffer from such deformities usually require a "custodial" setting, Carver said.

The toxicology exam, which could take several weeks, involves testing body fluids for psychiatric medications or illegal substances. Carver said the result could provide "potentially valuable information" in creating a full picture of Lanza.

Lanza fatally shot himself after the Dec. 14 shooting spree.

PHOTOS: VICTIMS OF SHOOTING AT SANDY HOOK ELEMENTARY

Lanza's body was claimed by his father on Dec. 27 and the public may never know what happened with the remains.

While still in the possession of the medical examiner, Lanza's body may have been the subject of interest beyond medical reasons. An employee was accused of showing the body to her husband, who is not a state employee, just days after the shooting.

CLICK HERE TO SIGN OUR ONLINE PETITION

SIGN OUR ASSAULT WEAPONS BAN PETITION

Thirty-four Americans are killed every day by firearms. The total killed in just 6 months is equal to all American combat deaths over the entire length of the Iraq and Afghanistan wars.

After the tragic murder of 20 children and 6 adults at Sandy Hook Elementary School, we call on Congress to immediately ban all assault weapons and high-capacity magazines and institute comprehensive gun control.

SIGN ONLINE, TOO!
NYDailyNews.com

YES ✓ I support a ban on all military-style assault weapons and high-capacity magazines.

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If you agree with an assault weapons ban, please sign the petition by printing out this article, cutting out this form and mailing it to address listed.

April 2, 2013

HUFF POST CRIME

Adam Lanza Motive: Medical Examiner Wants To Probe Sandy Hook Shooter's Genetics

Posted: 12/19/2012 4:26 pm EST | Updated: 12/19/2012 4:26 pm EST

Connecticut's chief medical examiner said he hopes Adam Lanza's biology will help explain why the Sandy Hook shooter went on a deadly rampage.

The Hartford Courant reports that Dr. H. Wayne Carver has asked a geneticist at the University of Connecticut to join in his investigation of the killings.

"I'm exploring with the department of genetics what might be possible, if anything is possible," Carver told the paper on Tuesday. "Is there any identifiable disease associated with this behavior?"

Carver is also awaiting toxicology testing results for the gunman.

The story comes on the same day that Fox News reported Nancy Lanza, Adam's mother, was in the process of having her son committed to a psychiatric facility when he went on the mass shooting spree, according to a lifelong family acquaintance.

Connecticut police have said a motive for the shooting remains unclear, Newtown Patch reports.

EXHIBIT 12

By Davis Dunavin and Michael Dinan | Email the authors | December 15, 2012

The graphic, detailed information seemed to fly in the face of a more private tone that Newtown First Selectman Patricia Llodra was trying to set when she preceded Carver at the podium.

Calling Newtown a “close-knit community” whose heart is broken in the wake of a “horrendous tragedy,” Llodra called for media members to respect the privacy of residents, including those grieving for lost loved ones.

“Please treat our community with kindness,” Llodra said. “Please know that we have suffered a terrible loss and we need your respect on this healing journey.”

Carver called the injuries to shooting victims “a very devastating set.”

Relatives identified their loved ones not in person but by photos taken of the victims’ faces, Carver said.

“We did not bring the bodies and families into contact, we took pictures of them, of their facial features,” he said. “It’s easier on the families when you do that. There is a time and place for up close and personal in the grieving process but to accomplish this we felt it would be best to do it this way.”

At one point a reporter asked Carver what the children were wearing, to which he replied: “They were wearing cute kids’ stuff. I mean they’re first-graders.”

Carver also was asked whether he became emotional among the bodies of so many victims, mostly children, and told the corps “Not yet.”

“I think if you don’t have to do that, you shouldn’t be in this business,” he said. “For this one, not yet. Notice I said ‘yet.’ “

Lt. J. Paul Vance of the Connecticut State Police echoed Llodra’s imploring for privacy, reminding people as he had at an earlier press conference that a state trooper has been assigned to each individual family of the victims. One new piece of information that Vance supplied in response to a reporter’s question was that investigators found no evidence of an altercation in the school involving the gunman.

Update 10:40 a.m.

NEWTOWN, CT -- Though the gunman’s motive remains unclear, some pieces of the timeline, emergency response and ongoing investigation into Friday’s horrifying shooting came into focus Saturday morning as state police addressed media members at a park near Sandy Hook Elementary School.

All 20 children and six adults who died as a result of wounds suffered at the Newtown school have been identified by family members, Connecticut State Police Lt. J. Paul Vance said.

Those families are going through “a very difficult and trying time,” Vance said, pleading with the media to respect the survivors’ wishes for privacy. A list that names the deceased will be made available as soon as the state Office of the Chief Medical Examiner has finished its work. Vance said that the bodies inside the school all have been transported to that office—located in the Hartford suburb of Farmington, about 40 miles from Newtown.

It isn’t clear when the elementary school will reopen. Vance said investigators likely will be on scene for another one to two days. The superintendent of schools in Newtown is expected to address the media Saturday, Vance said.

Echoing what Newtown police told Patch Saturday morning, Vance said investigators are working hard to try and establish the gunman’s motive. Until that investigation is complete, Vance said, no information about its details will be released.

“I have to tell you that there are certain things, that there are simply cards we are holding close to our chest,” he said.

Also echoing Newtown police, Vance confirmed that the gunman appeared to have forced his way into the school by shooting through glass to breach a secure, locked system.

Vance said that “good evidence” was recovered at the school as well as a Sandy Hook home where a woman whose son is believed to be the shooter was found dead Friday.

Multiple news outlets citing police sources have identified 20-year-old Adam Lanza as the gunman. **According to NBC News**, three weapons used in the shootings—two 9 mm handguns and a rifle—were legally purchased and registered to Lanza’s mother.

“[The school and home] did produce evidence that investigators are able to use,” Vance said.

Vance confirmed that all three weapons were located near the shooter by police responding to the scene Friday.

First responders to the school encountered “several students and staff suffering from gunshot wounds,” according to a press release issued by the state police.

On- and off-duty troopers and Newtown Police Department officers responded to what the world quickly learned was a horrifying, unimaginable scene following a 9:30 a.m. 911 call reporting a possible shooting at the school, Vance said in the press release.

“Upon arrival, teams of Troopers and Officers formed ‘Active Shooter Teams’ and immediately entered the school,” Vance said in the release. “Teams performed rescues of students and staff, removing them to a safe location as they searched for the shooting suspect within the building. The building was evacuated and students walked hand in hand out to a safe location.”

The shooter, whose identity police have not yet confirmed, was found dead inside the school, Vance said. Police have said the gunman shot himself.

Multiple media outlets have identified 20-year-old Adam Lanza as the gunman. Vance also confirmed that a relative of the gunman was found dead at a residence in Sandy Hook. That deceased person is believed to be Lanza’s mother, Nancy. Nancy Lanza, originally reported to be a teacher at the school, is not in fact a teacher there, **according to CNN**.

In all, 27 people were killed, police said, including 20 children. Among the adults killed were the school’s beloved principal and psychologist.

The identities of all victims have been established, Vance said. Families of those killed have asked that no media members press them for interviews, Vance said.

The bodies of those that perished have been transported to the Office of the Medical Examiner, which is located in Farmington—a suburb of Hartford about 40 miles away.

“State Police Major Crime Investigators are continuing to process the school crime scene, gathering evidence and documenting the entire facility,” Vance said in the press release. “State Police Detectives assisted by Newtown Detectives processed the interior and exterior crime scene. Teams of investigators flooded the community and followed each lead, developing extensive information.”

In addition to the support for families themselves, Vance said, a crisis intervention team is being made available to the larger Newtown community. That team can be reached at 203-270-4283, Vance said.

Original Story

Newtown residents reeling from the massacre of 26 people, including 20 children, at an elementary school Friday are facing questions as they wake up to a living nightmare about the gunman’s motive, weapons and just what happened.

Police are expected to hold a press conference at 8 a.m. and have said that they are “working backwards” to piece together the “why” behind the mass shooting in this normally quiet area. A town of about 27,000, Newtown is 45 miles southwest of Hartford, or about 60 miles northeast of New York City. A 12 p.m. Saturday prayer service is scheduled for **St. John's Episcopal Church** in Sandy Hook, a neighborhood of the town.

Newtown police Lt. George Sinko, the department’s public information officer, told Patch Saturday morning that investigators have no sense of what prompted the gunman to act.

“There is no sense of motive at this time,” Sinko said.

Though Connecticut State Police have declined to identify the **Sandy Hook Elementary School** shooter, several news outlets citing police sources have identified 20-year-old Adam Lanza. **According to NBC News**, three weapons used in the shootings—two 9 mm handguns and a rifle—were legally purchased and registered to Lanza’s mother, whom police say was found dead at her Sandy Hook home.

Parents of schoolchildren at the scene Friday told Patch that the school was locked and that visitors need to be buzzed in. Sinko said Saturday that the gunman appeared to have blasted his way inside.

Police radio dispatches **aired by CNN** reveal harrowing early communications to emergency responders who arrived at the elementary school around 9:40 a.m. Friday.

"Caller is indicating she thinks that someone is shooting in the building," a dispatcher says. "The front glass has been broken. We are not sure why."

And later: "All units, the individual that I have on the phone is continuing to hear what he believes to be gunfire. Units are responding to Sandy Hook School at this time. The shooting appears to have stopped. The school is in lockdown."

According to Sinko, the gunman shot out glass next to the front door of the school.

“We say that because the window next to the door was shattered. We are still investigating," Sinko said.

Sinko said investigators are sorting through a “tremendous amount of evidence,” adding that police are looking for no other suspects than the suspected gunman who also was found dead inside the school.

Much of the investigators’ work involves checking motor vehicles, Sinko said.

Sinko said that police are not releasing the names of the suspect or children killed.

Patch will update this article with new information from state police and other officials throughout Saturday.

More links to Newtown Patch’s coverage here:

- ***Police Official: 27 Dead, 'It is Not a Simplistic Scene'***
- ***'In Sheer Shock' — Newtown Community Seeks News, Updates***
- ***Reaction: Sandy Hook School Shooting***
- ***Police Raid Sandy Hook Home Hours After Shooting***
- ***[PHOTOS] Newtown School Shooting***
- ***Newtown Principal Remembered as 'Warm,' 'Selfless'***
- ***Ryan Lanza, Wrongly Named As Mass Murderer, Left To Grieve***

Los Angeles Times | ARTICLE COLLECTIONS

← Back to Original Article

Connecticut school gunman shot mother multiple times, autopsy finds

December 16, 2012 | By Tina Susman and Matt Pearce

NEWTOWN, Conn. -- School shooter Adam Lanza killed his mother with "multiple" shots to her head and killed himself with a single shot to his head, according to a coroner's report released Sunday.

After killing his mother in the home they shared, Lanza, 20, drove her car to Sandy Hook Elementary School, where he opened fire in two classrooms Friday morning, killing 20 children and six adults. He then turned the gun on himself.

The autopsy reports were released by Connecticut Chief Medical Examiner Dr. H. Wayne Carver II, who said earlier that all the children had been shot multiple times.

Officials have not identified the make of Lanza's weapon, which Carver has described only as a "long gun."

As the autopsy reports were being released Sunday, a threatening phone call to a local church prompted a mid-service evacuation that jarred a day of mourning as residents throughout this community grappled with the aftermath of the elementary school massacre.

FULL COVERAGE: Connecticut school shooting

A church spokesman said police gave an all-clear soon after the evacuation at St. Rose of Lima Church. A SWAT team had surrounded the rectory across the parking lot from the main church building and hundreds of parishioners were forced to leave services that had been packed all morning.

"This is a very difficult time for all the families. We have seen incredible dignity in the faces of these people," church spokesman Brian Wallace said. The church was locked following the all-clear to "restore calm," Wallace said.

"I don't think anyone can be surprised about anything after what has happened," he said.

Earlier police said in a morning briefing that they may have to interview the youngest survivors of the school shooting as they try to determine the motive of the gunman.

State Police Lt. Paul Vance and Newtown Police Lt. George Sinko offered few new details of the crime or the investigation into the so-far inexplicable rampage at the elementary school.

Any motive -- speculation about Lanza's video game habits, and his relationship with the school and with his mother -- remained unconfirmed. Two days later, police still aren't saying why he did what he did.

PHOTOS: Connecticut school shooting

"For us to be able to give you the summary of the motive, we have to complete the investigation; we have to have the whole picture to say how and why this occurred," said Vance of the Connecticut State Police, the lead agency on the investigation. "There are weeks' worth of work left for us to complete this."

Lanza's mother legally purchased the guns later recovered at the scene of the massacre, law enforcement officials have said. Officials have previously said those weapons included a military-style Bushmaster .223 rifle, a Glock 9-millimeter pistol and a Sig Sauer semiautomatic pistol, officials said.

Vance said police would be tracing the weapons' origins "back to their origin" at their manufacturers.

Connecticut Gov. Dan Malloy told CNN on Sunday morning: "What we know is he shot his way into the building, so he penetrated the building -- he wasn't buzzed in. He penetrated the building by literally shooting an entrance into the building."

Sinko, meanwhile, said it was "too early" to say if children ever would return to the two classrooms where the killings occurred. "It's too early to say, but I would find it very difficult for them to do that," he said.

Arrangements were under way for some children to report to another elementary school in Newtown when classes resume.

"We want to keep these kids together," said Sinko, explaining that they hoped children who were moved to new schools could stay with their classmates. "We want to move forward very slowly and respectfully," he added, by way of explaining why it was expected to take so long to interview surviving children.

At the news conference, Vance also said the FBI had been asked to help investigate false postings on social media sites that included "some things in somewhat of a threatening manner," and some that purported to be messages from the shooter himself or others involved in the incident.

"There are quotes by people who are posing as the shooter.... Suffice it to say, the information has been deemed as threatening," he said when asked to elaborate.

ALSO:

Suspect in massacre tried to buy rifle days before, sources say

In Newtown, death's chill haunts the morning after school shooting

Connecticut shooting: Gunman forced his way into school, police say

EXHIBIT 14

M.E.: Lanza's brain appeared normal

Michael P. Mayko
Updated 6:19 pm, Friday, January 11, 2013

VIEW: LARGER | HIDE 1 of 4 ◄ PREV NEXT ►



HARTFORD -- While doctors and scientists conduct a battery of toxicological tests and genetic analysis to help determine what turned Adam Lanza into a psychopathic killing machine Dec. 14, the state's chief medical examiner doubts the reports will offer any answers.

Already, he said, an examination of what remained of Lanza's brain showed nothing unusual.

"It's a fishing expedition," said H. Wayne Carver II, whose autopsy of Lanza is one of nearly 1,000 he has conducted in his 30-plus years of experience. "I don't think we'll find answers. But that doesn't mean you don't look."

Lanza killed 20 students and six educators during what some have called a video-game inspired shooting spree at Sandy Hook Elementary School. He ended the terror by putting a gun to his head.

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State to decide who pays for buried lines

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This week in Southwestern Connecticut, April 1 to 7


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Time Out: Jane Condon takes on Greenwich, and the 'Twitterverse'

St. Margaret's: A message of rebirth

Carver said the examination of Lanza's brain showed "no tumor ... no gross deformity."

But the medical examiner didn't expect to find a gross deformity.

"That would be associated with very severe disabilities," Carver explained. He said people who suffer from such deformities usually require a "custodial" setting.

Additionally, an often-published photo of Lanza gives the impression he had a large head and might have suffered from a genetic mutation called Fragile X syndrome.

Fragile X is "the most common cause of inherited intellectual disability and the most common known genetic cause of autism or autism spectrum disorders," according to the National Fragile X Foundation.

The mutation involves the FMR1 gene not producing enough protein for the brain to grow properly. This causes mental retardation, usually in boys, and the individual is left with deformities such as a large forehead or a big face.

"We measured his head and it fell in the normal range," Carver said.

The toxicology exam, which could take several weeks, involves testing a person's urine, saliva or blood for up to 30 different drugs at a time.

Carver said tests are done to determine if the person had taken any type of drug that might "affect behavior."

He said these would include psychiatric medications used to treat anxiety, seizures and other issues. The toxicology exam also looks for pain medication, vitamins and natural supplements, along with illegally obtained drugs and alcohol.

"We don't test for marijuana," he added.

In this particular toxicology test, Carver said he would be looking for the "presence or absence" of particular drugs.

He said the result could provide "potentially valuable information" in creating a full picture of Lanza.

As for claims Lanza suffered from Asperger's syndrome, an autism-related disorder, Carver said that requires a "functional" test and in this case, the patient was deceased.

Additionally, Carver was asked if he thought any biochemical issues like an excess or deficiency of dopamine, serotonin or other neurotransmitters might have played a role in Lanza's behavior.

"Don't over read on that," he warned.

"Inborne errors of (issues like) metabolism are not subtle," he said. "Most are fatal."

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Adam Lanza's Brain Shows Nothing Unusual, Says Autopsy

Alex Marin in Politics, Crime 3 months ago


Adam Lanzas Brain Shows Nothing Unusual Says Autopsy

Adam Lanza, the 20-year-old Sandy Hook Elementary shooter who killed 20 children and 8 adults — including his mother and self — during the December 14 Newtown, Connecticut, massacre had a perfectly normal brain — according to toxicological tests and genetic analysis reported by the *Associated Press* via the *New York Daily News*.

But Dr. H. Wayne Carver II, the Connecticut chief medical examiner who conducted the analysis, said he doubts these results could explain the motives behind Lanza's deadly rampage, as his brain showed "nothing unusual."

"It's a fishing expedition," Dr. Carver said. "I don't think we'll find answers. But that doesn't mean you don't look," he added. Carver revealed Lanza's brain "showed no tumor or gross deformity" (which would have been associated with "very severe disabilities").

Furthermore, results of the full toxicology exam — which involve testing body fluids for psychiatric medications or illegal substances — could take "several weeks." According to Dr. Carver, these results could provide "potential information" into the motives of the deadly shooter.

Read on the *NYDN*.

Alex Marin
Social media and trends editor. I think in keywords and memes. ...

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EXHIBIT 16

The New York Times

December 14, 2012

Nation Reels After Gunman Massacres 20 Children at School in Connecticut

By JAMES BARRON

A 20-year-old man wearing combat gear and armed with semiautomatic pistols and a semiautomatic rifle killed 26 people — 20 of them children — in an attack in an elementary school in central Connecticut on Friday. Witnesses and officials described a horrific scene as the gunman, with brutal efficiency, chose his victims in two classrooms while other students dove under desks and hid in closets.

Hundreds of terrified parents arrived as their sobbing children were led out of the Sandy Hook Elementary School in a wooded corner of Newtown, Conn. By then, all of the victims had been shot and most were dead, and the gunman, identified as Adam Lanza, had committed suicide. The children killed were said to be 5 to 10 years old.

A 28th person, found dead in a house in the town, was also believed to have been shot by Mr. Lanza. That victim, one law enforcement official said, was Mr. Lanza's mother, Nancy Lanza, who was initially reported to be a teach at the school. She apparently owned the guns he used.

Although reports at the time indicated that the principal of the school let Mr. Lanza in because she recognized him, his mother did not work at the school, and he shot his way in, defeating a security system requiring visitors to be buzzed in. Moments later, the principal was shot dead when she went to investigate the sound of gunshots. The school psychologist was also among those who died.

The rampage, coming less than two weeks before Christmas, was the nation's second-deadliest school shooting, exceeded only by the 2007 Virginia Tech massacre, in which a gunman killed 32 people and then himself.

Law enforcement officials said Mr. Lanza had grown up in Newtown, and he was remembered by high school classmates as smart, introverted and nervous. They said he had gone out of his way not to attract attention when he was younger.

The gunman was chillingly accurate. A spokesman for the State Police said he left only one wounded survivor at the school. All the others hit by the barrage of bullets from the guns Mr.

Lanza carried died, suggesting that they were shot at point-blank range. One law enforcement official said the shootings occurred in two classrooms in a section of the single-story Sandy Hook Elementary School.

Some who were there said the shooting occurred during morning announcements, and the initial shots could be heard over the school's public address system. The bodies of those killed were still in the school as of 10 p.m. Friday.

The New York City medical examiner's office sent a "portable morgue" to Newtown to help with the aftermath of the shootings, a spokeswoman, Ellen Borakove, confirmed late Friday.

Law enforcement officials offered no hint of what had motivated Mr. Lanza. It was also unclear, one investigator said, why Mr. Lanza — after shooting his mother to death inside her home — drove her car to the school and slaughtered the children. "I don't think anyone knows the answers to those questions at this point," the official said. As for a possible motive, he added, "we don't know much for sure."

F.B.I. agents interviewed his brother, Ryan Lanza, in Hoboken, N.J. His father, Peter Lanza, who was divorced from Nancy Lanza, was also questioned, one official said.

Newtown, a postcard-perfect New England town where everyone seems to know everyone else and where there had lately been holiday tree lightings with apple cider and hot chocolate, was plunged into mourning. Stunned residents attended four memorial services in the town on Friday evening as detectives continued the search for clues, and an explanation.

Maureen Kerins, a hospital nurse who lives close to the school, learned of the shooting from television and hurried to the school to see if she could help.

"I stood outside waiting to go in, but a police officer came out and said they didn't need any nurses," she said, "so I knew it wasn't good."

In the cold light of Friday morning, faces told the story outside the stricken school. There were the frightened faces of children who were crying as they were led out in a line. There were the grim faces of women. There were the relieved-looking faces of a couple and their little girl.

The shootings set off a tide of anguish nationwide. In Illinois and Georgia, flags were lowered to half-staff in memory of the victims. And at the White House, President Obama struggled to read a statement in the White House briefing room. More than once, he dabbed his eyes.

“Our hearts are broken,” Mr. Obama said, adding that his first reaction was not as a president, but as a parent.

“I know there is not a parent in America who does not feel the same overwhelming grief that I do,” he said.

He called the victims “beautiful little kids.”

“They had their entire lives ahead of them: birthdays, graduations, weddings, kids of their own,” he said. Then the president reached up to the corner of one eye.

Mr. Obama called for “meaningful action” to stop such shootings, but he did not spell out details. In his nearly four years in office, he has not pressed for expanded gun control. But he did allude on Friday to a desire to have politicians put aside their differences to deal with ways to prevent future shootings.

Gov. Dannel P. Malloy of Connecticut, who went to Newtown, called the shootings “a tragedy of unspeakable terms.”

“Evil visited this community today,” he said.

Lt. J. Paul Vance, a spokesman for the Connecticut State Police, described “a very horrific and difficult scene” at the school, which had 700 students in kindergarten through fourth grade. It had a security protocol that called for doors to be locked during the day and visitors to be checked on a video monitor inside.

“You had to buzz in and out and the whole nine yards,” said a former chairwoman of the Newtown board of education, Lillian Bittman. “When you buzz, you come up on our screen.”

The lock system did not go into effect until 9:30 each morning, according to a letter to parents from the principal, Dawn Hochsprung, that was posted on several news Web sites. The letter was apparently written earlier in the school year.

It was Ms. Hochsprung, who recognized Mr. Lanza because his mother worked at the school, who let him in on Friday. Sometime later, she heard shots and went to see what was going on.

Lieutenant Vance said the Newtown police had called for help from police departments nearby and began a manhunt, checking “every nook and cranny and every room.”

Officers were seen kicking in doors as they worked their way through the school.

Lieutenant Vance said the students who died had been in two classrooms. Others said that as the horror unfolded, students and teachers tried to hide in places the gunman would not think to look. Teachers locked the doors, turned off the lights and closed the blinds. Some ordered students to duck under their desks.

The teachers did not explain what was going on, but they did not have to. Everyone could hear the gunfire.

Yvonne Cech, a school librarian, said she had spent 45 minutes locked in a closet with two library clerks, a library catalog assistant and 18 fourth graders.

“The SWAT team escorted us out,” she said, and then the children were reunited with their parents.

Lieutenant Vance said 18 youngsters were pronounced dead at the school and two others were taken to hospitals, where they were declared dead. All the adults who were killed at the school were pronounced dead there.

Law enforcement officials said the weapons used by the gunman were a Sig Sauer and a Glock, both handguns. The police also found a Bushmaster .223 M4 carbine.

One law enforcement official said the guns had not been traced because they had not yet been removed from the school, but state licensing records or permits apparently indicated that Ms. Lanza owned weapons of the same makes and models.

“He visited two classrooms,” said a law enforcement official at the scene, adding that those two classrooms were adjoining.

The first 911 call was recorded about 9:30 and said someone had been shot at the school, an almost unthinkable turn of events on what had begun as just another chilly day in quiet Newtown. Soon, frantic parents were racing to the school, hoping their children were all right. By 10:30, the shooting had stopped. By then, the police had arrived with dogs.

“There is going to be a black cloud over this area forever,” said Craig Ansman, who led his 4-year-old daughter from the preschool down the street from the elementary school. “It will never go away.”

Reporting on the Connecticut shootings was contributed by Al Baker, Charles V. Bagli, Susan Beachy, Jack Begg, David W. Chen, Alison Leigh Cowan, Robert Davey, Matt Flegenheimer, Joseph Goldstein, Emmarie Huetteman, Kristin Hussey, Thomas Kaplan, Elizabeth Maker, Patrick McGeehan, Sheelagh McNeill, Michael Moss, Andy Newman, Richard Pérez-Peña,

Jennifer Preston, William K. Rashbaum, Motoko Rich, Ray Rivera, Liz Robbins, Emily S. Rueb, Eric Schmitt, Michael Schwirtz, Kirk Semple, Wendy Ruderman, Jonathan Weisman, Vivian Yee and Kate Zernike.

This article has been revised to reflect the following correction:

Correction: December 17, 2012

A correction posted with an earlier version of this article was published in error. As the initial article correctly noted, the gunman in the Connecticut shooting used a rifle to carry out the shootings inside the Sandy Hook Elementary School; he did not use two handguns. (He did use a handgun to kill himself.)

This article has been revised to reflect the following correction:

Correction: December 18, 2012

An article on Saturday about the school shooting in Newtown, Conn., that left 20 children and 8 adults dead, using information from the authorities, misstated the way in which the gunman managed to enter the Sandy Hook Elementary School. The gunman, Adam Lanza, shot his way in, defeating the security system that required visitors to be buzzed in; the school's principal did not allow him to go through the security system after recognizing him. The article also referred incorrectly to the gunman's mother, Nancy, whom he killed in the house they shared not far from the school. She was never a teacher at the school.

BBC NEWS

US & CANADA

15 December 2012 Last updated at 00:14 ET

Connecticut school shooting: Children among 27 killed

A gunman has killed 20 children and six adults at a primary school in the US state of Connecticut, police say.

The gunman, who also died, has not been formally identified by police.

But officials told US media that the killer at Sandy Hook Elementary School, in Newtown, was a 20-year-old son of a teacher. He is thought to have killed her before the attack.

It is one of the worst-ever US school shootings, with a toll close to the 32 who died at Virginia Tech in 2007.

Early reports named 24-year-old Ryan Lanza as the gunman, but anonymous officials later said his brother Adam, 20, was the suspect.

He is believed to have killed their mother, Nancy Lanza, at her home before heading to Sandy Hook school. Investigators say it is unclear whether she worked there.

Ryan Lanza of Hoboken, New Jersey, was being questioned by police, US media reported, but has not been named as a suspect.

'Safest place in America'

Police Lt Paul Vance said 18 children were pronounced dead at the school, and two died after being taken to hospital. Six adults were also killed, and the gunman died at the scene, apparently after shooting himself.

One person was also injured, and police were investigating a second crime scene in Newtown, where another victim was found dead - understood to be the gunman's mother.

Dressed in black and wearing a bullet-proof vest, the gunman is thought to have had several weapons.

These included two handguns - a Glock and a Sig Sauer - and a .223-calibre rifle, reports said.

The killings took place in two rooms within a single section of the school, police have said.

One parent, Stephen Delgiadice, whose eight-year-old daughter was at Sandy Hook School on Friday but was not harmed, said the shooting was traumatic for the small town.

"It's alarming, especially in Newtown, Connecticut, which we always thought was the safest place in America," Mr Delgiadice told AP.

At a memorial service in Newtown people crowded outside the doors of the church as Connecticut Governor Dannel Malloy addressed those gathered.

He called the attack a "tragedy of unspeakable terms", saying "you can never be prepared" for an event like this.

In Washington, about 200 people held a candlelight vigil for the victims outside the White House, whilst others protested there to call for gun controls.

'Innocence torn away'
Friday's shooting is the third major gun attack in the US in 2012.

In July an attacker killed 12 people at a premiere of a Batman film in Aurora, Colorado. In August six people died at a Sikh temple in Wisconsin.

Just this week two people died in a shooting at a shopping mall in the state of Oregon.

At the White House, an emotional President Barack Obama cited those incidents as he called for "meaningful action... regardless of politics".

"Our hearts are broken today, for the parents, grandparents, sisters and brothers of these children, and for the families of the adults who were lost."

Mr Obama offered condolences to the families of survivors too, saying "their children's innocence has been torn away from them too early, and there are no words that will ease their pain".

He wiped tears from his eyes as he spoke of the "overwhelming grief" at the loss of life.

The American flags on Capitol Hill were lowered to half-mast in the wake of the attack.

Schools locked down
Police arrived at the school soon after 09:40 local time (14:40 GMT) on Friday, answering reports that a gunman was in the school's main office and one person had "numerous gunshot wounds".

Witnesses reported hearing scores of shots fired, with one suggesting there "must have been 100 rounds" in an interview with CNN.

Parent Richard Wilford said his seven-year-old son Richie described a noise that "sounded like what he described as cans falling".

Mr Wilford said his son's teacher locked the classroom door and told the children to huddle in a corner until the police arrived.

The authorities said they mobilised "every possible asset" in their response to the shooting. Teams of officers, some with dogs, combed the school and evacuated the building.

Firefighters reportedly told children to close their eyes and run past the school's office as they left the building.

Sandy Hook School - described by correspondents as a highly rated school has more than 600 students - spanning the ages five to 10.

Witness Mergim Bajraliu, 17, said he heard the gunshots ring out from his home and ran to the school looking for his nine-year-old sister, who was not hurt.

He spoke of an emotional scene at the school as anguished parents rushed to find their children.

"Everyone was just traumatised," he said.

More US & Canada stories

Obama proposes brain mapping project
[/news/science-environment-22007007]
US President Barack Obama unveils a $100m initiative to map the "enormous mystery" of the human brain.
Second Senate Republican backs gay marriage

EXHIBIT 18

Connecticut school shooting: Dec 15 as it happened

Latest updates as America reels from the shooting yesterday at Sandy Hook Elementary School in Newtown, Connecticut, which killed 20 children and six adults.

By Josie Ensor, and Raf Sanchez

5:53PM GMT 15 Dec 2012

- **Victim's father: killer acted with 'free agency' from God**
- **Police say evidence of gunman's motives found**
- Teachers sacrificed themselves to save pupils
- **Pupils heard principal's murder on intercom**
- Suspected gunman was 'smart but shy nerd'

00.00 (19.00) We're going to leave it there for the night. I'll leave you with this video recounting the horrific events in Connecticut:

23.40 (18.40) A vigil is about to start in Newtown for **Vicki Soto**, the young teacher who died shielding her students from the gunman. Friends and family are going to wear green, her

favourite colour, and sing as they remember her. Her black labrador has apparently been wandering around her apartment, waiting for her owner to come home.

23.30 (18.30) Amazing to think that the killer is from a law enforcement family.

23.10 (18.10) James Champion, the brother of **Nancy Lanza** has put out at statement saying the "whole family is traumatised" by his nephew's killing spree. Champion is a police officer in New Hampshire and their father is a retired officer.

22.45 (17.45) Meanwhile, gun violence continues across the US:

22.30 (17.30) Robbie Parker, the father of six-year-old Emilie who died yesterday, is speaking of his family's devastation.

He begins by expressing his sympathy for all the families "this includes the family of the shooter. I can't imagine how hard it this experience must be for you and I want you to know that our love and our support goes out to you as well".

As the deep pain begins to settle into our hearts, we find comfort reflecting on the incredible person that Emily was and how many lives she was able to touch in her short time on earth.

He describes how little Emilie was a serial maker of cards and "always carried around her markers and pencils" to make notes for anyone who was looking sad. Mr Parker was teaching his daughter Portuguese and says their last conversation on Friday morning was in Portuguese.

He says the killer acted with "free agency" that was given by God and that he can't feel anger towards the gunman.

She was the type of person who could just light up a room. She always had a kind word to say about anybody.

The family only moved to Newtown eight months ago.

22.06 (17.06) Governor Malloy has just addressed the people of Connecticut, saying not is a time for "love, courage and compassion".

When tragedies like this take place people often look for answers and explanations of this could have happened but the sad truth is there are no answers. No good ones, anyway.

He says "there will be a time soon" for a public debate about guns.

21.45 (16.45) Sandy Hook Elementary School killer Adam Lanza was taught how to shoot by the mother he murdered, **Robert Mendick** reports.

Nancy Lanza, 52, was "a big, big gun fan" who went target shooting with her children, according to friends.

"She said she would often go target shooting with her kids," Dan Holmes, owner of the landscaping firm Holmes Fine Gardens, told Reuters.

He recalled that she once showed him a 'high-end rifle' that she had purchased.

'She was very proud of it,' he told the New York Daily News. 'She loved her guns."

Lanza, 20, killed his mother at the home they shared, shooting her in the face with her own gun, before driving three miles to the school in Newtown, Connecticut.

21.35 (16.35) And here's the list:

Adults
Rachel Davino, 29, school staff

Dawn Hochsprung, 46, teacher

Anne Marie Murphy, 52, school staff

Mary Sherlach, 56, psychologist

Victoria Soto, 27, teacher

Lauren Russeau, 30, teacher

Nancy Lanza, 52, gunman's mother

Children

Charlotte Bacon, six

Daniel Barden, seven

Olivia Engel, six

Josephine Gay, seven

Ana Marquez-Green, six

Dylan Hockley, six

Madeleine Hsu, six

Catherine Hubbard, six

Chase Kowalski, seven

Jesse Lewis, six

James Mattiolo, six

Grace McDonnel, seven

Emilie Parker, six

Jack Pinto, six

Noah Pozner, six

Caroline Previdi, six

Jessica Rekos, six

Avielle Richman, six

Benjamin Wheeler, six

Allison Wyatt, six

21.35 (16.25) And here's the list itself: 26 children and adults killed.

-

21.20 (16.20) Here's the breakdown of the casualties from the list provided by the State Police.

Their ages ranged from six to 56. Most of the children were first-graders.

21.15 (16.15) Ryan Lanza, the elder brother of the gunman, told police he had not been in touch with his brother since 2010, according to the Associated Press. It's not clear whether he's still in police custody in New Jersey. He seems to have lost touch with a lot of the people close to him in recent years:

Joshua Milas, who graduated from Newtown High in 2009 and belonged to the school technology club with him, said that [Adam] Lanza was generally a happy person but that he hadn't seen him in a few years.

"We would hang out, and he was a good kid. He was smart," Joshua Milas said. "He was probably one of the smartest kids I know. He was probably a genius."

21.05 (16.05) Police are now talking down earlier reports that Lanza had been involved in an altercation with staff at the school on the day before the killing.

20.55 (15.55) He says all the victims he knows of were killed with the Bushmaster .223, a civilian version of the military's M-16 rifle. Although he hasn't examined Lanza's body he says he is fairly confident the gunman killed himself with one of the two pistols.

Dr Carver says the bodies of the 26 victims are all ready to be released and that parents were shown pictures, rather being taken to see the actual bodies, as they identified them. "It's easier on the families when you do that," he said.

20.45 (15.45) Dr H Wayne Carver, the chief medical examiner for the state of Connecticut, has just given an update on the forensic investigation, saying he has completed post-mortems on the 26 victims in the school. "I believe that everybody was hit more than once," he said, adding that many of the bullets were lodged in the bodies.

The post-mortems on Lanza and his mother will be completed tomorrow.

20.25 (15.25) Carlee Soto, whose sister Vicki was among the six adults killed at Sandy Hook, has been tweeting her grief.

Vicki Soto is believed to have been the last person to die, killed as she was shielding her class of six-year-olds. After shooting her, Lanza reportedly turned the gun on himself.

19.52 (14.52) Inside the school the forensic work is still going on but all 27 bodies have been removed. Lanza had three guns on him at the time of his death - two pistols and a civilian version of an M16 - and police say they know which weapon he used to kill himself with but are not yet disclosing that information.

19.40 (14.40) Here's some of the footage from the press conference earlier, where **Lt Col Paul Vance** describes how the shooter "forced his way into the school".

19.18 (14.18) Lauren Rousseau, 30, is the latest teacher named as a victim of the shootings.

Devastated friends say she was having "the best year of her life" after landing her first full-time teaching job only months ago.

"She was like a kid in many ways," her father, Gilles Rousseau, said. "That's why she liked working with kids so much. She died with her little kids."

18.40 (13.40) Public Schools Superintendent Janet Robinson has told NBC of more tales of teachers' heroism. One teacher helped kids escape out of a window, while another hid children in the kiln room as the shooter made his way through school.

17.50 (12.50) Officers have "found evidence" at Sandy Hook Elementary School and at a second crime scene where a woman was found dead.

Speaking at a press conference earlier, Lt Paul Vance said:

Our investigators at the crime scene did produce some very good evidence in this investigation that our investigators will be able to use in hopefully painting the complete picture as to how and more importantly why this occurred.

17.45 (12.45) CNN is reporting Lanza had six guns - three more than previously thought. It is believed he used three at school including a Bushmaster assault rifle, while police have now found three more rifles at the second crime scene.

17.25 (12.25) A moving photo of some of the first responders from Connecticut state police at the scene:

17.10 (12.10) NBC are reporting that there was allegedly an altercation between Lanza and staff at Sandy Hook Elementary School the day before the shooting.

Officials say Lanza was involved in an argument at the school which involved himself and four other staff members. Of the four, three were murdered in the shooting spree while the fourth was not at school yesterday and is now being interviewed by federal and state investigators.

Adam Lanza

16.50 (11.50) Newtown students heard their principal's murder over the school intercom, which gave them some time to hide, according to one young girl talking to ABC.

it is not known if the intercom was turned on by headteacher Hochsprung to alert others in the school or whether it was turned on for morning announcement.

Either way, it caught the initial moments of the gunman's attack and gave teachers and others life saving moments to lock their doors and try to hide their children.

Third grader Tori Chop said that she could hear her principal's final moments as Lanza barged in with his weapons.

"Yeah, yeah, she was crying. I thought she was screaming," Chop told "Good Morning America." "That's what we heard over the loudspeaker. We heard kids crying.

"We kept hearing gun noises and 'put your hands up'…we kept hearing that," said Chop.

Victim Ana Marquez-Greene, 6 (Left) and principal Dawn Hochsprung (Right)

16.16 (11.16) Lanza tried to purchase a rifle earlier this week at a store in Danbury, Connecticut, according to NBC News. He was turned down because he didn't want to undergo a background check or abide by the state's waiting period for gun sales, officials said.

16.12 (11.12) One 17 year-old boy called Jesse whose brother went to school with Adam Lanza has just been interviewed by the BBC

He said Lanza was "a social outcast", and "the kind of kid that wouldn't talk to people about the things that happened to them.

"I've heard he's very fidgety. He didn't seem like a kid who had a lot of friends."

He added that it was upsetting to hear that children he had previously babysat for were killed in the shooting.

He said many in the town had taken down Christmas decorations, as now was not a time for celebration.

15.42 (10.42) We now have a transcript of radio traffic featuring officers from Newtown police and fire department, and Connecticut state police immediately after the shooting started. It becomes clear that, as the police just confirmed, the suspect did force his way in to the school.

0935 Sandy Hook School. Caller is indicating she thinks there's someone shooting in the building.

0936 Units responding at Sandy Hook School. The front glass has been broken. We're unsure why.

0937 All units, the individual I have on the phone is continuing to hear what he believes to be gunfire.

0938 All units responding to Sandy Hook School at this time. The shooting appears to have stopped. The school is in lockdown.

0940 I will need two ambulances at this time.

0940 The shooter is apparently still shooting in the office area.

0941 Take exit 10... continue on Riverside Road, Dickerson Drive. Make sure you have your vest on.

0942 Last known shots were in the front of the (inaudible)

0943 We have one fatal in room one... (inaudible) received a wound to the foot...

0946 I got bodies here.

Teacher Kaitlin Roig recounts her ordeal

15.20 (10.20) Lt Paul Vance says the suspect "was not voluntarily let into the school," but rather made a "forced" entry.

They also confirmed that the woman found dead at the second crrime scene was related to the shooter.

15.14 (10.14) Lieutenant Paul Vance from the Connecticut State Police department is speaking live now outside the school. He says the victims have been officially identified, but they have some more work to do before they release the full list of victims' names and ages.

A crisis intervention team has been established in the town and their services will be available to victims' families.

He says they are still working on forensics at the school, which will take at least one to two days.

15.00 (10.00) USA Today said they had interviewed a very trauamatised school nurse from Sandy Hook, who described how the gunman walked into her office and looked her straight in

the eye. She then was said to have ducked under the desk before he then inexplicably turning around and walking out.

She also said she knew the suspect's mother, Nancy, describing her as an "absolutely loving, caring kindergarten teacher."

There are mixed reports as to whether Nancy Lanza worked at the school or not, but this is the first person to talk about her being a teacher at Sandy Hook.

14.50 (09.50) As America starts to wake up, people have begun to lay flowers near the school.

14.30 (09.30) Mary-Anne Jacob, the school librarian, has just told Sky News of how she barrackaded 18 children into a cupboard to avoid the shooter. When asked about Nancy Lanza, the suspected killer's mother, she said she didn't know anyone called Nancy Lanza who works at the school.

14.00 (09.00) We are still waiting for the press conference (which was supposed to begin at 1pm or 8am EST) with Connecticut Police Lieutenant Paul Vance, as is much of the world's media...

13.43 (08.43) Meanwhile, the tabloids went for:

13.38 (08.38) The front page of the New York Times has come in, featuring the very emotional headline:
"Who Would Do This to Our Poor Little Babies."

13.30 (08.30) The superintendent of Newtown schools has just told the Today Show in America that Nancy Lanza did not work at Sandy Hook Elementary and she was not in their database. it is now unclear what her connection to the school was.

13.15 (08.13) As mentioned earlier, first-grade teacher Kaitlin Roig managed to keep the killer out of her classroom by blockading the door.

Here she recounts her ordeal and tells how she kept her class safe.

12.46 (07.46) A third young victim has been named as six year-old Jesse Lewis.

His father Neil Heslin told The New York Post that Jesse had been looking forward to making gingerbread houses in school yesterday.

“I dropped him off at school at 9 am. He went happily. That was the last I saw of him," Mr Heslin, 50, said.

“He was just a happy boy. Everybody knew Jesse.He was going to go places in life. He did well in school.

“He was in Ms. [Victoria] Soto’s class. We were supposed to make gingerbread houses today at 2:30 in his class."

Dad Neil Heslin with son Jesse

12.42 (07.42) We will have a live feed of the conference outside the school in 15 minutes.

12.30 (07.30) In his weekly internet address, President Obama has called for "meaningful action, regardless of politics."

12.15 (07.15) A new, more recent picture has emerged of Adam Lanza. The undated photo has been confirmed to be the suspected gunman by government officials, according to NBC.

12.07 (07.07) According to Jo Ling Kent at NBC News on the scene all bodies have been identified, but it is not known if any still remain inside.

11.45 (06:45) It is thought police will hold a conference this morning at 8am EST in which it will name all the victims.

11.30 (06.30) The Ottawa Citizen has published this photo purporting to show one of the victims, six year-old Ana Marquez-Greene, with her family.

Her father, Jimmy Greene, is a jazz saxophinist. Friends and fellow musicians posted messages of condolence on their Facebooks walls last night, including pianist Christian Sands.

@christiansands1 My prayers and heart go out to my brother, Mr. Jimmy Greene. Your loss cannot be compared. I'm praying for you and your family @jimmygreene

It is believed Mr Greene wrote this song for his daughter Ana four years ago:

11.15 (06.15) The school's principal Dawn Hochsprung had a Twitter profile she regularly updated with news of how students were doing.

She had recently put up a picture of Sandy Hook Elementary practising an evacuation drill.

11:00 (06:00) "There's been a shooting at your daughter's school" - a very moving piece in the New York Times by a mother after hearing the news of the shooting. Fortunately, her nine year-old daughter Lenie was unharmed.

10:55 (05:55) Here is a video from a little earlier of Connecticut Governor Dan Malloy addressing the media as a local church holds an emotional vigil.

10:47 (05.47) Mark Kelly, the husband of Gabrielle Giffords, who was shot during a public meeting held in a supermarket parking lot, has urged immediate action on gun control.

Writing on his Facebook page, he said: “This time our response must consist of more than regret, sorrow and condolence. The children of Sandy Hook Elementary School and all victims of gun violence deserve leaders who have the courage to participate in a meaningful discussion about our gun laws — and how they can be reformed and better enforced to prevent gun violence and death in America. This can no longer wait.”

10:35 (05:35) With the tragic massacre of young children in Connecticut being given prominent coverage in newspapers and on news broadcasts parents face the task of attempting to explain the events to their own kids.

Psychologists at the Children's Medical Centre in the US yesterday issued a set of guidelines to help parents, which includes limiting the amount of coverage your child is watching and to maintain normal routines.

They say there is nothing to be gained from letting a child watch news coverage of the aftermath of the shootings. Adults must model a sense of calm and reassurance for children, monitoring their own reaction, anxiety and outrage about the shooting.

10:10 (05:10) Three teachers murdered at Sandy Hook Elementary School all died heroes as they attempted to save their young pupils from a gunman they recognised as the son of one of the school's kindergarten teachers.

Authorities have identified principal Dawn Hochsprung, 47, school psychologist Mary Sherlach, 56, and 27-year-old Victoria Soto, a young first grade teacher, as three of the eight adults found dead at the school on Friday.

It has been reported that Miss Soto sacrificed herself to save her students – throwing her body in front of the young children.

The full story can be found here.

Victoria Soto, first grade teacher

Mary Sherlach, the school's psychologist

09:50 (04:50) Friends and relatives have paid tribute to the school's principal Dawn Hochsprung, who was killed in the shooting.

Hochsprung's niece, MaryAnn Suarez of Naugatuck, said her aunt devoted her life to the children at her school.

"In every school she worked at, every teacher was her friend, she was every child's friend," Suarez said.

According to Suarez, Hochsprung is a married mother of two daughters and four grandchildren.

09:25 (04:25) A second victim has been named, another six year-old girl called Grace McDonnell, according to the MailOnline.

She has been described as "utterly adorable" and "full of life", with eyes that were so blue and hair that was so blonde that friends thought she looked like a "little doll".

Her mother Lynn McDonnell, 45, a housewife, and Christopher, 49, a business executive, live just one street away from where alleged shooter Adam Lanza lived.

Neighbor Dorothy Werden, 49, said: "I just choke up when I think about it. Grace was like a little doll. She was utterly adorable.

"I used to see her waiting for the school bus over the road from our house every day.

"She had blonde hair and blue eyes - she was like a little Barbie doll."

09:15 (04:15) A picture of one of the first young victims has been published by the Toronto Sun.

Ana Marquez-Greene, 6, has been named as one of the 20 children killed.

She had just started at the school with her brother Isaiah, reportedly in grade 3, this year after moving from Winnipeg in Canada. Isaiah made it out unharmed.

The children's father is American jazz saxophonist Jimmy Greene. According to his online biography, Greene and his family spent the past three years in Winnipeg while he worked as a faculty member with the University of Manitoba's school of music.

Their mother Nelba, is a therapist who worked at the University of Winnipeg's Aurora Family Therapy Centre.

Ana Marquez-Greene, 6

09:00 (04:00) It is believed the guns used in the shooting belonged to his mother, Nancy, who bought them legally.

Two 9mm handguns were found at the scene of the Connecticut shooting, according to NBC News. Lanza also reportedly brought two semi-automatic pistols and an automatic rifle to school. All three of those guns were legally owned by Nancy Lanza.

Connecticut residents must be 21 or older to purchase or carry a handgun, while Lanza was only 20.

Photograph reportedly showing Lanza taken in 2005

08:55 (03:55) A reporter from the local paper, the Stamford Advocate, first broke the news to Lanza's father, Peter, a vice president of taxes for GE Energy Financial Services who separated from his mother in 2009.

"I told him I was a reporter for the Stamford Advocate, and I was surprised that no click of recognition flash across his face," writes Maggie Gordon. "So I continued, explaining that I'd been told someone at his address had been linked to the shootings in Newtown.

"His expression twisted from patient, to surprise to horror."

Peter Lanza on his LinkedIn page

08:35 (03:35) As more details come out, more stories of heroism emerge.

Sandy Hook Elementary first grade teacher Kaitlin Roig was worried that she and her students would not survive the gunfire.

Ms Roig told ABC News that she quickly ushered her first grade students into the class bathroom and held the door shut with a storage unit.

"They asked, 'Can we go see if anyone is out there… I just want Christmas… I don't want to die, I just want to have Christmas," she said.

She told them she loved them as she feared it would be the last thing they would ever hear.

08:30 (03:30) Throughout the afternoon, Adam Lanza's older brother Ryan, 24, a former student at Quinnipiac University in Connecticut, was named by some news outlets as the killer.

Ryan's identification had been found on the body of his underage brother, leading to the mistaken reports.

The Killer's older brother Ryan Lanza, 24, led away by police for questioning. Police say he has been fully cooperative

Ryan Lanza's Facebook page

08:25 (03:25) Catherine Urso, who was attending a vigil last night in Newtown, said her college -age son knew the killer and remembered him for his alternative style.

"He just said he was very thin, very remote and was one of the goths," she said.

Lanza's parents filed for divorce in 2008, according to court records. His father, Peter Lanza, lives in Stamford, Connecticut, according to public records, and he reportedly works as a tax director for General Electric.

08:15 (03:15) The New York Times has done a profile on the killer, named as Adam Lanza, describing him as an intelligent but shy person, who left few footprints in life.

He did all he could to avoid attention, it seemed.

Lanza did not even appear in his high school yearbook, that of the class of 2010. His spot on the page said, "Camera shy." Others who graduated that year said they did not believe he had finished school.

Remembering him from school, one of his old classmates, Olivia DeVivo, said she and her friends "weren't surprised" at that news.

She said. "They said he always seemed like he was someone who was capable of that because he just didn't really connect with our high school, and didn't really connect with our town."

A child reacts to police and fireman staged nearby Sandy Hook

08.10 (03:10) Overnight **Richard Blackden,** our reporter in Connecticut, attended vigils across Newtown to remember the victims of the massacre.

Thousands of residents Newtown, Connecticut poured into vigils last night as this small American town grieved over the second-deadliest mass shooting in the country's history.

People spilled onto the steps of the St Rose of Lima catholic church, where about six or seven families lost children in the shooting, according to parish priest Robert Weiss. It was a scene repeated in at least six church across the leafy town of 26,000 that lie 80 miles north of New York.

"This will change our country and all of our communities forever," said Diane Heineken, a resident of Newtown. "You are part of it in this community. We're all connected."

08:00 (0300) Good morning and welcome to our liveblog as we cover the latest news from Connecticut after the shooting at Sandy Hook Elementary School that left 20 children and seven adults dead.

HEITKE LAW OFFICE HLO LLC

* KEVIN D. HEITKE
• TRACY J. HERMANN
• RICHARD A. DeMERCHANT

June 18, 2013

VIA E-MAIL
Connecticut Office of Governmental Accountability
Freedom of Information Commission
18-20 Trinity Street, 1st Floor
Hartford, CT 06106

Re: AbleChild's Supplement to Appeal from the Office of the Chief Medical Examiner for Release of Adam Lanza's Autopsy, Toxicology, and Prescription Drug History Records

To the Freedom of Information Commission:

Complainant AbleChild,[1] by counsel and pursuant to Regulation § 1-21j-26,[2] hereby supplements its pending appeal with evidence of autopsy record disclosures (and, thereby, waiver of defenses) by the Office of Chief Medical Examiner (OCME) that occurred after the filing of AbleChild's April 3, 2013 appeal challenging the OCME's decision to withhold records concerning decedent Adam Lanza. Since April 3, 2013, on at least one occasion, Connecticut state officials voluntarily revealed content of the medical records of decedent Adam Lanza to select members of the press, while refusing to supply the same and comparable information to AbleChild. Appellant AbleChild hereby presents those supplemental facts in furtherance of its appeal, which is pending before the Freedom of Information Commission (FOIC). In addition to this supplement, AbleChild reserves the right to file prehearing briefs under Section 1-21j-26.

Before the OCME and in its appeal, AbleChild requests the autopsy, toxicology, and prescription drug records of Adam Lanza so that an evaluation may be made: (1) to determine if those drugs contain agents associated with increased thoughts of hostility, murder, homicide, and

[1] Pursuant to 1-21j-28(a), the Complainant is Sheila Matthews-Gallo on behalf of AbleChild.

[2] This supplemental submission is timely under Section 1-21j-26, which provides, in pertinent part, that "all briefs, memoranda of law, exceptions or other written argument shall be served upon the commission on or before the Wednesday of the week immediately prior to the proceeding at which the subject matter of such documents is scheduled to be discussed or acted upon by the commission. For good cause shown, the commission or the presiding officer may extend the time for serving any of the aforesaid documents." Conn. Agencies Regs. § 1-21j-26.

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suicide and (2) to determine if such drugs contributed in whole or part to Adam Lanza's commission of murder and suicide. A professional evaluation will then be made to determine if any drug agents in the body of Adam Lanza either at the time of his death or in his medical history may have contributed to his acts of mass murder and suicide. Information gleaned from that evaluation can then be published to parents, caregivers, law makers, and the public nationwide, thus enabling them to work with health care professionals in choosing safe and effective therapies for the treatment of mental infirmities, to engage in more informed debate on pressing national issues concerning how best to defend public venues from such attacks, and to promote the development of legal means to stem incidents of this kind.

On March 19, 2013, the OCME denied AbleChild's Request, citing an unofficial OCME policy (not adopted in accordance with the requirements of Connecticut General Statute § 4-168(a)) that limits such records to all but next of kin and certain attorneys, physicians, insurance agents, and investigative authorities.[3] Since April 3, 2013 (the date AbleChild filed its appeal to the FOIC), state officials have selectively disclosed autopsy records to the press, an act revealing a waiver of defenses, that is directly germane to the legal arguments AbleChild makes on appeal.

I. ADDITIONAL EVIDENCE GERMANE TO ABLECHILD'S PENDING APPEAL

AbleChild herein supplements its pending appeal with new evidence of Connecticut officials' further release of Adam Lanza's toxicology test results to select members of the press.

The OCME recently disclosed the results of Adam Lanza's toxicology tests to law enforcement. This information was also disseminated to select members of the press, while OCME maintains its refusal to provide the same and comparable information to AbleChild. The selective disclosure confirms that OCME has waived any basis for objecting to disclosure of the same and comparable additional information to AbleChild under the public domain doctrine.

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[3] Legislative history from recently passed legislation, SB 1149, reveals that § 19a-401-12 was never intended to limit disclosure solely to next of kin. SB 1149 was signed into law on June 5, 2013. The law prevents disclosure of official records under certain circumstances, including law enforcement records containing the identity of minor witnesses and images of homicide victims respectively. The final bill does not make public disclosure of such records contingent upon consent by a family member, even though the General Assembly and Governor's office considered such a requirement in a prior draft. *Compare* Ex. 19, "An Act Making Technical Changes to the Statute Concerning Access to Public Records," SB 1149, Jan. Session 2013 (Conn. 2013), *available at* http://www.cga.ct.gov/2013/amd/S/2013SB-01149-R00SA-AMD.htm, *with* Ex. 20, Subst. H.B. 6424, Jan. Session 2013, (Conn. 2013), *available at* http://www.courant.com/news/connecticut/hc-proposed-bill-on-sandy-hook-investigation-20130522,0,6122173.htmlpage. Omission of such a similar limitation in § 19a-401-12 was therefore intentional, substantially undercutting the reasonableness of OCME's unofficial policy. Had such (or any other) limitation been desired, it would have been included in the OCME's regulations.

Under the public domain doctrine "once the State has gone public with information which could have previously been protected from disclosure under the Act's exemptions, no further purpose is served by preventing full access to the desired documents or information." *Downs v. Austin*, 522 So. 2d 931, 935 (Fla. Dist. Ct. App. 1988). "The rationale behind the public domain doctrine is clear: if identical information is truly public, then enforcement of an exemption cannot fulfill its purposes." *Inner City Press/Cmty. on the Move v. Bd. of Governors of Fed. Reserve Sys.*, 463 F.3d 239, 244 (2d Cir. 2006) (internal citation omitted).

Since AbleChild submitted its Appeal, the official results of Adam Lanza's toxicology tests have been released by Connecticut state officials to select members of the press.[4] Such disclosure confirmed the results of testing for the presence of alcohol and both prescription and illegal drugs in Adam Lanza's body.[5] That is information identical to a significant subset of the information AbleChild specifically requested from the OCME. The recent disclosure is a continuation of the OCME's history of piecemeal disclosures, recorded in AbleChild's appeal, whereby the OCME has released and discussed detailed information arising from the autopsy of Adam Lanza with select individuals and journalists while excluding access to the same and comparable information by AbleChild.[6] Withholding such information from disclosure violates the public domain doctrine, and any objection to disclosure by the OCME should be considered waived. Connecticut law, the Connecticut Constitution, and the United States Constitution do not permit discriminatory treatment of one part of the public in favor of the other in response to requests for public information. The OCME's deliberate disclosure to major media outlets, while withholding the same and comparable information from AbleChild, demonstrates bias against the non-profit entity.

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[4] *See* Ex. 21, Dave Altimari, *Sandy Hook Shooter Adam Lanza Had No Drugs, Alcohol In System*, HARTFORD COURANT, May 13, 2013, *available at* http://arti cles.courant.com/2013-05-13/news/hc-adam-lanza-toxicology-20130513_1_nancy-lanza-adam-lanza-no-drugs (last visited June 7, 2013); *see* Ex. 22, *Newtown School Shooting Update: Toxicology tests show no sign of alcohol, illegal drugs or Rx meds in shooter Adam Lanza*, CBS NEWS, May 21, 2013, *available at* http://www.cbsnews.com/8301-504083_162-57585559-504083/newtown-school-shooting-update-toxicology-tests-show-no-sign-of-alcohol-illegal-drugs-or-rx-meds-in-shooter-adam-lanza/ (last visited June 7, 2013).

[5] *Id.*

[6] *See* Ex. 12, available at http://newtown.patch.com/articles/police-no-motive-emerging-in-newtown-school-shooting (last visited June 7, 2013); *see* Ex. 13, *available at* http://articles.latimes.com/print/2012/dec/16/nation/la-na-nn-connecticut-shooting-lanza-autopsy-20121216. (last visited June 7, 2013); *see* Ex. 14, available at http://www.ctpost.com/local/article/M-E-Lanza-s-brain-appeared-normal-4183530.php. (Last visited June 7, 2013); *see* Ex. 15, *available at* http://www.policymic.com/articles/22740/adam-lanza-s-brain-shows-nothing-unusual-says-autopsy (last visited June 7, 2013); *See* Ex. 11. This account was reiterated by CBS News, *available at* http://www.cbsnews.com/8301-204_162-57559983/medical-examiner-seeks-genetic-clues-to-adam-lanzas-motives/ (last visited June 7, 2013);

II. CONCLUSION

Based on the additional disclosures cited herein which give rise to a waiver of defenses and the reasons provided above, AbleChild respectfully requests that the FOIC overturn the OCME's decision denying AbleChild access to Adam Lanza's autopsy, toxicology, and prescription drug history records.

Respectfully Submitted,

By Connecticut Counsel for AbleChild:

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CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2013, a copy of the foregoing, **ABLECHILD'S SUPPLEMENT TO APPEAL TO THE CONNECTICUT FREEDOM OF INFORMATION COMMISSION,** was electronically delivered and mailed to the following:

Connecticut Freedom of Information Commission
18-20 Trinity St
Hartford, CT 06106
Ph: (860) 566-5682

Assistant Attorney General, Patrick B. Kwanashie
Office of the Attorney General
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/s/
Kevin D. Heitke, Esq.

EXHIBIT 19

General Assembly

Amendment

January Session, 2013

LCO No. **8864**

SB0114908864SDO

Offered by:

SEN. WILLIAMS, 29th Dist.	REP. FOX, 148th Dist.
REP. SHARKEY, 88th Dist.	SEN. FRANTZ, 36th Dist.
SEN. LOONEY, 11th Dist.	REP. FREY, 111th Dist.
REP. ARESIMOWICZ, 30th Dist.	REP. GENTILE, 104th Dist.
SEN. MCKINNEY, 28th Dist.	SEN. GERRATANA, 6th Dist.
REP. CAFERO, 142nd Dist.	REP. GUERRERA, 29th Dist.
SEN. FASANO, 34th Dist.	SEN. GUGLIELMO, 35th Dist.
REP. FOX, 146th Dist.	REP. HADDAD, 54th Dist.
REP. BOLINSKY, 106th Dist.	REP. HAMPTON, 16th Dist.
REP. CARTER, 2nd Dist.	SEN. HARP, 10th Dist.
REP. HOVEY, 112th Dist.	REP. HENNESSY, 127th Dist.
REP. ARCE, 4th Dist.	REP. HOYDICK, 120th Dist.

REP. AYALA, 128th Dist.

REP. BUTLER, 72nd Dist.

REP. CANDELARIA, 95th Dist.

REP. CLEMONS, 124th Dist.

REP. CUEVAS, 75th Dist.

REP. GONZALEZ, 3rd Dist.

REP. HEWETT, 39th Dist.

REP. HOLDER-WINFIELD, 94th Dist.

REP. MCCRORY, 7th Dist.

REP. MCGEE, 5th Dist.

REP. MILLER P. , 145th Dist.

REP. MORRIS, 140th Dist.

REP. ROJAS, 9th Dist.

REP. SANCHEZ, 25th Dist.

REP. SANTIAGO, 130th Dist.

REP. SANTIAGO, 84th Dist.

REP. STALLWORTH, 126th Dist.

REP. VARGAS, 6th Dist.

REP. WALKER, 93rd Dist.

REP. LESSER, 100th Dist.

REP. ABERCROMBIE, 83rd Dist.

REP. ALBIS, 99th Dist.

REP. ALEXANDER, 58th Dist.

SEN. KANE, 32nd Dist.

SEN. KELLY, 21st Dist.

REP. KINER, 59th Dist.

SEN. KISSEL, 7th Dist.

REP. KLARIDES, 114th Dist.

REP. KUPCHICK, 132nd Dist.

REP. LARSON, 11th Dist.

SEN. LINARES, 33rd Dist.

REP. LOPES, 24th Dist.

SEN. MAYNARD, 18th Dist.

SEN. MCLACHLAN, 24th Dist.

REP. MEGNA, 97th Dist.

REP. MILLER L. , 122nd Dist.

REP. MILLER, 36th Dist.

REP. MORIN, 28th Dist.

REP. MOUKAWSHER, 40th Dist.

REP. NAFIS, 27th Dist.

REP. NICASTRO, 79th Dist.

REP. NOUJAIM, 74th Dist.

REP. O'DEA, 125th Dist.

REP. O'NEILL, 69th Dist.

REP. ORANGE, 48th Dist.

REP. PERILLO, 113th Dist.

SEN. AYALA, 23rd Dist.

REP. BARAM, 15th Dist.

SEN. BARTOLOMEO, 13th Dist.

REP. BERGER, 73rd Dist.

SEN. BOUCHER, 26th Dist.

REP. BOWLES, 42nd Dist.

REP. CAMILLO, 151st Dist.

SEN. CASSANO, 4th Dist.

SEN. COLEMAN, 2nd Dist.

REP. COOK, 65th Dist.

SEN. CRISCO, 17th Dist.

REP. D'AMELIO, 71st Dist.

REP. DAVIS P., 117th Dist.

REP. DILLON, 92nd Dist.

REP. DIMINICO, 13th Dist.

SEN. DUFF, 25th Dist.

REP. ESPOSITO, 116th Dist.

REP. FLEXER, 44th Dist.

REP. FLOREN, 149th Dist.

SEN. FONFARA, 1st Dist.

REP. RILEY, 46th Dist.

REP. RITTER M., 1st Dist.

REP. LEMAR, 96th Dist.

REP. RYAN, 139th Dist.

REP. SAWYER, 55th Dist.

REP. SCRIBNER, 107th Dist.

REP. SERRA, 33rd Dist.

SEN. SLOSSBERG, 14th Dist.

REP. SRINIVASAN, 31st Dist.

SEN. STILLMAN, 20th Dist.

REP. TONG, 147th Dist.

REP. VICINO, 35th Dist.

REP. WALKO, 150th Dist.

REP. WILLIAMS, 68th Dist.

REP. WILLIS, 64th Dist.

SEN. WITKOS, 8th Dist.

REP. WOOD, 141st Dist.

REP. WRIGHT C., 77th Dist.

REP. WRIGHT E., 41st Dist.

REP. YACCARINO, 87th Dist.

REP. ZONI, 81st Dist.

To: Subst. Senate Bill No. **1149** File No. 616 Cal. No. 448

"AN ACT MAKING TECHNICAL CHANGES TO THE STATUTE CONCERNING ACCESS TO PUBLIC RECORDS. "

Strike everything after the enacting clause and substitute the following in lieu thereof:

"Section 1. Subdivision (3) of subsection (b) of section 1-210 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage, and applicable to all requests for records under chapter 14 of the general statutes pending on or made on or after said date*):

(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, **[**(C)**]** (D) information to be used in a prospective law enforcement action if prejudicial to such action, **[**(D)**]** (E) investigatory techniques not otherwise known to the general public, **[**(E)**]** (F) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, **[**(F)**]** (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, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, or **[**(G)**]** (H) uncorroborated allegations subject to destruction pursuant to section 1-216;

Sec. 2. Subsection (b) of section 1-210 of the general statutes is amended by adding subdivision (27) as follows (*Effective from passage, and applicable to all requests for records under chapter 14 of the general statutes pending on or made on or after said date*):

(NEW) (27) Any record created by a law enforcement agency or other federal, state, or municipal governmental agency consisting of a photograph, film, video or digital or other visual image depicting the victim of a homicide, to the extent that such record could reasonably be expected to constitute an unwarranted invasion of the personal privacy of the victim or the victim's surviving family members.

Sec. 3. (NEW) (*Effective from passage, and applicable to all requests for records under chapter 14 of the general statutes pending on or made on or after said date*) Notwithstanding any provision of the general statutes or any special act, a law enforcement agency shall not be required to disclose that portion of an audio tape or other recording where the individual speaking on the recording describes the condition of a victim of homicide, except for a recording that consists of an emergency 9-1-1 call or other call for assistance made by a member of the public to a law enforcement agency. This section shall apply to any request for such audio tape or other recording made on or before May 7, 2014.

Sec. 4. (*Effective from passage*) (a) There is established a task force to consider and make recommendations regarding the balance between victim privacy under the Freedom of Information Act and the public's right to know.

(b) The task force shall consist of the following members:

(1) The executive director of the Freedom of Information Commission;

(2) A person appointed by the Connecticut Council of Freedom of Information;

(3) The Chief State's Attorney;

(4) The Chief Public Defender;

(5) The Victim Advocate;

(6) The Commissioner of Emergency Services and Public Protection;

(7) Two persons appointed by the Governor, one of whom shall represent a crime victim advocacy organization, and one of whom shall be a representative of municipal law enforcement;

(8) A professor of constitutional law who is recommended jointly by the deans of the schools of law of Yale, Quinnipiac University and The University of Connecticut;

(9) Four persons appointed by the Connecticut Society of Professional Journalists, one each representing television, radio, print and electronic media;

(10) The president pro tempore of the Senate, or a member of the General Assembly designated by the president pro tempore;

(11) The speaker of the House of Representatives, or a member of the Black and Puerto Rican Caucus of the General Assembly designated by the speaker;

(12) The minority leader of the Senate, or a member of the General Assembly designated by said minority leader; and

(13) The minority leader of the House of Representatives, or a member of the General Assembly designated by said minority leader.

(c) All appointments to the task force shall be made not later than July 1, 2013. Any vacancy shall be filled by the appointing authority.

(d) The speaker of the House of Representatives and the president pro tempore of the Senate shall select the two chairpersons of the task force from among the members of the task force. Such chairpersons shall schedule the first meeting of the task force, which shall be held not later than August 1, 2013, and additional meetings at least monthly thereafter through December 2013.

(e) Not later than January 1, 2014, the task force shall submit a report on its findings and recommendations to the majority and minority leadership of the Connecticut General

Assembly. The task force shall terminate on the date that it submits such report or January 1, 2014, whichever is later. "

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage, and applicable to all requests for records under chapter 14 of the general statutes pending on or made on or after said date*	1-210(b)(3)
Sec. 2	*from passage, and applicable to all requests for records under chapter 14 of the general statutes pending on or made on or after said date*	1-210(b)
Sec. 3	*from passage, and applicable to all requests for records under chapter 14 of the general statutes pending on or made on or after said date*	New section
Sec. 4	*from passage*	New section

EXHIBIT 20

WORKING DRAFT

General Assembly

Amendment

January Session, 2013

LCO No. 7575

Offered by:

To: Subst. House Bill No. 6424 File No. 780 Cal. No.

"AN ACT CONCERNING FEES FOR SEARCHES OF ACCIDENT AND INVESTIGATIVE REPORTS OF THE DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION."

Strike everything after the enacting clause and substitute the following in lieu thereof:

"Section 1. (*Effective from passage and applicable to all requests for records under chapter 14 of the general statutes pending or made on or after said date*) (a) As used in this section and section 2 of this act: (1) "Record" means any public record, as defined in section 1-200 of the general statutes, that is compiled in connection with the investigation of the school shooting that occurred on December 14, 2012, at Sandy Hook Elementary School in Newtown, Connecticut, (2) "immediate family" means a spouse, adult child, parent, adult sibling or legal guardian, (3) "victim" means any person who suffered a gunshot wound or any other physical injury arising from the discharge of a firearm on the grounds of Sandy Hook Elementary School on December 14, 2012, but excluding the person who fired such firearm, and (4) "public agency" has the same meaning as provided in section 1-

200 of the general statutes.

(b) Notwithstanding any provision of the general statutes or any special act, nothing shall require the disclosure of any record that consists of a photograph, videotape, digital recording or other image or audio transmission or recording depicting the physical condition of any victim without the written consent of the victim or, if the victim is deceased, a member of the victim's immediate family.

(c) Notwithstanding any provision of the general statutes or any special act, any public agency may redact the identity of any minor witness to the school shooting that occurred on December 14, 2012, at the Sandy Hook Elementary School from any record.

(d) Any record that consists of an audio transmission or recording of a call for emergency assistance, including, but not limited to, an emergency 9-1-1 call, that is not otherwise exempt under subsection (b) of this section, shall be exempt from the requirements of chapter 14 of the general statutes, provided whenever the public agency in possession of such record receives a request for any such record, the public agency shall, within available appropriations, transcribe such audio transmission or recording and provide a copy of the transcript to any person requesting such record. The fee for any copy of such transcript shall be fifty cents per page.

Sec. 2. (*Effective from passage and applicable to all requests for records under chapter 14 of the general statutes pending or made on or after said date*) Notwithstanding any provision of the general statutes or any special act, no municipal official or municipal employee shall be required to disclose the death certificate of any person who died at Sandy Hook Elementary School in Newtown, Connecticut on December 14, 2012, provided the provisions of this section shall not apply to any request for a death certificate made by a member of such person's immediate family."

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage and applicable to all requests for records under chapter 14 of the general statutes pending or made on or after said date*	New section
Sec. 2	*from passage and applicable to all requests for records under chapter 14 of the general statutes pending or made on or after said date*	New section

EXHIBIT 21

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March 13, 2013

Sandy Hook Shooter Adam Lanza Had No Drugs, Alcohol In System

May 13, 2013 | By DAVE ALTIMARI, daltimar@courant.com, The Hartford Courant

Toxicology tests show that Adam Lanza had no alcohol or drugs in his body when he shot and killed 20 first-graders and six women at Sandy Hook Elementary School in Newtown on Dec. 14.

The tests were conducted as part of the autopsy by state Chief Medical Examiner Dr. H. Wayne Carver II. Sources said his final report has been turned over to state prosecutors and investigators.

Law enforcement sources familiar with the test results said that Lanza, 20, had no traces of alcohol or any illegal drugs such as cocaine or marijuana in his body. The sources also said that there is no trace of antidepressants or anti-psychotic medications.

A toxicology exam searches for trace amount of hundreds of drugs — from aspirin to antidepressants. Sources said testing for marijuana is a specific, separate test which Carver ordered in this case.

It is unclear whether Lanza took medication or used illegal drugs or alcohol. Search warrant records released by state police do not indicate whether drugs or alcohol were found when investigators searched the Newtown home Lanza shared with his mother. Lanza shot and killed Nancy Lanza in the home before he went to the school.

The warrants do indicate that unspecified medical records were found. Law enforcement sources have said that Lanza received some psychiatric care at an unspecified point and that state police obtained those records.

Forensic pathologist Dr. Michael Baden, the former chief medical examiner in New York City, said it could take a few days or more for drugs to leave a person's system. Anti-psychotic drugs would take the least time, with some drugs such as marijuana taking longer, he said. Baden said the clean test for Lanza would seem to indicate no drugs were involved in the planning of the shooting.

"Whatever made him do this there weren't drugs involved," Baden said. "It was something else that made him decide to act out what was on his mind and start planning it."

Former FBI profiler Mary Ellen O'Toole said she wasn't surprised to learn that Lanza had a clean toxicology test, noting that shooters in other recent mass killings also tested clean. Virginia Tech gunman Seung-Hui Cho, for instance, had been prescribed Prozac but had no traces of the drug in his system after the attack, she said.

O'Toole said that other mass shooters have had histories of antidepressant use but acknowledged going off their medications because they "wanted to have a clear head" during their attacks.

O'Toole said Lanza's test results support the theory that Lanza's attack was focused and well planned.

"His thinking was not blurred or flawed in anyway," O'Toole said.

O'Toole said the absence of anything in Lanza's system is consistent with someone thinking that "I want to kill as many people as I can."

Adam Lanza's Own Words, Drawings Could Provide Key To Sandy...
March 30, 2013

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Release Of Sandy Hook School Shooting Report Likely Delayed
May 29, 2013

Danbury State's Attorney Stephen Sedensky has said he expects a final report on the state police investigation into the shooting to be released by the end of June.

Lanza shot his mother four times in the head with a .22 rifle. Her body was found in her bed. He then drove her Honda Civic to the Sandy Hook school, put in ear plugs, loaded hundreds of rounds of ammunition into his military vest and shot his way through the glass windows at the front entrance.

In all he fired 154 shots as he move through the school, all but one from a Bushmaster AR-15 that belonged to his mother.

Lanza first killed Principal Dawn Hochsprung and school psychologist Mary Sherlach in the hallway before entering the classroom of substitute teacher Lauren Rousseau and killing her, a teacher's aide and 15 students. One girl survived by playing dead.

He then backtracked into the classroom of Victoria Soto and killed her, a teacher's aide and five students. Six students escaped when Lanza's gun either jammed or he had difficulty reloading it, dropping live bullets on the floor. Five students survived after Soto hid them in a closet.

Lanza shot and killed himself with a handgun as police were entering the building.

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Chimp-Attack Victim Nearly Got Friend's Entire Estate

EXHIBIT 22

May 21, 2013 4:37 PM

Newtown School Shooting Update: Toxicology tests show no sign of alcohol, illegal drugs or Rx meds in shooter Adam Lanza

By **Crimesider Staff**

Sandy Hook Elementary School in Newtown, Conn., the day after the Dec. 14, 2012 shooting there that killed 20 children and six educators.

(AP) HARTFORD, Conn. - Newtown elementary school shooter Adam Lanza had no sign of alcohol, illegal drugs or prescription medications in his body, according to toxicology tests, an official close to the investigation said Tuesday.

PICTURES: Victims of Conn. school shooting

Lanza, 20, fatally shot 20 first-graders and six educators at Sandy Hook Elementary School on Dec. 14 before killing himself as police arrived. He also killed his mother at their Newtown home before going to the school, and subsequently took his own life.

The official said the toxicology tests were completed about five weeks ago and the results were turned over to Danbury State's Attorney Stephen Sedensky III, who is leading the investigation. The official, who was not authorized to publicly disclose the information and spoke on condition of anonymity, also said at least some victims' relatives were notified of the test results.

Toxicology tests check for a wide variety of over-the-counter medicines, prescription medications and illegal drugs. In Lanza's case, a separate test was performed for marijuana, which usually isn't part of toxicological reviews, and came back negative, the official said.

The test results, which were first reported by The Hartford Courant last week, leave many questions unanswered. Search warrants revealed that Lanza lived in a home surrounded by an arsenal of weapons, but authorities haven't revealed whether Lanza had been prescribed medications or whether he was diagnosed with any disorder that could help explain the massacre.

Illegal drugs and prescription medications were not on the lists of items found at Lanza's home, according to the warrants. Authorities said they did find medical, psychiatric and prescription records in the home, but didn't disclose the contents of those documents.

A state investigation report on the killings is expected to be publicly released this summer.

39 Photos

Victims of Conn. school shooting

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EXHIBIT 19

General Assembly

Amendment

January Session, 2013

LCO No. **8864**

SB0114908864SDO

Offered by:

SEN. WILLIAMS, 29th Dist.

REP. SHARKEY, 88th Dist.

SEN. LOONEY, 11th Dist.

REP. ARESIMOWICZ, 30th Dist.

SEN. MCKINNEY, 28th Dist.

REP. CAFERO, 142nd Dist.

SEN. FASANO, 34th Dist.

REP. FOX, 146th Dist.

REP. BOLINSKY, 106th Dist.

REP. CARTER, 2nd Dist.

REP. HOVEY, 112th Dist.

REP. ARCE, 4th Dist.

REP. FOX, 148th Dist.

SEN. FRANTZ, 36th Dist.

REP. FREY, 111th Dist.

REP. GENTILE, 104th Dist.

SEN. GERRATANA, 6th Dist.

REP. GUERRERA, 29th Dist.

SEN. GUGLIELMO, 35th Dist.

REP. HADDAD, 54th Dist.

REP. HAMPTON, 16th Dist.

SEN. HARP, 10th Dist.

REP. HENNESSY, 127th Dist.

REP. HOYDICK, 120th Dist.

REP. AYALA, 128th Dist.

REP. BUTLER, 72nd Dist.

REP. CANDELARIA, 95th Dist.

REP. CLEMONS, 124th Dist.

REP. CUEVAS, 75th Dist.

REP. GONZALEZ, 3rd Dist.

REP. HEWETT, 39th Dist.

REP. HOLDER-WINFIELD, 94th Dist.

REP. MCCRORY, 7th Dist.

REP. MCGEE, 5th Dist.

REP. MILLER P. , 145th Dist.

REP. MORRIS, 140th Dist.

REP. ROJAS, 9th Dist.

REP. SANCHEZ, 25th Dist.

REP. SANTIAGO, 130th Dist.

REP. SANTIAGO, 84th Dist.

REP. STALLWORTH, 126th Dist.

REP. VARGAS, 6th Dist.

REP. WALKER, 93rd Dist.

REP. LESSER, 100th Dist.

REP. ABERCROMBIE, 83rd Dist.

REP. ALBIS, 99th Dist.

REP. ALEXANDER, 58th Dist.

SEN. KANE, 32nd Dist.

SEN. KELLY, 21st Dist.

REP. KINER, 59th Dist.

SEN. KISSEL, 7th Dist.

REP. KLARIDES, 114th Dist.

REP. KUPCHICK, 132nd Dist.

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SEN. COLEMAN, 2nd Dist.

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SEN. DUFF, 25th Dist.

REP. ESPOSITO, 116th Dist.

REP. FLEXER, 44th Dist.

REP. FLOREN, 149th Dist.

SEN. FONFARA, 1st Dist.

REP. RILEY, 46th Dist.

REP. RITTER M. , 1st Dist.

REP. LEMAR, 96th Dist.

REP. RYAN, 139th Dist.

REP. SAWYER, 55th Dist.

REP. SCRIBNER, 107th Dist.

REP. SERRA, 33rd Dist.

SEN. SLOSSBERG, 14th Dist.

REP. SRINIVASAN, 31st Dist.

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REP. WRIGHT E. , 41st Dist.

REP. YACCARINO, 87th Dist.

REP. ZONI, 81st Dist.

To: Subst. Senate Bill No. **1149** File No. 616 Cal. No. 448

"AN ACT MAKING TECHNICAL CHANGES TO THE STATUTE CONCERNING ACCESS TO PUBLIC RECORDS. "

Strike everything after the enacting clause and substitute the following in lieu thereof:

"Section 1. Subdivision (3) of subsection (b) of section 1-210 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage, and applicable to all requests for records under chapter 14 of the general statutes pending on or made on or after said date*):

(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, **[**(C)**]** (D) information to be used in a prospective law enforcement action if prejudicial to such action, **[**(D)**]** (E) investigatory techniques not otherwise known to the general public, **[**(E)**]** (F) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, **[**(F)**]** (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, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, or **[**(G)**]** (H) uncorroborated allegations subject to destruction pursuant to section 1-216;

Sec. 2. Subsection (b) of section 1-210 of the general statutes is amended by adding subdivision (27) as follows (*Effective from passage, and applicable to all requests for records under chapter 14 of the general statutes pending on or made on or after said date*):

(NEW) (27) Any record created by a law enforcement agency or other federal, state, or municipal governmental agency consisting of a photograph, film, video or digital or other visual image depicting the victim of a homicide, to the extent that such record could reasonably be expected to constitute an unwarranted invasion of the personal privacy of the victim or the victim's surviving family members.

Sec. 3. (NEW) (*Effective from passage, and applicable to all requests for records under chapter 14 of the general statutes pending on or made on or after said date*) Notwithstanding any provision of the general statutes or any special act, a law enforcement agency shall not be required to disclose that portion of an audio tape or other recording where the individual speaking on the recording describes the condition of a victim of homicide, except for a recording that consists of an emergency 9-1-1 call or other call for assistance made by a member of the public to a law enforcement agency. This section shall apply to any request for such audio tape or other recording made on or before May 7, 2014.

Sec. 4. (*Effective from passage*) (a) There is established a task force to consider and make recommendations regarding the balance between victim privacy under the Freedom of Information Act and the public's right to know.

(b) The task force shall consist of the following members:

(1) The executive director of the Freedom of Information Commission;

(2) A person appointed by the Connecticut Council of Freedom of Information;

(3) The Chief State's Attorney;

(4) The Chief Public Defender;

(5) The Victim Advocate;

(6) The Commissioner of Emergency Services and Public Protection;

(7) Two persons appointed by the Governor, one of whom shall represent a crime victim advocacy organization, and one of whom shall be a representative of municipal law enforcement;

(8) A professor of constitutional law who is recommended jointly by the deans of the schools of law of Yale, Quinnipiac University and The University of Connecticut;

(9) Four persons appointed by the Connecticut Society of Professional Journalists, one each representing television, radio, print and electronic media;

(10) The president pro tempore of the Senate, or a member of the General Assembly designated by the president pro tempore;

(11) The speaker of the House of Representatives, or a member of the Black and Puerto Rican Caucus of the General Assembly designated by the speaker;

(12) The minority leader of the Senate, or a member of the General Assembly designated by said minority leader; and

(13) The minority leader of the House of Representatives, or a member of the General Assembly designated by said minority leader.

(c) All appointments to the task force shall be made not later than July 1, 2013. Any vacancy shall be filled by the appointing authority.

(d) The speaker of the House of Representatives and the president pro tempore of the Senate shall select the two chairpersons of the task force from among the members of the task force. Such chairpersons shall schedule the first meeting of the task force, which shall be held not later than August 1, 2013, and additional meetings at least monthly thereafter through December 2013.

(e) Not later than January 1, 2014, the task force shall submit a report on its findings and recommendations to the majority and minority leadership of the Connecticut General

Assembly. The task force shall terminate on the date that it submits such report or January 1, 2014, whichever is later. "

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage, and applicable to all requests for records under chapter 14 of the general statutes pending on or made on or after said date*	1-210(b)(3)
Sec. 2	*from passage, and applicable to all requests for records under chapter 14 of the general statutes pending on or made on or after said date*	1-210(b)
Sec. 3	*from passage, and applicable to all requests for records under chapter 14 of the general statutes pending on or made on or after said date*	New section
Sec. 4	*from passage*	New section

EXHIBIT 20

WORKING DRAFT

General Assembly

Amendment

January Session, 2013

LCO No. **7575**

* H B 0 6 4 2 4 0 7 5 7 5 *

Offered by:

To: Subst. House Bill No. **6424** File No. 780 Cal. No.

"AN ACT CONCERNING FEES FOR SEARCHES OF ACCIDENT AND INVESTIGATIVE REPORTS OF THE DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION."

Strike everything after the enacting clause and substitute the following in lieu thereof:

"Section 1. (*Effective from passage and applicable to all requests for records under chapter 14 of the general statutes pending or made on or after said date*) (a) As used in this section and section 2 of this act: (1) "Record" means any public record, as defined in section 1-200 of the general statutes, that is compiled in connection with the investigation of the school shooting that occurred on December 14, 2012, at Sandy Hook Elementary School in Newtown, Connecticut, (2) "immediate family" means a spouse, adult child, parent, adult sibling or legal guardian, (3) "victim" means any person who suffered a gunshot wound or any other physical injury arising from the discharge of a firearm on the grounds of Sandy Hook Elementary School on December 14, 2012, but excluding the person who fired such firearm, and (4) "public agency" has the same meaning as provided in section 1-

200 of the general statutes.

(b) Notwithstanding any provision of the general statutes or any special act, nothing shall require the disclosure of any record that consists of a photograph, videotape, digital recording or other image or audio transmission or recording depicting the physical condition of any victim without the written consent of the victim or, if the victim is deceased, a member of the victim's immediate family.

(c) Notwithstanding any provision of the general statutes or any special act, any public agency may redact the identity of any minor witness to the school shooting that occurred on December 14, 2012, at the Sandy Hook Elementary School from any record.

(d) Any record that consists of an audio transmission or recording of a call for emergency assistance, including, but not limited to, an emergency 9-1-1 call, that is not otherwise exempt under subsection (b) of this section, shall be exempt from the requirements of chapter 14 of the general statutes, provided whenever the public agency in possession of such record receives a request for any such record, the public agency shall, within available appropriations, transcribe such audio transmission or recording and provide a copy of the transcript to any person requesting such record. The fee for any copy of such transcript shall be fifty cents per page.

Sec. 2. (*Effective from passage and applicable to all requests for records under chapter 14 of the general statutes pending or made on or after said date*) Notwithstanding any provision of the general statutes or any special act, no municipal official or municipal employee shall be required to disclose the death certificate of any person who died at Sandy Hook Elementary School in Newtown, Connecticut on December 14, 2012, provided the provisions of this section shall not apply to any request for a death certificate made by a member of such person's immediate family."

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage and applicable to all requests for records under chapter 14 of the general statutes pending or made on or after said date*	New section
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EXHIBIT 21

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March 13, 2013

Sandy Hook Shooter Adam Lanza Had No Drugs, Alcohol In System

May 13, 2013 | By DAVE ALTIMARI, daltimar@courant.com, The Hartford Courant

Toxicology tests show that Adam Lanza had no alcohol or drugs in his body when he shot and killed 20 first-graders and six women at Sandy Hook Elementary School in Newtown on Dec. 14.

The tests were conducted as part of the autopsy by state Chief Medical Examiner Dr. H. Wayne Carver II. Sources said his final report has been turned over to state prosecutors and investigators.

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A toxicology exam searches for trace amount of hundreds of drugs — from aspirin to antidepressants. Sources said testing for marijuana is a specific, separate test which Carver ordered in this case.

It is unclear whether Lanza took medication or used illegal drugs or alcohol. Search warrant records released by state police do not indicate whether drugs or alcohol were found when investigators searched the Newtown home Lanza shared with his mother. Lanza shot and killed Nancy Lanza in the home before he went to the school.

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"Whatever made him do this there weren't drugs involved," Baden said. "It was something else that made him decide to act out what was on his mind and start planning it."

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May 29, 2013

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Chimp-Attack Victim Nearly Got Friend's Entire Estate

EXHIBIT 22

May 21, 2013 4:37 PM

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By **Crimesider Staff**

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PICTURES: Victims of Conn. school shooting

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39 Photos

Victims of Conn. school shooting

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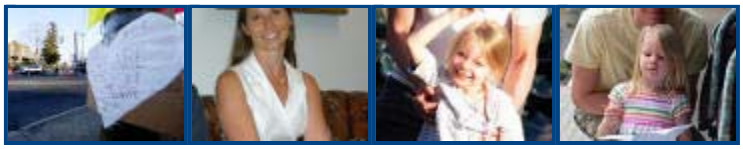

BEFORE THE CONNECTICUT

FREEDOM OF INFORMATION COMMISSION

ABLECHILD, Complainant, v. CHIEF MEDICAL EXAMINER, STATE OF CONNECTICUT, OFFICE OF THE CHIEF MEDICAL EXAMINER; AND STATE OF CONNECTICUT, OFFICE OF THE CHIEF MEDICAL EXAMINER, Respondents.	**SUPPLEMENTAL BRIEF OF ABLECHILD** Docket No. FIC 2013-197 Valicia D. Harmon, Hearing Officer

SUPPLEMENTAL BRIEF OF ABLECHILD

Complainant AbleChild, by counsel, respectfully submits this post-hearing brief as a supplement to its previously submitted briefs. This supplemental brief has been filed within the time specified by the Hearing Officer. It confirms, based on controlling precedent, that the Commission has primary jurisdiction, and the legal duty, to determine the legality of the Office of the Chief Medical Examiner's (hereinafter "OCME") reliance on a "Next of Kin Rule"[1] adopted internally and *sua sponte*, without notice and comment rulemaking, in violation of the Open Meetings Act and the Administrative Procedure Act.

[1] As explained herein, the OCME prohibits disclosure of all decedent records in its possession unless the requester is "next of kin, attorneys involved in litigation or attorneys handling the estate of the deceased, as well as physicians involved in the patient's care, insurance claims agents and investigative authorities." *See* Complainant Exh. 2, at Ex. 2. Throughout this brief, AbleChild refers to this OCME rule as the "Next of Kin Rule."

The bases articulated by respondent OCME for non-disclosure of the requested public records are, as explained in detail below, unlawful. Moreover, AbleChild has established a legitimate interest in the requested documents within the meaning of the governing Commission on Medicolegal Investigations' rule, Conn. Agencies Regs. § 19a-401-12. Accordingly, AbleChild respectfully requests that the FOIC forthwith order OCME to grant AbleChild's request for the autopsy, drug history, and toxicology records OCME possesses concerning Adam Lanza, the Newtown, Connecticut shooter. In particular, AbleChild respectfully requests issuance of an FOIC order compelling the OCME to conduct a thorough search of its records germane to this request by a date certain; to give AbleChild a written list identifying all responsive documents it possesses; to turn over to AbleChild all responsive records by a date certain; and to confirm in writing to AbleChild that its production is accurate and complete in every particular.[2] AbleChild hereby incorporates all facts and argument presented to the FOIC in its opening complaint, memoranda in support, supplemental pleadings, and exhibits. *See* Exhibits 1-4.

[2] Immediately before the hearing, OCME for the first time produced a responsive document to AbleChild, a toxicology summary sheet that is incomplete, entered into evidence as Respondents' Exh. 1. That production constitutes a further waiver of its argument against production because it is incongruous with OCME's articulated position that complete non-production is warranted under its Next of Kin Rule. The incomplete production reveals that OCME, even in this instance, has chosen selective non-disclosure of responsive materials. To lay a proper foundation against this tactic, AbleChild respectfully requests that the Commission's order include each element here sought, that (1) OCME conduct a thorough search of its records germane to AbleChild's request by a date certain; (2) OCME give AbleChild a written list identifying all responsive documents it possesses; (3) OCME turn over to AbleChild all responsive records by a date certain; and (4) OCME confirm in writing to AbleChild that its production is accurate and complete in every particular.

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FACTS AND BACKGROUND

The Freedom of Information Commission (herein "FOIC") held a hearing in this matter on August 22, 2013 at 11:00 AM. All counsel stipulated to the facts and exhibits presented by AbleChild at that hearing and reiterated below:

AbleChild is a 501(c)(3) non-profit organization that represents and advocates the interests of its members, who are parents, caregivers, and children. *See* Complainants Exh. 1, at 1. Incorporated in New York in 2003, AbleChild aims to ensure the safety of parents and caregivers when those for whom they give care are diagnosed as mentally ill and are prescribed drug treatments that may induce adverse events that include thoughts of murder, homicide, or suicide. *Id.*; Exh. 4 (Attachments B-G). A public interest group and media organization, AbleChild seeks to determine which recommendations are appropriate to reduce the risk of violence and suicidality in mentally ill children arising from prescription drugs labeled by FDA as ones that increase violence and suicidality. In aid of that mission, AbleChild is collecting data concerning the use of psychiatric drugs in those children and young adults who were involved in school shootings across the United States. *Id.*; Complainant Exh. 2, at 1-2; Exh. 4 (Attachments B-G).

As parents and custodians of children who are treated with psychiatric medications, AbleChild's members have a legitimate interest in determining the extent to which use of such drugs and treatment protocols affect behavior by increasing the incidence of violence and suicidality. By evaluating proof from school shootings and identifying all potential early warning signs, AbleChild can then recommend to its members, the general public, health care professionals, and federal and state legislators measures that might help prevent or reduce the risk of violence by mentally ill youth prescribed these drugs. Adam Lanza's autopsy, drug

history, and toxicology records provide information germane to AbleChild's analysis and reform advocacy.

Violent crime among school-aged children has increased in recent years, and so has the use of prescription drugs in the treatment of mental illness and disorders among those in that population. *See* Complainant Exh. 2, at 2-3. In 2004, the FDA determined that antidepressant drugs increased the risk of suicidal thoughts and violent behavior in children and young adults treated with psychiatric medications. *See* Complainant Exh. 4 (Attachment F). In response, the FDA ordered manufacturers of such medications to include "black box" warnings on labels so physicians and patients would be alerted to the existence of these risks. *Id.* "A 'black box' warning is the most serious warning placed in the labeling of a prescription medication" by the FDA. *Id.* (noting that FDA's labeling revisions "warn of the risk of suicidality and encourage prescribers to balance this risk with clinical need"); *See* Complainant Exh. 4, Attachment G, at 3 (summarizing statements of Dr. Martin Teicher, psychiatrist from Harvard Medical School).

AbleChild can only determine or investigate the relationship of prescription drugs and current psychiatric treatment protocols and violence if records and information germane to that inquiry is available to it. Because FDA has identified an increased risk of suicidality and violence associated with psychiatric drugs prescribed to children and young adults (*see* Complainant Exh. 2, at 2), an investigation into Adam Lanza's autopsy record, drug history, and toxicology reports will enable AbleChild to determine if Lanza, like other school shooters, has a history of prior use of psychiatric drugs and reliance on such protocols. Almost all school shootings in the United States have been committed by individuals who were found to have been treated at some time prior to the commission of the offense with psychiatric drugs.

On March 5, 2013, AbleChild filed a request for records with the Connecticut OCME seeking the autopsy report, drug history records, and toxicology records of decedent Adam Lanza, the shooter responsible for 27 deaths, including his own, at Sandy Elementary School in Newtown, Connecticut. AbleChild's request was supported by the signatures of 263 Newtown residents, each of whom signed a petition for the release of Adam Lanza's records. *See* Complainant Exh. 3 (AbleChild's Petition to Connecticut Lawmakers—For Release of Adam Lanza Toxicology Reports). AbleChild sought to investigate Adam Lanza's drug history, evidence of drug use at the time of his death, and the measures taken by the OCME to investigate same.[3] *See* Complainant Exh. 1. AbleChild thus requested:

> [T]e immediate release of the complete autopsy report, toxicology report, and prescription drug history possessed by the [OCME] for and concerning the decedent Adam Lanza … [including] all public records and files … concerning or relating to drugs in Mr. Lanza's serum and organs and concerning or relating to drugs prescribed to Mr. Lanza. For any tests performed on Mr. Lanza's body for which results have not yet been produced by the testing entity, [AbleChild] respectfully request[s] that those results be supplied to them when they are produced to [the OCME's] office.

See Complainant Exh. 1, at 1.

On March 19, 2013, the OCME responded with a two-paragraph, single-page letter denying AbleChild's request. *See* Complainant Exh. 2, at Ex. 2. The only legal justification for withholding the requested documents that OCME specified in its letter was the vague contention

[3] It is important to note that psychotic episodes, involving thoughts of aggressive behavior and suicide, can occur long after use of psychiatric drugs has ceased. *See Does antipsychotic withdrawal provoke psychosis? Review of the literature on rapid onset psychosis (supersensitivity psychosis) and withdrawal-related relapse*, Joanna Moncrieff, ACTA Psychiatrica Scandinavica (Feb. 9, 2006), *available at* http://psychrights.org/research/digest/nlps/actadrugwith.pdf. Consequently, blood serum evidence of the presence of these agents in the decedent is not the dispositive factor in determining whether a person who actually commits murder and suicide suffered from drug induced thoughts of murder and suicide. Rather, drug history evidence along with autopsy and toxicology data are all helpful in assessing that potential.

that the requested records "are not subject to the statutes and regulations under the jurisdiction of the Freedom of Information Commission…" *Id.* Moreover, the OCME stated that the requested documents were available to a select subset of the public to the exclusion of all others, namely to "next of kin, attorneys involved in litigation or attorneys handling the estate of the deceased, as well as physicians involved in the patient's care, insurance claims agents and investigative authorities" (herein referred to as the "Next of Kin Rule"). *Id.* Because AbleChild was not in the class of requesters preferred by OCME, the OCME refused Able Child's request without passing on the "legitimate interest" articulated by AbleChild in its request. *Id.*

The parties appeared for a hearing in this case on August 22, 2013 at 11:00 AM. By that date, OCME had not submitted any brief or pleading explaining its position, beyond the aforementioned one-page letter dated March 19, 2013. OCME therefore articulated at hearing for the first time its legal position for withholding the requested documents.

At oral argument, counsel for respondent OCME admitted that the "Next of Kin Rule" had not been promulgated following an open public meeting and notice and comment rulemaking, but had instead been created by OCME internally and *sua sponte* and had been applied by OCME to all public record requests germane to decedents, regardless of the requesters' articulation of a legitimate interest. *See* Video Recording of Contested Case Hearing, FIC 2013-197 (Aug. 22, 2013) (beginning at 1:10.30).[4]

Although not contained in the letter from OCME, counsel for respondent explained that OCME had rejected Able Child's request on another basis: OCME's disdain for what it presumed to be AbleChild's intended use of the information (an act of viewpoint discrimination), reciting at oral argument:

[4] *available at*, http://www.ctn.state.ct.us/ctnplayer.asp?odID=9336.

> The complainant is proposing that they can make generalizations—generalize from one single incident. No matter how the outcome of the use of antidepressants, or the causal link between the use of antidepressants, and the kind of violence that took place in Newtown, that's not a legitimate use of information, that information. You can't generalize just from one case. Even if you can conclusively establish that Adam Lanza, … his murderous actions were caused by antidepressants, you can't logically conclude that … [he] committed actions as a result of taking antidepressants. So it's simply not legitimate.
>
> And not only is the use to which they're proposing to put the information not legitimate, it is harmful. Because then you can cause a lot of people to stop taking their medications, stop cooperating with their treating physicians, just because of the heinousness of what Adam Lanza did. As the FDA materials that they've submitted show, a lot of studies of a long period of time and within various demographic groups, to even begin to establish causal links between antidepressants and aggressive action, suicidal behavior, and the informed opinion has not quite reached that point to say definitively that there is a causal link between the use of antidepressants and violent behavior… To say there are correlations doesn't necessarily mean the relationship is causal. And this is an issue that the FDA is still grappling with. And so far all it's been willing to do is ask the drug makers to put warnings on their products and to advise treating physicians to follow their, to monitor their patients closely … at the beginning of the taking of antidepressants. So it's a complex issue, and to pretend that you can just based on this one case make recommendations as to how people should make their treatment choices is a disservice to the public, and illustrates why these types of reports should not be made available because in the wrong hands they can be the source of mischief.

See id. (beginning at 1:04:10). Respondent offered no facts or evidence to support its assertion that AbleChild intended to "make recommendations as to how people should make their treatment choices" based "on this one case" (a misperception). In fact, AbleChild is gathering this kind of information on all school shooting cases in the United States so that AbleChild will be in a position to make informed recommendations to its members, the public, health authorities, and federal and state legislators. *See id.*; *see also* Respondents' Post-Hearing Brief,

at 1-10. Respondent omitted reference to the fact that FDA has required placement of a blackbox warning on these drugs, alerting the public to increased risk of suicidality and aggressive behavior from the drugs. Respondent omitted reference to the fact that an FDA "black box" warning is that federal agency's most serious drug label warning, a requirement imposed only on rare occasion in FDA's entire history. In effect, OCME arbitrarily presumed that AbleChild would put the information requested to a use in support of public policy disfavored by OCME and, based on that arbitrary and prejudicial act of viewpoint discrimination, OCME deemed AbleChild not deserving of the public records it sought.

On September 9, 2013, Respondent submitted a Post-Hearing Brief in which it argues threefold: (1) that Adam Lanza's records are exempt from disclosure under the FOIA; (2) that the FOIC lacks jurisdiction to adjudicate this case; and (3) that AbleChild does not have a legitimate interest in the requested records. We address each of those points below. OCME's jurisdictional and procedural arguments are contrary to the governing law. Respondent relies on inapposite precedent for legal propositions that have been repeatedly rejected by the FOIC and by the courts. AbleChild has established a legitimate interest in Adam Lanza's records. The OCME has failed to rebut that interest or establishing a countervailing compelling interest in non-disclosure. Consequently, production of the requested documents is required under the law.

SUMMARY OF ARGUMENT

AbleChild's complaint is governed by two primary sources of law: Conn. Gen. Stat. § 19a-411(b) and Regs. Conn. State Agencies § 19a-401-12(c)(2).

Connecticut General Statutes Section 19a-411 requires release of OCME records to general public requesters who have a "legitimate interest in the records." *See* Conn. Gen. Stat. § 19a-411(b). In particular, the law provides: "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***…" (emphasis added). Whenever the Chief Medical Examiner, as here, chooses not to produce requested documents to a party with a legitimate interest, Section 19a-411(c) makes it incumbent on the CME to seek a protective order from the superior court pursuant to Section 19a-411(c) and establish a compelling public interest to justify that non-disclosure. The CME has no authority to avoid pursuit of the protective order if it chooses to withhold requested documents, but CME has violated that statutory mandate in this very case. *See id*; *Galvin v. Freedom of Information Commission*, 201 Conn. 448, 460 (1986).

The Commission on Medicolegal Investigations duly enacted regulations implementing Section 19a-411(b) and (c). *See* Regs. Conn. State Agencies § 19a-401-12(c). Under Section 19a-401-12(c)(2), members of the general public "may obtain access to [OCME] records if the person has a legitimate interest in the documents and no court has issued an order prohibiting disclosure pursuant to section 19a-411(c) of the Connecticut general statutes." *Id.*

While the Commission on Medicolegal Investigations duly enacted the foregoing regulation, it did not adopt the Next of Kin Rule. Rather, OCME itself adopted the Next of Kin Rule through internal, *sua sponte*, non-public deliberations, having never followed the legally

required course of holding a public meeting to consider the rule and having never adopted the rule pursuant to notice and comment rulemaking. *See* Video Recording of Contested Case Hearing, FIC 2013-197 (Aug. 22, 2013) (beginning at 1:10.30).[5]

Consistent with the statute and the duly enacted regulation of the Commission on Medicolegal Investigations, AbleChild explained to OCME its "legitimate interest" in Adam Lanza's autopsy, drug history, and toxicology records possessed by the OCME. The Supreme Court has repeatedly held protection of citizens from harmful drugs and violent crime to be "legitimate interests." See *Kuhali v. Reno*, 266 F.3d 93, 111 (2001); *Washington v. Harper*, 494 U.S. 210, 211 (1990); *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

OCME's primary argument against production made at oral argument and in its brief is that only OCME has jurisdiction to determine the propriety of its withholding of requested public records. That position is not the law. The FOIC has twice rejected the identical argument. *See John Vivo* III, Docket #FIC 2005-380 (Jan. 25 2006); *Paul J. Ganim*, Docket #FIC 2010-328 (April 27, 2011). Indeed, the FOIC has primary jurisdiction to determine whether the OCME's rules and regulations unduly restrict the disclosure of public records. *See* Conn. Gen. Stat. Ann. § 1-205 (West); *Bd. of Educ. for City of New Haven v. Freedom of Info. Comm'n*, 545 A.2d 1064, 1070 (Conn. 1988) (holding that, the FOIC has "full authority to determine...the propriety of disclosure [of public records]"). Were it otherwise, were it the case that an agency could refuse production on the notion that it alone had jurisdiction to determine whether a public records request before it was warranted, the Freedom of Information Act would be a dead letter and the FOIA's statutory mission of affording independent review of agency non-disclosures would be defeated, causing the law to revert to its status before adoption of the FOICA, when

[5] *available at*, http://www.ctn.state.ct.us/ctnplayer.asp?odID=9336.

regulatory agencies could, without having to answer to the independent FOIC authority, simply refuse production of public documents.

Here, the OCME erroneously presumed itself possessed of unbridled discretion to determine in an extra-statutory and extra-regulatory manner which citizens are entitled to access. OCME did so without passing upon actual interests in the information requested. Instead, OCME employed its Next of Kin Rule, a rule adopted internally and *sua sponte,* without resort to a single public meeting or notice and comment rulemaking.

The OCME's Next of Kin Rule is unlawful and void. The OCME never followed the open meeting and notice and comment rulemaking required by the Open Meetings Act and the UAPA. *See* Conn. Gen. Stat. § 1-225; Conn. Gen. Stat. Ann. § 4-168.[6] Under the governing law, a rule not adopted through adherence to the requirements of the Open Meetings Act and the UAPA is void and unenforceable by every agency of this government, including the OCME and the FOIC. *See Salmon Brook Convalescent HomeInc. v. Comm'n on Hospitals & Health Care*, 177 Conn. 356, 366, 417 A.2d 358, 368 (1979) (holding that agency's "guidelines" were not adopted under the rule-making provisions of the UAPA and were thus "void and of no effect"). Because the OCME's Next of Kin Rule is unlawful and unenforceable, the FOIC is forbidden

[6] The UAPA states:

> No agency regulation is enforceable against any person or party, nor may it be invoked by the agency for any purpose, until (1) it has been made available for public inspection as provided in this section, and (2) the regulation or a notice of the adoption of the regulation has been published in the Connecticut Law Journal if noticed prior to July 1, 2013, or posted on the eRegulations System pursuant to section 4-172 and section 26 of public act 13-247, if noticed on or after July 1, 2013. This provision is not applicable in favor of any person or party who has actual notice or knowledge thereof. The burden of proving the notice or knowledge is on the agency.

Conn. Gen. Stat. Ann. § 4-167.

from upholding OCME reliance upon it in support of its refusal to turn over the requested records. Indeed, if the FOIC were to defer to OCME's decision under the Next of Kin Rule, FOIC would thereby base its own rule of decision on an illegality, something it cannot do without engaging in arbitrary and capricious decision-making, contrary to its own requirements under the UAPA. *See* Conn. Gen. Stat. Ann. § 1-205(d); Conn. Gen. Stat. Ann. § 4-167. In short, OCME's decisional Next of Kin Rule is an unlawful and unenforceable, which rule infects OCME's decision fundamentally, causing that decision to be unlawful and unenforceable, and impugning the legitimacy of all subsequent decisions by every state agency that would choose to rely on OCME's decision in the AbleChild case or on OCME's decisional Next of Kin Rule.

In its oral argument and Post-Hearing brief, OCME offered an additional ground for withholding the requested documents, viewpoint discrimination. Viewpoint discrimination is a constitutionally forbidden ground. At oral argument and in its brief, OCME explained that it would not supply AbleChild the documents requested because OCME presumes AbleChild will use the requested documents to advocate reforms disfavored by OCME. Government is forbidden from denying access to information on the basis that the Government disagrees with the viewpoint that may be expressed in reliance on that information. Viewpoint discrimination violates the Free Speech Clause of the First Amendment of the U.S. Constitution (and Article I, Section 4 of the Connecticut Constitution). *See, e.g., Simon & Schuster, Inc. v. Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 115 (1991). Speaker based and viewpoint based discrimination is unconstitutional absent proof of a compelling state interest and proof that there is no less restrictive alternative to the proscription adopted. *See Boos v. Barry*, 485 U.S 312, 313 (1988). OCME has offered no proof of either requirement.

The OCME's Next of Kin Rule also violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution (and Article First, Sec. 20 of the Connecticut Constitution) because it arbitrarily limits to a narrowly defined subset those requesters who may be given decedent information. It discriminates in this way without a compelling justification for the act of discrimination (indeed, the rule having not been adopted formally through notice and comment rulemaking is backed by no articulated justification at all). *See, e.g., Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 101 (1972) (holding that "[t]he Equal Protection Clause requires that statutes affecting First Amendment interests be narrowly tailored to their legitimate objectives"). The OCME has offered no evidentiary or factual basis to support its rule that severely discriminates among members of the public to arrive at a very narrow category of individuals who, without need for any expression of legitimate interest, are the only ones ever allowed access to OCME records.

OCME's rule also contradicts applicable statutory and regulatory sections that favor disclosure. Because OCME's Next of Kin Rule substantively conflicts with legislative intent and the plain meaning of the enabling statute, Section 19a-411(b), and in particular the Commission on Medicolegal Investigations' duly adopted regulation implementing the statute, Regs. Conn. State Ag. § 19a-401-12(c)(2), OCME's Next of Kin Rule is entitled to no deference. Its Next of Kin Rule is void and unenforceable; even were it lawfully promulgated, it is substantively arbitrary and capricious, without any reasoned basis justifying severe truncation to such a limited universe of public requesters, a substantially less inclusive subset of the public than is specified in the duly adopted Commission on Medicolegal Investigations' rule, Regs. Conn. State Ag. § 19a-401-12(c)(2).

Finally, AbleChild has demonstrated a legitimate interest in the OCME's records concerning Adam Lanza. AbleChild is a non-profit organization with members from the general public, including parents, custodians, and caretakers of children with mental illnesses. Those members have a keen interest in discovering whether Adam Lanza's thoughts of suicide and suicidality were in any way precipitated or encouraged by psychiatric protocols and drug treatments given Lanza before his murderous rampage. AbleChild's interest is further endorsed by signatures from 263 Newtown residents supplied to the OCME. *See* Complainant Exh. 3 (AbleChild's Petition to Connecticut Lawmakers—For Release of Adam Lanza Toxicology Reports). The OCME has not rebutted that interest. It has not presented facts or evidence to dispute AbleChild's complaint. OCME was statutorily obliged to seek a protective order from the superior court dependent on proof of a compelling public interest that would justify limiting disclosure of the requested records. It did not do so. It violated the law. *See* Conn. Gen. Stat. § 19a-411(c).

OCME failed to hold public meetings concerning its Next of Kin Rule, failed to promulgate the Next of Kin Rule pursuant to notice and comment rulemaking, failed to seek protective order in superior court as required by Section 19a-411(c), and violated state and federal law by applying its Next of Kin Rule that arbitrarily limits disclosure to a select class of "preferred" members of the public to the exclusion of all others and by justifying its decision based on prohibited speaker and viewpoint based discrimination. In sum, in this single action OCME has violated three state statutes in addition to the Equal Protection and Free Speech Clauses of the federal and state constitutions. The FOI Commission thus cannot uphold OCME's action without itself committing those same law violations.

ARGUMENT

I. THE FREEDOM OF INFORMATION COMMISSION HAS JURISDICTION TO HEAR CONTESTED CASES INVOLVING THE OFFICE OF THE CHIEF MEDICAL EXAMINER'S DENIAL OF ACCESS TO RECORDS UNDER CONN. GEN. STAT. §19A-411 AND REGS. CONN. STATE AGENCIES § 19A-401-12

OCME argues that AbleChild's request for Adam Lanza's records is not subject to the statutes and regulations under the jurisdiction of the FOIC. *See* Respondents' Post-Hearing Brief, at 2-4. OCME errs. The FOIC expressly rejected OCME's present argument in prior cases. *See John Vivo III* (Docket #FIC 2005-380); *Paul J. Ganim* (Docket #FIC 2010-328). The *Vivo* and *Ganim* cases involved requests for OCME records. OCME moved to dismiss complaints brought before the FOIC by arguing that the Commission on Medicolegal Investigations has exclusive jurisdiction over records requests. In both cases the FOIC rejected OCME's argument and denied OCME's motion to dismiss. FOIC reasoned that "dismissing the complaint would be contrary to the fundamental principles upon which the FOI Act was created." *Paul J. Ganim and the Bridgeport Probate Court v. Office of the Chief Medical Examiner*, Docket #FIC 2010-328 (2011).

FOIC held that §19a-411 obtains its authority "by virtue of §1-210(a)" of the FOI Act. *James Coll v. Office of the Chief Medical Examiner*, Docket #FIC 2002-053 (2002). Therefore, the FOIC held that §19a-411 of the General Statute falls within the purview §1-210 of the Freedom of Information Act (herein "FOIA") and thus the purview of the FOIC. *See John Vivo III v. Office of the Chief Medical Examiner*, Docket #FIC 2005-380 (2006) (holding that §19a-411 is a state statute that falls within the "except as otherwise provided" exception to §1-210); *Anthony Sinchak v. Office of the Chief Medical Examiner*, Docket #FIC 2005-035 (2006); *Paul J. Ganim and the Bridgeport Probate Court v. Office of the Chief Medical Examiner*, Docket #FIC 2010-328 (2011); *Chad St. Louis v. Office of the Chief Medical Examiner*, Docket #FIC

2009-389 (2010). Indeed, Section 19a-411(b) expressly incorporates the general FOIA in Section 1-210 and in accordance therewith mandates the production of records. *See* Conn. Gen. Stat. § 19a-411(b). The FOIC held the requirements imposed by §19a-411 to be an exception, not an exemption, to §1-210 of the FOIA. *See John Vivo III*, Docket #FIC 2005-380 (2006) (holding that §19a-411 is a state statute that falls within the "except as otherwise provided" exception to §1-210); *Anthony Sinchak* , Docket #FIC 2005-035 (2006); *Paul J. Ganim*, Docket #FIC 2010-328 (2011); *Chad St. Louis*, Docket #FIC 2009-389 (2010); *James Coll*, Docket #FIC 2002-053 (2002). As such, the FOIC has handled contested cases, like the AbleChild case, to determine OCME's compliance with the FOIA when a complaint alleges that the OCME failed to comply with a §19a-411 records request. As in *John Vivo III*, *Paul J. Ganim*, and similar cases, the FOIC has already determined that it has the jurisdiction to hear cases such as the instant one.

FOIC's jurisdiction is unaltered by the Connecticut Supreme Court's decision in *Galvin v. Freedom of Information Commission*, 201 Conn. 448 (1986). In *Galvin*, the Court addressed whether the more general access provision in Section 1-210 would prevail over the limited disclosure provisions in Section 19a-411(b) and implementing regulations. *Id.* at 459-60. The Court held the more specific provisions control or, in other words, the Commission on Medicolegal Investigations' Section 19a-401-12 is an effective restriction on the right of public access. *Id.* *Galvin* did <u>not</u> hold that the FOIC lacks authority to interpret the law governing OCME disclosure of public records or the general FOIA law as it applies to the OCME. Nor did Galvin hold that OCME's Next of Kin Regulation was lawfully promulgated. The *Galvin* decision specifically noted that the regulations governing OCME records disclosure must be interpreted harmoniously with the FOIA law: "§ 19a–411 incorporates only those provisions

of § 1–19 that are not inconsistent with the former statute's restrictions on disclosure. These provisions include, but are not limited to, the exceptions to disclosure set forth in § 1–19(b), insofar as they apply to the types of records covered by § 19a–411." *Id.* at 459-60. Moreover, the Court in *Galvin* had an occasion to consider the FOIC's jurisdiction in context with the mandatory time constraints in Section 10-21i(b), and the Court unequivocally held that the FOIC "had jurisdiction to act in this case." *Id.* at 454.

Here, AbleChild does not argue that the general FOIA law contradicts and supplants the duly adopted Commission on Medicolegal Investigations' regulation, Regs. Conn. State Ag. § 19a-401-12(c)(2), governing OCME record disclosures. Such an argument would be contrary to *Galvin*. Rather, consistent with *Galvin*, AbleChild calls for full enforcement of that duly adopted Commission on Medicolegal Investigations' regulation in lieu of the contradictory and unlawful OCME Next of Kin Rule. AbleChild represents that it has satisfied the "legitimate interest" standard in the duly promulgated Commission on Medicolegal Investigations' regulation, Conn. Agencies Regs. § 19a-401-12(c)(2), and, therefore, is entitled to access to the OCME records.[7]

[7] The *Galvin* decision expressly refrained from reaching the question of which persons have a "legitimate interest," stating:

> The defendants do not claim that they are persons with a 'legitimate interest' within the meaning of either the statute or the regulation. We need not and do not consider, therefore, the validity of administrative distinctions between persons based on the presence or absence of a "legitimate interest" in disclosure.

Galvin, 201 Conn. at 460 n.11.

A. The FOIC Has Jurisdiction to Determine What Constitutes a "Legitimate Interest" Under Conn. Gen. Stat. § 19a-411

The FOIC's enabling Act gives the FOIC jurisdiction to determine when documents are wrongfully withheld by an agency of the Connecticut government. *See* Conn. Gen. Stat. Ann. § 1-205. In determining whether documents are wrongfully withheld, the FOIC must necessarily construe the statutes and regulations germane to document production by the agency appearing before it. *See, e.g., Araxy Najarian v. First Church Village Housing Inc.*, Docket No. FIC 2001-442 (Jan. 23, 2002) (rejecting argument that records at issue were exempt under Sec. § 52-146 G.S. because they did not relate to the clinical evaluation and treatment of an individual); *Cos Cob Volunteer Fire Co. No. 1, Inc. v. Freedom of Info. Comm'n*, 561 A.2d 429, 431 (Conn. 1989) (upholding FOIC's interpretation of term "operational" under Gen. Stat. § 7-314(b) to determine whether an entity was a public agency).

FOIC routinely construes the statutory and regulatory provisions of other agencies that are relied upon by those agencies as justifications for non-disclosure. *See, e.g.*, *American News and Information Services v. Dept. of Public Safety*, Docket No. FIC 2011-002 (interpreting Title 29, which concerns Public Safety and State Police); *The Greenwich Time v. Dept. of Public Health*, Docket No. FIC 2010-026; *Faroulh Dorlette v. Connecticut Dept. of Correction*, Docket No. FIC 2010-284. FOIC has stricken regulatory actions withholding documents when inconsistent with the FOIA and the enabling acts of those agencies *sub judice*. *See, e.g., Nancy Rice v. Kent Haydock, et al.*, Docket No. 2011-176. If FOIC lacked the power to compel production of documents withheld contrary to the statutory and regulatory provisions governing other agencies, it would have no power other than that of recommendation, which is contrary to the plain and intended meaning of the FOIA and the precedent of the FOIC for the past 38 years.

Indeed, stripping it of review power now would render FOIC feckless, returning the law to the state that existed before the FOIA was enacted in 1975.

It is well settled that the FOIC has "full authority to determine ... the propriety of disclosure [of public records]." *Bd. of Educ. for City of New Haven v. Freedom of Info. Comm'n*, 545 A.2d 1064, 1070 (Conn. 1988). The scope of the FOIC's authority extends to all public agencies and all public records, including those of the OCME. *See* Conn. Gen. Stat. Ann. § 1-205(d); Conn. Gen. Stat. Ann. § 1-210(a). That authority exists even if an agency adopts criteria for disclosure concerning its own records. *See* Conn. Gen. Stat. Ann. § 1-205(d); *Wilson v. Freedom of Info. Comm'n*, 435 A.2d 353, 362 (Conn. 1980) (holding that the FOIC is empowered to investigate "all alleged violations" of Connecticut's Freedom of Information Act). The FOIC is only prevented from ordering disclosure if such records are specifically exempted under the FOIA. *See* 1-210(a); *Maher v. Freedom of Info. Comm'n*, 472 A.2d 321, 324-25 (Conn. 1984); *Corey Turner v. Office of Gov't. Accountability, et al.*, Docket No. FIC 2011-406. No such situation exists in this case.[8] Here, in the presence of stipulated facts establishing that AbleChild has a "legitimate interest" in Adam Lanza's records and OCME's argument against disclosure consisting of reliance on its unlawful Next of Kin Rule and on its prohibited speaker based and viewpoint based discrimination, the Commission on Medicolegal Investigations Rule Conn. Agencies Regs. § 19a-401-12 will only be fulfilled by an FOIC order compelling disclosure of the requested records.

[8] The Connecticut Legislature has specifically exempted records when that is intended. *See, e.g.,* Conn. Gen. Stat. Ann. § 10-151c (West) ("Any records maintained or kept on file by the Department of Education or any local or regional board of education that are records of teacher performance and evaluation shall not be deemed to be public records and shall not be subject to the provisions of section 1-210…")*;* Conn. Gen. Stat. Ann. § 51-44a(j) (West) ("Except as provided in subsections (e) and (m) of this section, the investigations, deliberations, files and records of the commission shall be confidential and not open to the public or subject to disclosure…").

Further, the FOIC has specific authority, subject to the UAPA prohibition on arbitrary, capricious, and unlawful action, to determine the meaning of broad terms where the legislature has not provided a definition. *See Ottochian v. Freedom of Info. Comm'n*, 604 A.2d 351, 354 (Conn. 1992) ("When the legislature uses a broad term ... in an administrative context, without attempting to define that term, it evinces a legislative judgment that the agency should define the parameters of that term on a case-by-case basis"); *Wiese v. Freedom of Info. Comm'n*, 82 Conn. App. 604, 608 (2004); *Carpenter v. Freedom of Info. Comm'n*, CV 980577840, 1998 WL 886615 (Conn. Super. Ct. Dec. 8, 1998) *aff'd*, 755 A.2d 364 (2000); *Sinchak v. OCME*, Docket No. FIC 2005-035 (finding that complainant had not met the conditions set forth under §19a-401-12(f), and therefore, the records could not be disclosed).[9] Such authority allows for interpretation of all terms concerning disclosure regardless of whether such terms fall under statutes other than the FOIA. *See Cos Cob Volunteer Fire Co. No. 1, Inc. v. Freedom of Info. Comm'n*, 561 A.2d 429, 431 (Conn. 1989) (upholding FOIC's interpretation of term "operational" under Gen. Stat. § 7-314(b) to determine whether an entity was a public agency).

In *Carpenter*, a primary question to the FOIC was whether school-related records were "records of teacher performance and evaluation." *Carpenter*, 1998 WL 886615 at 1. Such records were exempt from disclosure under Conn. Gen. Stat. Ann. § 10-151c. *Id.* No definition existed for that phrase, yet the teacher argued that the requested records fell under a FOIA

[9] The FOIC consistently makes determinations concerning the nature of public records when parties to a contested case disagree on whether certain records may be disclosed. *See Wilson v. Freedom of Info. Comm'n*, 181 Conn. 324, 340, 435 A.2d 353, 362 (1980) (finding that Sec. 1-205(d) "anticipates that the commission will play a central role in resolving disputes administratively under the act"). The FOIC's basic function and purpose would be rendered hollow if it could not interpret the statutes of agencies concerning disclosure. *See* Conn. Agencies Regs. § 1-21j-3 ("The commission is generally empowered to exercise specified grants of authority for the administration of statutes that provide access to public records, public meetings, and other sources of public information, as set forth in the Freedom of Information Act").

exemption. *Id.* at 3. FOIC reviewed the records in-camera to determine whether the exemption applied, and it held that the records were not "records of teacher performance and evaluation," thus construing the other agencies' regulatory definition. *Id*. The interpretation of the FOIC was affirmed on appeal. *See Carpenter v. Freedom of Info. Comm'n*, 755 A.2d 364, 366 (Conn. 2000). Similarly, the term "legitimate interest" is not defined by statute or regulation, and the FOIC is obliged in assessing the legality of non-disclosure to determine if OCME acted wrongfully when it defined "legitimate interest" in violation of law and in a severely truncated way, embracing only a small subset of those within the full embrace of the duly promulgated regulation of the Commission on Medicolegal Investigations, Section 19a-401-12(c)(2). *Compare* Conn. Agencies Regs. § 19a-401-12 *with* Next of Kin Rule in OCME letter, Complainant Exh. 2, at Ex. 2.

FOIC is not required to "accept an agency's generalized and unsupported allegations relating to documents claimed to be exempt from disclosure." *Wilson v. Freedom of Info. Comm'n*, 435 A.2d 353, 362 (Conn. 1980). Further, interpretations that run contrary to the FOIA (and to law in general) are rejected. *See Office of Health Care Access v. Freedom of Info. Comm'n*, CV030521573S, 2005 WL 1095361 (Conn. Super. Ct. Apr. 19, 2005) (unpublished) (rejecting the CT Office of Health Care Access' proposed meaning of statute that would frustrate access to records).

B. FOIC Has the Authority to Issue Rulings Concerning the Constitutionality of Agency Decisions to Withhold Records

The FOIC cannot uphold an unlawful agency rule used as a pretext for non-disclosure, and the FOIC may strike such rules in its discretion to uphold and enforce the FOIA:

> In any appeal to the Freedom of Information Commission under subdivision… the commission may confirm the action of the agency or order the agency *to provide relief that the commission, in its discretion*, believes

> appropriate to rectify the denial of any right conferred by the Freedom of Information Act.

See Conn. Gen. Stat. Ann. § 1-206 (West) (emphasis added). As discussed below, the FOIC should reject the OCME's Next of Kin Rule because it is illegal and unenforceable--not adopted pursuant to notice and comment rule-making. Acceptance of such a rule would cause the FOIC to violate its own legal obligations under the OMA, APA, and the FOIA.

First, the FOIC cannot lawfully enforce agency action that fails to comply with the UAPA. *See Salmon Brook Convalescent HomeInc. v. Comm'n on Hospitals & Health Care*, 177 Conn. 356, 366 (1979) (affirming that agency's "guidelines" were not adopted under the rule-making provisions of the UAPA, and were "void and of no effect"). Further, the OCME may only adopt promulgated rules that "carry into effect the will of the legislature as expressed by the statute." *Salmon Brook,* 417 A.2d at 362.

Second, by adopting the OCME's definition, the FOIC would itself violate the Open Meetings Act, the Administrative Procedure Act and the FOIA. Condoning or upholding a violation of the OMA, APA, and FOIA would also violate the hearing officer's oath of office.

The FOIC is, under the law of Connecticut, an agency subject to the Open Meetings Act and the Uniform Administrative Procedure Act.[10] The FOIC is legally obliged to abide by the

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[10] *See* Conn. Gen. Stat. Ann. § 1-200(1)(A) (West) (defining "agency" under Freedom of Information Act):

> Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions, and for purposes of

OMA and UAPA. *See* Conn. Gen. Stat. Ann. § 1-205(d); Conn. Gen. Stat. Ann. § 4-167. When an agency fails to disclose information requested by the public and, thus, becomes subject to the FOIC's jurisdiction, that jurisdiction reaches all grounds asserted for non-disclosure and, when an agency is the party not producing, necessarily involves determinations of legality under the OMA and APA. FOIC cannot itself abide by those Acts unless it upholds them. In the face of a failure of OCME to abide by those Acts, FOIC must declare the law violations and order the disclosures that were unlawfully not made, or the FOIC will be complicit in the law violations under the OMA, UAPA, and the FOIA.

Third, the FOIC may refuse to accept the interpretation of a statute advanced by a party on the basis that such interpretation contravenes principles of statutory construction. *See Thomas Germain v. Town of Manchester*, Docket No. FIC 2009-145, ¶ 31. (Jan. 13, 2010) (rejecting party's suggestion that the term "hand-held scanner" could include a "flatbed scanner"); *State v. Nelson*, 11 A.2d 856, 858 (Conn. 1940) ("Courts may not by construction supply omissions in a statute, or add exceptions merely because it appears to them that good reasons exist for adding them. This is especially so when it appears that the omission was intentional"). Additionally, it is presumed that "the legislature intended to enact one consistent body of law." *Sutton v. Lopes*, 201 Conn. 115 (1986). "If there are two possible interpretations of a statute, this court must

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> this subparagraph, "judicial office" includes, but is not limited to, the Division of Public Defender Services.

See also Conn. Gen. Stat. Ann. § 4-166 (West) (defining "agency" under UAPA):

> "Agency" means each state board, commission, department or officer authorized by law to make regulations or to determine contested cases, but does not include either house or any committee of the General Assembly, the courts, the Council on Probate Judicial Conduct, the Governor, Lieutenant Governor or Attorney General, or town or regional boards of education, or automobile dispute settlement panels established pursuant to section 42-181.

adopt the more reasonable construction." *Turner v. Turner*, 219 Conn. 703, 713 (1991). It is therefore a fundamental principle of statutory construction that the FOIC should interpret statutes using common sense and assume that the legislature intended a reasonable and rational result. *See Longley v. State Employees Retirement Commission,* 284 Conn. 149, 172-73 (2007). Inherent in that task is the authority to adjudge for itself whether the OCME is abiding by statutes germane to OCME production of requested documents. In other words, because FOIC has authority to determine the legality of agency non-disclosure of records, it necessarily has the specific authority to determine the legality of OCME's Next of Kin Rule, which is OCME's primary basis for non-disclosure in this case, as well as the specific authority to determine the legality of OCME's speaker and viewpoint based justification for non-disclosure, which is OCME's only other basis for non-disclosure in this case.

C. AbleChild Was Not Required To Seek a Declaratory Ruling Under UAPA Section 4-176

All appeals arising out of the non-disclosure of public records must be heard by the FOIC. *See* Conn. Gen. Stat. Ann. § 1-206(b)(1) ("Any person denied the right to inspect or copy records under section 1-210… may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission"). The OCME is a public agency, and its records are "public records." *See* Conn. Gen. Stat. Ann. § 1-200(1), (5); *see also Sinchak v. OCME*, Docket No. FIC 2005-035. AbleChild was not, therefore, required to pursue a declaratory judgment in lieu of an appeal to the FOIC. *See Hill v. State Employees Ret. Comm'n*, 851 A.2d 320, 325 (Conn. 2004) ("Declaratory rulings are not proper for review of an agency's prior administrative decisions"). Indeed, questions concerning the merits or "correctness" of an agency's decision to act are to be resolved "only by appeal," not through

seeking a declaratory judgment. *See Young v. Chase*, 557 A.2d 134, 137-38 (Conn. 1989) (holding that declaratory action was inappropriate to determine whether the plan and zoning commission's decision to grant a modification for the location and height of a radio transmission tower). Examples of issues appropriate for declaratory judgments are narrow and include "those where an agency lacks jurisdiction due to defective notice, where statutory authority has been exceeded, or where the validity of a statute or ordinance is attacked." *Young v. Chase*, 557 A.2d 134, 137 (Conn. 1989) (internal citations omitted). Those matters are not in issue here.

This case proceeds from the OCME's denial of AbleChild's request for records. AbleChild's standing stems from the denial of the record request, and the issues *sub judice* arise from the OCME's invocation of its Next of Kin Rule against disclosure and its assertion of speaker and viewpoint-based justifications for non-disclosure. AbleChild was not required to pursue a declaratory ruling prior to appealing the OCME's non-disclosure to the FOIC. Exhaustion of remedies to contest the denial of access to public records is satisfied through appeal to the FOIC. *See* Conn. Gen. Stat. Ann. § 1-206(b)(1); *Messenger v. Connecticut Dep't of Motor Vehicles*, 0115796, 1993 WL 498988 (Conn. Super. Ct. Nov. 19, 1993) ("[1-206(b)] specifically sets forth the proper appeal procedure for a person who has been denied access to public records") (unpublished); *Pane v. City of Danbury*, CV97347235S, 2002 WL 31466332 (Conn. Super. Ct. Oct. 18, 2002) (unpublished).

Further, Section 4-176 of the UAPA does not replace the defined appeals process before the FOIC. *See LaCroix v. Bd. of Educ. of City of Bridgeport*, 199 Conn. 70, 78 (1986) ("where a statutory right of appeal from an administrative decision exists, an aggrieved party may not bypass the statutory procedure and instead bring an independent action to test the very issue which the appeal was designed to test") (internal citations omitted); *P.R.I.C.E., Inc. v. Kenney*,

CV94 542469, 1995 WL 139510 (Conn. Super. Ct. Mar. 17, 1995) ("one fundamental rule is that a declaratory judgment cannot be used as a substitute for an appeal"). Indeed, most records requests proceed through agencies other than the FOIC. If requesters were always required to first seek a declaratory judgment before challenging the rules and regulations that apply to those agencies' disclosure policies, then the FOIC would rarely, if ever, have jurisdiction over cases concerning non-disclosure of public records. The FOIC's precedential history reveals otherwise. The FOIC consistently determines the legality or validity of agency policies that limit access to public records without the necessity for commencement of rulemakings at the agency or actions for declaratory judgment. Where, as here, a case develops through a request for records, there is a single, defined appeals process for the denial of access and that process is through an appeal to the FOIC. The statute demands an appeal directly to the FOIC. *See* Conn. Gen. Stat. Ann. § 1-206(b)(1); *Messenger v. Connecticut Dep't of Motor Vehicles*, 0115796, 1993 WL 498988 (Conn. Super. Ct. Nov. 19, 1993). AbleChild has pursued the statutorily prescribed process.

II. ABLECHILD DEMONSTRATED A "LEGITIMATE INTEREST" IN THE RECORDS REQUESTED, AND OCME FAILED TO SEEK A PROTECTIVE ORDER IN SUPERIOR COURT AS REQUIRED BY SECTION 19a-411(c)

A "legitimate interest" is a question of fact to be decided on a case-by-case basis. *See Meriden Record Co. v Browning*, 6 Conn. Cir. Ct. 633, 634-35 (1971) (holding that "legitimate interests" can be of all kinds); Opinion of the Connecticut Attorney General, 1971 WL 21766 (Conn. A.G. 1971). To hold that "legitimate interests" can only relate to certain individuals in contractual privity with the deceased, or those with investigative duties over the deceased, excludes the overwhelming majority of public requesters allowed access in the duly adopted regulation of the Commission on Medicolegal Investigations, Conn. Agencies Regs. § 19a-401-12. *See, e.g., Meriden Record Co. v. Browning*, 6 Conn. Cir. Ct. 633, 637 (1971); *Kuhali v.*

Reno, 266 F.3d 93, 111 (2001); *Washington v. Harper*, 494 U.S. 210, 211 (1990); *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

Courts have found a "legitimate interest" present when parties seek to protect society from acts that cause physical or mental harm. For instance, the United States Court of Appeals for the Second Circuit determined that government "has a legitimate interest in protecting society from the commission of aggravated felonies…" *See Kuhali*, 266 F.3d at 111. The Supreme Court of the United States has also held that government has a "legitimate interest" in protecting citizens from mentally ill persons who may be violent, and in protecting the health of its citizens generally. *See, e.g., Harper*, 494 U.S. at 211 (holding that state had a "legitimate interest in combating the danger posed by a violent, mentally ill inmate"); *Eisenstadt,* 405 U.S. at 442 (holding that state had a legitimate interest in "protecting the health of its citizens").

As in those examples, here AbleChild has a legitimate interest in Adam Lanza's records because AbleChild seeks to investigate the potential causal connection between drug and drug treatment protocols for mental illness and violent behavior by the mentally ill, so that means may be identified to reduce the risk of drug induced murder and suicide. AbleChild aims to ensure the safety of its member parents, caregivers, and children when those in their company are diagnosed with mental illness and are prescribed drugs or treatment protocols that involve agents and conditions that the FDA has determined may evoke thoughts of violence and suicide. *See* Complainant Exh. 4. AbleChild has a legitimate interest in accessing Adam Lanza's autopsy, toxicology, and drug history records so that an evaluation may be made to determine the extent to which his case is one associated with treatments that may have contributed to increased thoughts of murder, homicide and suicide. That information and resulting AbleChild recommendations stemming from the information will help parents, caregivers, health

authorities, state and federal governments, and the public nationwide to make better informed decisions concerning how best to care for the mentally ill and protect parents and caregivers.

As explained by Respondent's counsel at hearing and in Respondent's brief, an additional reason given for non-disclosure is OCME's assumption that AbleChild will advance positions based on the information obtained with which OCME objects: classic viewpoint discrimination. *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 829 (1995) ("[v]iewpoint discrimination is . . . an egregious form of content discrimination [forbidden by the First Amendment]"). Nowhere in Connecticut law is there a grant to OCME of power to deny access to requested documents on the basis that requesters with that information may advance views antithetical to those preferred by the OCME. Indeed, that basis for non-disclosure violates the First and Fourteenth Amendments to the U.S. Constitution and the comparable provisions of Connecticut's Constitution. *Id.* ("government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction").

It is a patently illegitimate basis for decision to deny otherwise lawfully required production of requested documents on the basis that one obtaining them may use the documents to advance a view the government believes impolitic. Certainly the FOIC cannot condone or endorse such a position without hopelessly embedding itself in the same unconstitutional act; rather, FOIC should condemn speaker and viewpoint based discrimination in no uncertain terms, ensuring that this and other state agencies will not think it appropriate to deny document requests on the constitutionally repugnant basis that requesters may use information disclosed to advance views disfavored by state agencies.

Respondent argues, for example, that "any general treatment recommendation based on [Lanza's] isolated case would have to rely on incomplete and unscientific data and would be scientifically unsound." *See* Respondents' Post-Hearing Brief, at 9-10. For that reason, OCME would deny AbleChild access to information.

In addition, Respondent entirely misrepresents the purpose and importance of FDA's "black box" warnings on drugs for mental illness. Since the 1930s, the FDA has issued very few "black box" warnings for drug products. A "black box" warning is the most significant labeling measure FDA can take, one just short of removing a drug product from the market due to safety reasons. *See* Complainant Exh. 4 (Attachment F, at 1). When issuing that warning, the FDA determined that antidepressant drugs do, in fact, cause an increase in the risk of aggressive behavior and suicidality. *See* Complainant Exh. 4 (Attachments B-D, F, G). Thus, Respondents have mischaracterized the record by arguing that FDA has "not quite reached the point to say definitively that there is a causal link between the use of antidepressants and violent behavior." To the contrary, FDA has. AbleChild now seeks only to determine the extent of that causal link in certain contexts, particularly school shootings. The OCME also fails to consider the possibility that antidepressants may have simply failed to work for Adam Lanza, who eventually killed himself. That information would concern the drugs' efficacy, another factor AbleChild will consider in its evaluation of the requested information.

Connecticut courts have held that the burden to establish an exemption under the Freedom of Information Act—the burden to withhold documents—is with the government party claiming the exemption. *See City of New Haven*, 205 Conn. at 775-76. Section 19a-411(b) also incorporates the protections of the general Freedom of Information Act, even though Section 19a-411(b) represents an independent disclosure provision. *See* Conn. Gen. Stat. § 19a-411(b)

(requiring that records be made available "in accordance with … section 1-210"). Once a requester demonstrates a *prima facie* "legitimate interest," the burden shifts to the OCME to prove the interest does not exist or is insufficient. *See City of New Haven*, 205 Conn. at 775-76. It may not satisfy that burden based on rank speculation (such as a disagreement with the presumed use to which a requester may put information requested in furtherance of one or more presumed requester views). The courts have explained that:

> [The] burden requires the claimant of the exemption to provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested.

Id. (collecting cases). Here we have nothing in the record beyond OCME's speculation to support its conjecture about AbleChild's intentions.

In its Post-Hearing Brief, counsel argues that "[a] person claiming a legitimate interest in a record under § 19a-411(b) must, thus, demonstrate, at the minimum, a personal interest that is compelling, direct and bona fide." *See* Respondent Brief, at 6. Respondents claim, therefore, that the phrase "legitimate interest" in Section 19a-411(b) really means "compelling interest." *Id.* That is not the law. Respondents' cited cases are inapposite. Respondents cite several cases that touched upon the word "legitimate" when interpreting the confidentiality clause of Section 46b-124, a completely unrelated records provision governing the disclosure of juvenile records in legal cases.[11] For instance, *In re Jessica* stated that the "compelling need" test was an historical element of certain cases before the latest statute became effective. *See In re Jessica*, 25 Conn. L. Rptr. 388, 1999 WL 775753, at *2-3 (Conn. Super. 1999) (stating that "the history of the statute prior to P.A. 95-225" required a showing of compelling need). The court then

[11] Section 46b-124(e) does, however, have a similar clause that provides for the disclosure of juvenile matters involving delinquency proceedings "upon the order of the court to any person who has a legitimate interest in the information and is identified in the order."

explained that the legislature, "reflecting the national trend," had expanded records access to those with a "legitimate interest." *Id.* The case does not in any way establish a higher "compelling need" burden for records disclosure. In fact, in the AbleChild case under Section 19a-411(b), that interpretation would be illogical given that the legislature placed a contrary burden on the OCME itself to justify non-disclosure by proving a "compelling public interest," thus as to OCME, the legislature created a compelling interest burden but as to the public requestor the legislature created a legitimate interest requirement. *See* Conn. Gen. Stat. § 19a-411(c). Had the legislature intended the public requestor to bear a compelling interest, it certainly would have so stated, particularly when the same section imposes that very standard not on the public requestor exclusively but on the government non-discloser. In short, when the legislature means to impose a "compelling" burden, it has clearly shown that it will do so, selectively and advertently so in the context of Section 19a-411(c).

The OCME's citation to decisions interpreting Section 46b-124 must be assessed in context with the historical confidentiality of juvenile records generally. Unlike the OCME's records, which have historically been available to the public, juvenile criminal records have historically not been available. *Compare* Testimony of Mitch Pearlman Connecticut Committee Transcript, GAE 3/6/2002 ("Prior to around 1984 or '85 when the Supreme Court decision held to the contrary, autopsy reports were available to the public"), *and Dep't of Pub. Utilities of City of Norwich v. Freedom of Info. Comm'n*, 739 A.2d 328, 331 (Conn. 1999) (the FOIA statute presumes disclosure), *with In re Jessica*, 1999 WL 775753, at *2 (finding that a "history of the statutes prior to P.A. 95-225 which govern confidentiality of juvenile records" establish "the strong presumption of juvenile confidentiality"). Section 19a-411(b) was drafted to facilitate disclosure of records to the general public, not transfer unbridled discretion to the OCME in

determining whether to release documents. Terms used in the FOI Section 19a-411(b) thus may not be properly interpreted to carry the same meaning as similar terms used in juvenile code Section 46b-24(e).

Finally, even assuming the OCME had relevant authority and evidentiary support, the OCME was statutorily required to pursue its cause in Superior Court in an action for a protective order. *See* Conn. Gen. Stat. § 19a-411(c). Respondents' counsel argued that AbleChild lacked a "legitimate interest" because its intended use of the information was "harmful." According to counsel, "you can cause a lot of people to stop taking their medications, stop cooperating with their treating physicians, just because of the heinousness of what Adam Lanza did." *See* Hearing Recording, *supra* at 3 (beginning at 1:04.27); Respondents' Post-Hearing Brief, at 10 (arguing further that AbleChild's use of information "would be dangerous as it could cause some patients to forego life-saving treatment to their detriment and the detriment of the general public"). That argument misleads because it is based on a false predicate. AbleChild is a member of the public, not a professional or institutional entity, so it cannot translate its recommendations into treatment decisions, it can only recommend changes to existing treatments and treatment protocols for ultimate decision by other authorities who may or may not deem AbleChild's recommendations persuasive.

Nonetheless, arguments related to OCME fear of how information might be translated into public advocacy are ones OCME should have asserted in the first instance before the Superior Court in a motion for protective order. Section 19a-411(c) provides:

> 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. § 19a-411(c) (emphasis added). That section requires the OCME to seek a protective order if it believes that a compelling public interest overcomes the requester's legitimate need.[12]

III. OCME'S NEXT OF KIN RULE IS UNLAWFUL AND UNENFORCEABLE

Despite AbleChild's showing of "legitimate interest," the OCME denied the non-profit group's request for records because the group did not fit within the narrow class of individuals specified in OCME's Next of Kin Rule and because OCME opposes the viewpoint it presumes AbleChild will advocate if given the information requested. *See* Complainant Exh. 3, at Ex. 2 (noting that records are only available to "next of kin, attorneys involved in litigation or attorneys handling the estate of the deceased, as well as physicians involved in the patient's care, insurance claims agents and investigative authorities"). At present, only those persons included in OCME's Next of Kin Rule can receive OCME records, regardless of the nature or type of interest the requester has in OCME's records. The Next of Kin Rule violates state and federal law, and imposes a rule applied to all public requesters in violation of the UAPA. The Next of Kin Rule is unlawful, procedurally and substantively infirm, and entitled to no deference.

[12] That Medicolegal Investigations' rule reads: "[i]f the requester of the records is a member of the general public, he or she may obtain access to such records if the person has a legitimate interest in the documents and no court has issued an order prohibiting disclosure pursuant to section 19a-411(c) of the Connecticut general statutes." *See* Regs. Conn. State Agencies § 19a-401-12(c)(2).

A. OCME's Next of Kin Rule Is Invalid Under the UAPA and Is Therefore Void and Unenforceable

The Connecticut UAPA requires administrative agencies to proceed through required procedures when changing regulations or substantive policies. *See* Conn. Gen. Stat. § 4-168(a). Those procedures ensure due process of law and protect citizens from arbitrary government action. *Pet v. Department of Health Services*, 228 Conn. 651, 683 (1994) ("[b]ecause the UAPA is designed and intended to safeguard minimal due process rights, strict compliance with its mandate is necessary to ensure that significant property rights are not unlawfully destroyed").

The Connecticut UAPA defines a "regulation" as "[e]ach agency statement of general applicability, without regard to its designation, that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of the agency." *See* Conn. Gen. Stat. § 4-166(13). Before enacting a regulation, OCME is obliged to: (1) give thirty days notice to the public; (2) give notice to each joint standing committee of the General Assembly with interest in the subject matter; (3) give notice to interested persons; (4) provide a paper copy or electronic version of the proposed regulation to persons requesting it; (5) prepare a fiscal note that includes an estimate of the cost or revenue impact; (6) afford interested persons a reasonable opportunity to submit data, views, or arguments; (7) grant oral argument; and (8) consider all written and oral submissions concerning the proposal. *See* Conn. Gen. Stat. § 4-168(a). The OCME did none of that. Instead, it created the Next of Kin Rule internally, in an imperial fashion, without notice and comment from any member of the public.

Even informal guidelines violate the UAPA if agencies apply them as substantive rules. *See Hosp. of St. Raphael v. Comm'n on Hospitals & Health Care*, 438 A.2d 103, 107 (Conn. 1980). "Substantive rules" are those that have a "substantial impact on the rights and obligations of parties who may appear before the agency in the future." *Salmon Brook Convalescent Home,*

Inc. v. Comm'n on Hospitals & Health Care, 416 A.2d 358, 362 (Conn. 1979). Here the OCME's Next of Kin Rule is substantive because OCME applies the Next of Kin Rule to every public request. Regulation 19a-401-12(c)(2) states that "if the requester of the records is a member of the general public, he or she may obtain access to such records if the person has a legitimate interest in the documents…" *Id.* The regulation does *not* say that a requester can only obtain records if he or she falls within a specific group of individuals to be named by the OCME. Because the OCME's Next of Kin Rule determines the rights of those members of the public who request records from the OCME and governs release of all OCME documents, it is a substantive rule subject to the rulemaking requirements of Conn. Gen. Stat. § 4-168(a).

To be sure, the Next of Kin Rule is not an "interpretive" policy that merely defines ambiguous terminology. The Next of Kin Rule restricts access to records in every case and, thus, is, in fact, not an *interpretation* of existing regulatory language at all but a categorical rule governing all requests of decedent records and confining what is released to a select, arbitrary subset of the requesters, recognized by the Commission on Medicolegal Investigation's duly adopted rule, Conn. Agencies Regs. § 19a-401-12.

OCME's Next of Kin Rule is enforced by OCME in place of the statutory and regulatory text to limit to a severely truncated subset those who may receive OCME documents, a subset that incorporates only a small part of the people defined as eligible for access to OCME records in the Commission on Medicolegal Investigations' regulation, Section 19a-401-12(c)(2). According to OCME, if an individual or entity does not fall within its Next of Kin Rule, the records requested will not be supplied (and that applies even if, as here, the entity does fall within the Commission on Medicolegal Investigations' duly adopted regulation).

The FOIC itself has determined that the OCME's "policies" violate the UAPA. In 1986, FOIC determined that similar OCME "policies" had no application in the FOIC proceedings, in part, because those policies circumvented the UAPA rulemaking process. In *Patrice Courtney and Citizen Publications v. Office of the Chief Medical Examiner*, Docket #FIC 86-128 (1986), the Commission held in a contested case that "permission for disclosure from the decedent's family is not a statutory precondition for such disclosure [of autopsy records], but is merely a practice adopted by the respondent." *Id.* at 3, ¶ 16. As in this case, OCME had attempted to limit disclosure of records because the decedent's family did not consent. The Commission found that the OCME could not circumvent the rulemaking process, and explained that "[i]n the absence of statutory authority, it is concluded that under [§ 1-210] G.S., the respondent [OCME] cannot create a precondition to disclosure of a public record"). *Id.* Thus, the FOIC determined that disclosure of autopsy records, including "related toxicology and other laboratory reports," was required. *Id.*

Because the OCME's Next of Kin Rule violates the UAPA notice and comment rulemaking requirements, the Next of Kin Rule is legally invalid and cannot be relied upon as a basis for decision or condoned in a decision by the FOI Commission. *See Salmon Brook Convalescent Home Inc. v. Comm'n on Hospitals & Health Care*, 177 Conn. 356, 366 (1979) (holding that where an agency's "guidelines" were not adopted under the rule-making provisions of the UAPA, and were "void and of no effect").

B. OCME's Unlawful Next of Kin Rule Can Receive No Deference from the FOIC Because The Rule Is Unreasonable, Arbitrary, Illegal, and an Abuse of Discretion

The Respondents rejected AbleChild's initial request for records solely on the grounds that AbleChild did not fall within the persons listed in the Next of Kin Rule. *See* Complainant

Exh. 1. At hearing, Respondents' counsel again reiterated that OCME believed its Next of Kin Rule controlled, and that the OCME was entitled to deference for its Next of Kin Rule. That argument misstates and conflicts with the governing law. The FOIC cannot defer to an illegal rule. Moreover, the FOIC has no obligation to defer to the OCME's interpretation of Section 19a-411(b) because the FOIC itself is charged with interpreting that statutory section *de novo*. *See supra* at 5. Notwithstanding, OCME's definition of "legitimate interest" is also not a "permissible construction" of the statutory and regulatory text. *See Hargrove v. Commissioner of Social Services*, No. CV020516243, 2003 WL 21716063, at * 7 (Conn. Super. Ct. 2003) (unpublished) (citing *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984)). The FOIC has consistently refused to insert new definitions into a statutory term absent a lawful foundation. *See, e.g., Stephanie Reitz v. Dept. of Public Safety*, Docket No. FIC 2010-091 (Jan. 13, 2011) (rejecting respondent's argument that "mug shot" should also be considered part of a "record of arrest" when the plain language of the statute did not include it). It should similarly refuse that invitation here.

Where an agency interprets statutory sections that stray beyond its jurisdiction, neither the courts nor the FOIC defer to the interpretation, which in the end is "a question of law for the courts where the administrative decision is not entitled to special deference, particularly where … the statute has not previously been subjected to judicial scrutiny or time-tested agency interpretations." *City of New Haven v. Freedom of Information Com'n*, 205 Conn. 767, 773-74 (1988); *see also State Bd. of Labor Relations v. Freedom of Information Com'n*, 244 Conn. 487, 494-95 (1998). As in *New Haven*, here government counsel admitted at oral argument that OCME's interpretation of statutory law has not been "subjected to judicial scrutiny" and, so, it is

entitled to no FOIC deference. *New Haven*, 205 Conn. at 774; *see also* Hearing Recording, *supra*, at 1:13.42.[13]

In this case, OCME's Next of Kin Rule is a truncation of the term "legitimate interest" in Section 19a-411(b), which section "involves a number of interrelated statutory provisions," not all of which are charged to the OCME for enforcement. *See State Bd. of Labor Relations*, 205 Conn. at 494-95. For instance, Section 19a-411(b) requires that the Chief Medical Examiner provide documents "in accordance with this section, *section 1-210* and the regulations of the commission." *See* Conn. Gen. State § 19a-411(b) (emphasis added). Interpretation of the phrase "legitimate interest" therefore requires an analysis of the interplay between the Connecticut FOIA (Section 1-210), a statutory section beyond the OCME's jurisdiction, and Section 19a-411(b), so that a cohesive body of law can be applied to requests for public records. Applying *State Bd. of Labor Relations* here would require a *de novo* review based on principles of "statutory construction that apply in all cases turning upon the interpretation of statutes." *Id.* at 495. However, even if OCME is generally entitled to deference in its statutory interpretations, OCME's definition of "legitimate interest" still fails because it is unreasonable, arbitrary, illegal, and an abuse of discretion. *See Griffin Hosp. v. Commission on Hospitals and Health Care*, 200 Conn. 489, 496-97 (1986) ("Judicial review of the conclusions of law reached administratively is limited," and the court ultimately decides whether the agency "acted unreasonably, arbitrarily, illegally, or in abuse of its discretion").

[13] The Hearing Officer asked counsel: "Has any other entity ever challenged this further definition that the OCME has on its website, of who has a legitimate interest?" Counsel answered: "Not that I am aware of." *See* Hearing Recording, *supra*, (beginning at 1:13.42).

1. OCME's Next of Kin Rule Violates the Equal Protection Clause of the Fourteenth Amendment and the Free Speech Clause of the First Amendment

OCME's decision to withhold documents based on AbleChild's failure to fit within its severely limited listing in the Next of Kin Rule and based on AbleChild's presumed viewpoint violates the Equal Protection and Free Speech Clauses of the United States Constitution (and the Connecticut Constitution). OCME has not met its high burden to prove a compelling state interest and narrow tailoring such that there are no less restrictive alternatives to achieve that interest.

The Fourteenth Amendment to the United States Constitution provides in relevant part, "No State shall make or enforce any law which shall ... deny to any person within its jurisdiction the equal protection of the laws." *See Batte-Holmgren v. Comm'r of Pub. Health*, 281 Conn. 277, 280 (2007) (noting similarities in Connecticut and Federal constitutions). "The Equal Protection Clause has traditionally been applied to governmental classifications that treat certain groups of citizens differently than others." *Fortress Bible Church v. Feiner*, 694 F.3d 208, 221 (2d Cir. 2012). "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *See Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (internal citations omitted). Accordingly, the Supreme Court has recognized successful equal protection claims "where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *See id.* (collecting cases).

When state discrimination results in the diminution or infringement of a fundamental right, the state must meet its burden to demonstrate "that any abridgment of the right has been narrowly tailored to effectuate a compelling state interest." *See Kerrigan v. Comm'r of Pub. Health*, 289 Conn. 135, 144, 158 (2008) ("If … state action invidiously discriminates against a suspect class or affects a fundamental right, the action passes constitutional muster ... only if it survives strict scrutiny").

Here, OCME's Next of Kin Rule and condemnation of AbleChild's presumed intended advocacy violates AbleChild's First Amendment right to access the requested records. The United States Supreme Court recognizes a constitutional right to gather information under the First Amendment. *See Branzburg v. Hayes*, 408 U.S. 665, 681 (1972) ("without some protection for seeking out the news, freedom of the press could be eviscerated"); *Roth v. United States*, 354 U.S. 476, 484 (1957) (explaining that the First Amendment "was fashioned to [ensure] unfettered exchange of ideas for the brining about of political and social changes desired by the people"); *Stromberg v. California*, 283 U.S. 359, 369 (1931) (holding that "[t]he maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system"). Thus, to the extent the OCME infringes citizens' First Amendment rights, strict scrutiny applies to the OCME's discriminatory policy and renders it unconstitutional.

Notwithstanding, OCME's Next of Kin Rule does not survive even lower scrutiny under the rational basis test because the OCME failed to provide any reasoned justification for its Next of Kin Rule. Respondent's counsel was unable to explain how or why the OCME developed its Next of Kin Rule. OCME counsel entered no evidence in the record to support the OCME's

decision to restrict access to certain individuals, other than to simply restate the rule itself. Moreover, although the OCME rejected AbleChild's request for records on the basis of its Next of Kin Rule, Respondent offers no support for the Next of Kin Rule in its Post-Hearing Brief.

Under its policy the OCME performs no case-by-case analysis, choosing instead to reject records requests categorically based on its Next of Kin Rule without even considering each requesters' specific "legitimate interest" showing. That decision to limit production of documents to a small subset of individuals over all others who may nevertheless have stronger interests in the decedent's records violates the Equal Protection Clause because no legitimate or rational basis can justify why weaker interests held by certain individuals who are nevertheless within a category under the Next of Kin Rule should prevail over stronger interests held by other individuals who are not within a category under the Next of Kin Rule.

OCME's Next of Kin Rule and its subjective prejudice against AbleChild's presumed intended advocacy in reliance on records requested also violates the First and Fourteenth Amendments because it imposes a speaker-based and viewpoint-based restriction on the use of information. Permitting the government to choose who receives information based on whether the government favors the views of the requester is classic viewpoint discrimination forbidden by the First Amendment. Here OCME has restricted AbleChild's ability to obtain information and, in turn, *disseminate* information based on its assumptions about the type of advocacy AbleChild has planned. At the very core of the First Amendment is the principal that government cannot regulate speech based on government displeasure with the views the speaker may express. *See R. A. V. v. St. Paul*, 505 U.S. 377, 382 (1991) ("the First Amendment generally prevents government from proscribing speech or even expressive conduct because of disapproval of the ideas expressed"). The Supreme Court has held that content-based regulation of speech is

presumptively unconstitutional under the First Amendment. *Simon & Schuster, Inc. v. Members of N. Y. State Crime Victims Bd*., 502 U. S. 105, 115 (1991); *Consolidated Edison Co. of N. Y. v. Public Servo Comm'n of N. Y*., 447 U. S. 530, 536 (1980); *Boos v. Barry*, 485 U.S 312, 313 (1988); *Police Dept. of Chicago v. Mosley*, 408 U. S. 92, 95 (1972). A content-based government speech restriction is subjected to strict scrutiny. To overcome the strong presumption against the constitutionality of government action that gives rise to strict scrutiny, the government must prove that the regulation it has adopted is narrowly drawn and necessary to achieve a compelling government interest. *Boos*, 485 U.S. at 313. No such proof has been offered by the OCME or exists on this record.

Here, the OCME has not shown a compelling government interest in refusing production of Adam Lanza's records to AbleChild, nor has OCME narrowly tailored its restriction to serve a compelling interest by establishing the absence of less restrictive alternatives to outright bans on release of the requested information (such as appropriately selective redaction). The OCME maintains only that the recommendations that will arise from AbleChild if it is given the requested information will be "harmful" to mentally ill patients. *See* Respondents' Post-Hearing Brief, at 10. While on its face that viewpoint discrimination is unconstitutional, OCME's position conflicts with that of a federal agency, the FDA. FDA has recommended that treating physicians weigh risks of increased aggressiveness and suicidality arising from psychiatric medications before prescribing. *See* Complainant Exh. 4 (Attachment F). Respondents also speculate as to the precise nature of AbleChild's recommendations when not even AbleChild knows presently precisely what it will recommend because it has yet received and evaluated the requested records. Because Respondents have offered nothing other than rank speculation to rebut AbleChild's showing of a legitimate interest, the government has not met its burden of

overcoming the strong constitutional presumption against speaker-based and viewpoint-based discrimination.[14]

2. OCME's Exercise of Unbridled Discretion Is Unlawful, Unreasonable and an Abuse of Agency Discretion

The OCME departed from the plain and ordinary meaning of "legitimate interest" and, instead, applied a constricted definition that recognizes "legitimate" interests only for certain members of the public.[15] By creating its Next of Kin Rule in an imperial manner without the required public meeting and notice and comment rulemaking, OCME has assumed unbridled discretion to limit records access under Section 19a-411 of the general statutes upon its momentary whim or caprice. Today it has arbitrarily limited records to those who fall within the narrow category of persons in its Next of Kin Rule, tomorrow, again without public meeting and notice and comment rulemaking, it may decide unilaterally to restrict access even further. Unless its unlawfully promulgated Next of Kin Rule is held illegal, there will be nothing to prevent OCME from internally, *sua sponte,* without a public meeting and without notice and comment rulemaking, from promulgating an even more restrictive rule in future.

That assumption of unilateral rule promulgation authority by OCME exceeds statutory and regulatory limits, is illegal and void, and cannot be upheld or condoned.

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[14] Moreover, as discussed in more detail below, if the OCME feared that release of Adam Lanza's records would lead to public harm, the OCME was then statutorily obliged to seek a protective order under Section 19a-411(c). Moreover, as prior AbleChild submissions to the FOIC in this proceeding establish, OCME's fear is belied by its selective release of autopsy records sought here to certain broadcast and print journalists. *See* Exh. 2 at Ex. 2.

[15] The OCME limits the universe of "legitimate interest" to one or more of the following: "next of kin, attorneys involved in litigation or attorneys handling the estate of the deceased, physicians involved in the patient's care, insurance claims agents, and investigating authorities." *See* Complainant Exh. 2, at Ex. 3.

The OCME was statutorily obliged under Section 19a-411 (and regulatory section 19a-401-12(c)(2)) to produce records to those members of the public possessed of a "legitimate interest" in the records sought. Because OCME's Next of Kin Rule conflicts with and does not fully and faithfully implement the Commission on Medicolegal Investigations duly promulgated regulation in paragraphs 19a-401-12(c)(1) and (2), OCME's Next of Kin Rule is unreasonable and an abuse of agency discretion.

3. OCME's Next of Kin Rule Is Inconsistent With Legislative Intent

Legislative intent is the primary endpoint in statutory interpretation. The Court in *State Bd. of Labor Relations* explained:

> The process of statutory interpretation involves a reasoned search for the intention of the legislature. In seeking to discern that intent, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter.... Furthermore, we presume that laws are enacted in view of existing relevant statutes ... and that statutes are to be interpreted with regard to other relevant statutes because the legislature is presumed to have created a consistent body of law. No part of a legislative enactment is to be treated as insignificant or unnecessary, and there is a presumption of purpose behind every sentence, clause or phrase.... Statutes are to be construed "in a manner that will not thwart [their] intended purpose or lead to absurd results. The law favors a rational statutory construction and we presume that the legislature intended a sensible result.

State Bd. of Labor Relations v. Freedom of Info. Comm'n, 244 Conn. 487, 495 (1998).

Connecticut regulation § 19a-401-12(c)(2) provides access to any "member of the general public" with a "legitimate interest in the documents." *Id.* Section 19a-411(b) specifically states that "no person with a legitimate interest in the records shall be denied access to such records." *See* Conn. Gen. Stat. § 19a-411(b). Here the OCME has *severely* limited who among the general

public may receive access to its records, doing so by categorically excluding the entire public except those with familial or occupational positions favored by the OCME. OCME has not explained why, invariably, all of those in the few specified Next of Kin Rule categories have in every case a "legitimate interest" and why, invariably, all of those not in the few specified Next of Kin Rule categories never have in any case a "legitimate interest." OCME has not explained why an inflexible rule is appropriate for applying the Commission on Medicolegal Investigations' regulation that, by its very terms, requires a case by case approach. Instead, the OCME Next of Kin Rule is inconsistent with law because "withholding information under FOIA cannot be predicated on the identity of the requester." *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 170 (2004); *Bd. of Trustees of Woodstock Acad. v. Freedom of Info. Comm'n*, 436 A.2d 266, 270 (Conn. 1980) (holding that Connecticut courts look to the federal Freedom of Information Act for guidance because "the purpose of the federal act and of [the state] act are virtually identical").

Here OCME's Next of Kin Rule is at odds with the general body of disclosure law because OCME looks at the identity of the requester alone, rather than the nature of the requester's articulated interest in the information. For example, the OCME would release records, under its Next of Kin Rule, "to all parties in civil litigative proceedings."[16] Therefore, attorneys in litigation with even the most remote interest in an OCME autopsy record have a right to access, while nonprofits like AbleChild, with a compelling interest in investigating potential causes of violence and suicide, are categorically excluded. The OCME Next of Kin Rule expressly states that, for individuals not included in OCME's "next of kin" list, "[r]ecords are not otherwise open to the general public." That statement is in direct conflict with the

[16] *See* OCME Website, Frequently Asked Questions, *available at* http://www.ct.gov/ocme/cwp/view.asp?a=2166&Q=295104&ocmeNav=|.

statutory text of Section 19a-411(b), which expressly says "no person with a legitimate interest in records shall be denied." Conn. Gen. Stat. § 19a-411(b).

To the extent OCME argues that only those individuals in its list can be presumed to have a "legitimate" interest, its argument is contrary to legislative intent. Section 19a-411 was designed to work in conjunction with the general Connecticut FOIA law. *Ottochian v. Freedom of Info. Comm'n*, 221 Conn. 393, 398, 604 A.2d 351, 354 (1992) ("[I] t is well established that the general rule under the Freedom of Information Act is disclosure, and any exception to that rule will be narrowly construed in light of the general policy of openness expressed in the FOIA legislation"). That law promotes disclosure and government transparency by, for example, placing the burden on the state to justify why documents should be exempted from disclosure on a case by case basis. *See City of New Haven v. Freedom of Info. Comm'n*, 205 Conn. 767, 775-76 (1988).

When drafting Section 19a-411, the legislature explained that OCME records should be generally available to the "general public." On March 6, 2002, Mitch Pearlman, Executive Director and General Counsel of the Connecticut Freedom of Information Commission, testified before the Administration and Elections Committee and explained that revisions to Section 19a-411 were designed to facilitate disclosure of records, in part, to allay citizen concerns over "instances where the work … on the autopsies brought into questions competence and also malfeasance in office." *See* Connecticut Committee Transcript, GAE 3/6/2002. He explained that Connecticut had a history of disclosing such records. *Id.* ("Prior to around 1984 or '85 when the Supreme Court decision held to the contrary, autopsy reports were available to the public"). Consequently, he explained that revisions to Section 19a-411 would ensure that those records remained public: "as a general principle the Commission feels that because the state has

such a great interest in those situations in which there are possibilities of homicide, suicide, health or environmental concerns, this information should be made public." *See* Connecticut Committee Transcript, GAE 3/6/2002 (explaining that "there are already exemptions in the law under the law enforcement exemptions for withholding information that would harm prosecutions").

Attempting to rebut claims that its Next of Kin Rule conflicts with legislative intent, the Respondent argues that "[e]xamples of … direct bona fide personal interests are found in Regs. Conn. State Ag. § 19a-401-12(c)(4),(e), and (f)." In other words, Respondent claims that Sections (c)(4), (e), and (f) define the universe of "legitimate interests" that are or ever could be found by OCME. Respondent misapprehends the law. Section 19a-401-12(c)(4) is an entirely independent regulatory provision that grants access to OCME records where the "requester of the records is a pro se litigant seeking access to medical records…" *Id.* That independent subpart has no relevance to this case, where the AbleChild proceeded under paragraph (c)(2). Regardless, the text of paragraph (c)(4) actually supports AbleChild's position because it again reinforces that "legitimate interest" is a test independent of the requester's positional status. The regulatory text in paragraph (c)(4) states: "he or she may obtain access to such records if the records are legitimately sought…" *Id.* That would require a separate analysis of "legitimacy" linked to the *reason* for requesting records in litigation, not linked to the status of a requester as a pro se litigant.

Section 19a-401-12(e) has no application here. Paragraph (e) simply states that "[r]equests by attorneys, insurance claims agents or other interested parties, other than the next of kin or persons acting on behalf of the next of kin, should state reasons for which records are required." *Id.* That procedural notice section does not present a defined listing of persons by

occupation or position who are to be deemed exclusively possessed of "legitimate interests." Respondents argue that paragraph (e) contains a list of persons with "direct bona fide personal interests." *See* Respondents' Post-Hearing Brief, at 7. However, paragraph (e) expressly lists "other interested parties" as eligible, thus again defeating Respondents' truncated misreading. Even assuming that paragraph (e) had anything to say about "legitimate interests" (it does not), that list would include AbleChild as an "interested party."

Finally, Section 19a-401-12(f) governs disclosure of records in criminal cases. That paragraph is irrelevant in this case. It provides an independent basis for disclosure in criminal cases, and does not interpret or involve the "legitimate interest" analysis here in issue. AbleChild notes, however, that just like paragraph (c)(2), paragraph (f) also requires the OCME to seek a protective order under Section 19a-411(c) if it wishes to withhold information. Therefore, if anything, the mandatory disclosure section in paragraph (f) suggests that the general public's access in paragraph (c)(2) is broad.

In evaluating statutory language, the courts "begin with a searching examination of the language of the statute, because that is the most important factor to be considered." *See Mandell v. Gavin*, 262 Conn. 659, 667 (2003). Here, the statutory and regulatory language both state that *any* individual with a legitimate interest may obtain OCME records, including autopsy reports. Because the OCME's Next of Kin Rule expressly contradicts that language (and the regulation of the Commission on Medicolegal Investigations on point, Section 19a-401-12(c)(2)) by severely limiting the universe of persons capable of receiving OCME files, the OCME Next of Kin Rule is inconsistent with the plain and intended meaning of the statutes and duly promulgated regulation on point and must therefore be held invalid.

4. OCME's Next of Kin Rule Arbitrarily and Capriciously Limits Disclosure to a Subset of Those with Legitimate Interests

Connecticut courts will overturn or invalidate administrative decisions that are: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *See* Conn. Gen. Stat. § 4-183(j). Even assuming, *arguendo*, that the OCME's Next of Kin Rule was constitutional and lawfully enacted, it would still fail because it is an arbitrary and capricious measure.

The OCME Next of Kin Rule is the definition of "arbitrary" because the OCME promulgated it without any reasoned explanation or supporting facts. *See Hoosier Environmental Council, Inc. v. U.S. Army Corps of Engineers*, 105 F. Supp. 2d 953 (S.D. Ind. 2000) (the term "arbitrary and capricious" is a technical legal phrase meaning an administrative action not supported by evidence or lacking a rational basis); *Nor-Am Agric. Prods., Inc. v. Hardin,* 435 F.2d 1133, 1145 (7th Cir. 1970) (holding that an administrative action not supported by evidence or lacking a rational basis is deemed arbitrary and capricious).

OCME counsel argued that "the legislature uses terms all the time that it doesn't define, and in those cases, where a term is not defined … we follow the common usage."[17] He also argued that the word "legitimate" simply means "real." *Id.* (stating that the word "real" was the "most appropriate" meaning in this case). Respondent has not plausibly explained, however, why AbleChild lacks a legitimate interest of its own, particularly when AbleChild's interest seems fits well within Respondent's own definition of "legitimate."

[17] *See* Hearing Recording, *supra* at 3 (beginning at 1:02.05).

Because the OCME never complied with the UAPA procedural requirements, or offered evidence before the FOIC to support its Next of Kin Rule, the FOIC has no basis to conclude that the OCME's restrictive Next of Kin Rule is at all reasonable. That rule is, in fact, unreasonable, arbitrary, and capricious because it was not lawfully promulgated and "legitimizes" certain interests in records, yet excludes (or renders "illegitimate") other pressing and more compelling interests, all without any factual or evidentiary basis in support. In other words, the OCME has offered no evidentiary support to conclude that AbleChild's interest in Adam Lanza's records is somehow illegitimate when compared to, for example, an estranged family member,[18] treating physician, an insurance claims adjuster, or a civil attorney who may have minimal need for documents in litigation.

CONCLUSION

For the foregoing reasons, and the reasons set forth in AbleChild's complaint, AbleChild respectfully requests that the FOIC overturn OCME's decision to deny access to OCME drug history, toxicology, and autopsy records concerning Adam Lanza and compel the OCME (1) to conduct a thorough search of its records germane to AbleChild's request by a date certain; (2) to give AbleChild a written list identifying all responsive documents it possesses; (3) to turn over to

[18] AbleChild seeks Adam Lanza's records to investigate potential causes of violent criminal behavior associated with certain drugs. As with any investigation of the kind, the ultimate outcome may not lead to substantial findings. It might also, however, help federal and state authorities determine whether additional restrictions on the use of drugs are warranted, thus potentially avoiding future tragedy. The OCME finds that interest illegitimate. Yet, under the "next of kin" policy, its office would apparently provide the same records to an estranged father who had not seen his child in 30 years and only wants records out of personal curiosity. Fortunately, neither the OCME nor FOIC must assess the relative weights of those "legitimate interests" to determine whether records are accessible. As long as an interest is "legitimate," the records are *required* to be produced under Section 19a-411(b). *See* Conn. Gen. Stat. § 19a-411(b).

AbleChild all responsive records by a date certain; and (4) to confirm in writing to AbleChild that its production is accurate and complete in every particular.

DATED this 12th day of September, 2013.

Respectfully submitted,

ABLECHILD

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2013, a copy of the foregoing, **ABLECHILD'S POST-HEARING BRIEF**, was electronically delivered and mailed to the following:

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September 24, 2013

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Re: AbleChild v. Office of Chief Medical Examiner, FIC 2013-197

Dear Hearing Officer Harmon,

AbleChild, by counsel, hereby addresses the Respondent's letter dated September 17, 2013, submitted after both parties had filed post-hearing briefs in this matter, as authorized by the Hearing Officer on August 22, 2013. Respondent justifies its unauthorized letter on the basis that AbleChild's post-hearing brief was in fact a "reply to Respondent's brief." Although that description is in error for the reasons stated below, AbleChild does not object to receipt and consideration of the Respondent's letter, so long as the Hearing Officer also accepts and considers this correspondence in reply. That is fair given that the letter contains a new argument and misstatements of law and fact, which warrant consideration of a reply.

At the hearing on August 22, 2013, the Hearing Officer gave both parties the opportunity to file post-hearing briefs on or before September 9, inviting additional submissions in response to arguments raised at hearing. By her order on September 5, 2013, the Hearing Officer extended the time for filing those submissions to September 13th. Before the deadline for filing, the Respondent filed its brief on September 12, 2013. That brief did not limit itself to the argument concerning jurisdiction that the Respondent raised at hearing. For instance, Respondent expanded its argument to embrace new legal argument concerning the definition and application of the "legitimate interest" standard.

In the interests of due process and fairness, protected by Conn. Agencies Regs. § 1-21j-38, and because the Hearing Officer benefits from a full and complete briefing, AbleChild

respectfully requests that this reply be accepted for consideration along with the Respondent's letter of September 17. Under Section 1-21j-38, AbleChild may, in the hearing officer's discretion, file added exhibits or written testimony as "due process shall require." This submission is in the interests of due process and fairness because it ensures that each party is afforded an opportunity to address each substantive point. We hereby address each of Respondents' points seriatim.

A. Respondent's Position Conflicts with Section 19a-411(b) and Legislative Intent

In its September 17th letter ("Letter"), without citing AbleChild's brief, Respondent claims AbleChild "argue[d] that the use of the phrase 'compelling public interest' in Conn. Gen. Stat. § 19a-411(c) precludes construing the phrase 'legitimate interest' in § 19a-411(b) to mean a compelling interest that is personal, direct, and bona fide." *See* Resp. Letter at 1. Respondent misapprehends AbleChild's argument. On pages 28-30 of AbleChild's post-hearing brief, AbleChild explains that Respondent's definition of the term "legitimate interest" in Section 19a-411(b) is flawed because Respondent defines the term based on an inapposite statute, Section 46b-124(e). *See* AbleChild Post-Hearing Br. at 28-30. AbleChild also explains that one of the two OCME reasons for denying AbleChild's request is prohibited viewpoint discrimination (Respondent submits that it denied the request because, if given the information requested, AbleChild would "harm" society by arguing for a change in psychiatric treatment protocols). *See id.* at 29-30. Even were one to presume OCME correct to engage in such viewpoint discrimination (which the Constitution forbids), Section 19a-411(c) clearly required that the OCME proceed in a court of law to establish whatever "compelling public interest" it thought justified non-disclosure. *See* Conn. Stat. § 19a-411(c). The OCME unlawfully failed to comply with that statutory requirement.

Next, Respondent argues somewhat incoherently as follows: "Because reading §§ 19a-411(b) and (c) to require the chief medical examiner to overcome a showing of a compelling personal interest by a party asserting a legitimate interest in a record with a showing of 'compelling public interest makes sense,' construing 'legitimate interest' to mean a compelling interest of a personal nature is, far from being inconsistent with the use of 'compelling public interest' in § 19a-411(c), complementary and reasonable." *See* Resp. Letter at 1-2. Respondent provides no authority to support this odd elevation of "legitimate interest" to "compelling interest," and with good reason: There is none. Respondent appears to argue that because the Legislature in Section 19a-411(c) used the phrase "compelling public interest" to describe the OCME's burden, it is somehow "complementary and reasonable" (Resp. Letter at 2) to revise upward the lower statutory standard for public requesters of OCME. Respondent would therefore dramatically rewrite the text of Section 19a-411(b) to impose a substantially higher burden on public requesters of OCME information—a burden comparable to the OCME's

admittedly heightened burden in Section 19a-411(c). Neither it nor the FOIC have the power to delete and replace the applicable statutory language.

Respondent argues that this Commission must construe statutes "in pari material [sic]" and, therefore, the FOIC should define "legitimate interest" in Section 19a-411(b) exactly as the courts have defined "legitimate interest" in Section 46b-124. *See* Resp. Letter at 2. Respondent argues, therefore, that "[l]ike § 46b-124, § 19a-411 is a record access and confidentiality statute." *Id.* As AbleChild explained in its post-hearing brief at 28-30 and 42-46, Respondent is relying on the statute governing confidentiality in juvenile records for its argument, a statute having nothing to do with the OCME; rather, the juvenile records statute is predicated on policies, history, and legislative intent far different from those underlying the statutory provisions governing the OCME. Section 46b-124 was designed to protect juvenile court records by preserving a long-standing presumption of confidentiality in records society has traditionally deemed confidential and protected. *See, e.g., In re Jessica*, 25 Conn. L. Rptr. 388, 1999 WL 775753, at *2-3 (Conn. Super. 1999). By contrast, Section 19a-411(b) was designed to follow a long history of public access to autopsy records. *See* Testimony of Mitch Pearlman, Connecticut Committee Transcript, GAE 3/6/2002; *Dep't of Pub. Utilities of City of Norwich v. Freedom of Info. Comm'n*, 730 A.2d 328, 331 (Conn. 1999) (the FOIA statute presumes disclosure); *John Vivo III*, Docket No. FIC 2005-380 (2006) (holding that Section 19a-411 is a state statute construed as a exception—not exemption—from the FOIA and, thus, subject also to general FOIA law). Indeed, the only similarity between the two statutory provisions is simply the phrase "legitimate interest."[1]

[1] That similarity in language alone is an insufficient basis to alter legislative intent or overcome the clear command of Section 19a-411(b)'s mandatory disclosure clause. For instance, the phrase "legitimate interest" appears throughout Connecticut law in many different contexts with meanings unique to each peculiar one. *See Nordlinger v. Hahn*, 505 U.S. 1, 41 (1992) (equating term with "legitimate *state* interest") (emphasis added); *Marinelli v. Medco Health Solutions, Inc.*, 3:13CV199 MPS, 2013 WL 2902908 (D. Conn. June 13, 2013) (equating term with "legitimate *business* interest") (emphasis added); *Stamford Hosp. v. Vega*, 236 Conn. 646, 657, 674 A.2d 821, 828 (1996) (noting that a party has standing if it has "substantial and legitimate interest" in the case); *Dep't of Pub. Safety, Div. of State Police v. Freedom of Info. Comm'n*, 242 Conn. 79, 86, 698 A.2d 803, 807 (1997) (As to FOIA requests, "in the absence of other persuasive evidence, the commission is entitled to presume that the public has a legitimate interest in the integrity of police departments and in disclosure of how such departments investigate and evaluate citizen complaints of police misconduct") (citation omitted); *State v. Barrett*, 43 Conn. App. 667, 676, 685 A.2d 677, 683 (1996) (Finding that a defendant's right of cross-examination under C.G.S.A. Const. Art. 1, § 8, "may bow to other legitimate interests in the criminal trial process"); *DuBois v. William W. Backus Hosp.*, 887 A.2d 407, 414 (Conn. 2005) (For abuse of discovery process, "the sanction of dismissal should be imposed only where it would be the only reasonable remedy available to vindicate the legitimate interests of the other party and the court"). In each of those respective agencies and departments, the courts interpret the term distinctively and it would be plain error to presume the precedent of one agency or department to govern the language used in separate law governing another.

The text of the two statutes also supports the notion that Section 19a-411(b) was intended to encourage disclosure, in sharp contrast with Section 46b-124 which was designed to limit same. In contrast with Section 46b-124, the disclosure provision in Section 19a-411(b) is *mandatory*, stating that the OCME "shall" disclosure records upon a showing of legitimate interest. *See* Conn. Stat. § 19a-411(b). Section 46b-124(e) merely permits disclosure, and even then only upon "order of the court." *See* Conn. Stat. § 46b-124(e) ("[r]ecords of cases of juvenile matters … *may* be disclosed upon order of the court to any person who has a legitimate interest…") (emphasis added). The disclosure clause in Section 19a-411 shifts the burden onto the OCME to show why a compelling public interest would justify non-disclosure. *See* Conn. Stat. § 19a-411(c). By contrast, Section 46b-124(e) places no similar burden on the state but, rather, limits dissemination of juvenile records only to the party named in the Court's order. *See* Conn. Stat. § 46b-124(e). Those dissimilarities reveal that the FOIC should not apply the courts' interpretation of "legitimate interest" in Section 46b-124(e) here simply because those two words also appear in Section 19a-411(b). The purpose, language, and command of the two statutes are entirely different. When construing a statute, the fundamental objective is to ascertain and give effect to the intent of the legislature. *See State v. Solek*, 242 Conn. 409 (1997). The key differences between Section 19a-411(b) and Section 46b-124(e) reveal that, at a minimum, the legislature intended for Section 19a-411(b) to serve as a rule of disclosure, far different from the narrow provision in Section 46b-124(e).

Here, Respondents essentially request that the FOIC project the presumption of confidentiality inherent in juvenile records onto autopsy records, all without offering any support showing that the legislature intended that result. If the FOIC accepts that argument, then the mandatory disclosure provision in Section 19a-411(b) dramatically changes the historically public nature of OCME records, and rewrites the statutory text to contradict the legislative purpose of the general FOIA law.

B. The Respondent Did Not Properly Assess The Interests In This Case

Respondent argues that "the Complainant's contentions amount to a claim that, a decedent's relatives' privacy interests be damned." *See* Resp. Letter at 2. Not so. This case has nothing at all to do with the privacy interests of decedents' relatives generally. This case is about AbleChild's interest in Adam Lanza's records (the shooter's records, not the victims)—the only interest relevant under Section 19a-411(b) and Conn. Regs. 19a-401-12(c)(2). The statute requires no balancing between the interests of the decedents' kin. Even were that so, here Adam Lanza is a mass-murderer whose actions have created a compelling public interest in understanding what he did and why he did it. Lanza injected himself into the public domain by committing murder in a public school. In law we consistently diminish the privacy rights of those who harm the public, particularly when they do so, as here, in ways that beget consequences of grave and far reaching public consequence and concern. *See Ann-Margret v.*

High Soc. Magazine, Inc., 498 F. Supp. 401, 405 (S.D.N.Y. 1980) ("[Privacy rights can be severely circumscribed as a result of an individual's newsworthiness… once a person has sought publicity he cannot at his whim withdraw the events of his life from public scrutiny") (internal citations omitted); *Cantrell v. Am. Broad. Companies, Inc.*, 529 F. Supp. 746, 757 (N.D. Ill. 1981) ("It was important to the court that the plaintiff became and remained a public figure because of his criminal conduct … as a result, no right of privacy attached to matters associated with his participation in that widely publicized crime"); *Branson v. Fawcett Publications*, 124 F. Supp. 429, 433 (E.D. Ill. 1954) ("No doubt one who is a public figure, whether he seeks the public eye or not, waives the right of privacy as to all newsworthy publications"). Moreover, Respondent provided no delineation or definition of the "privacy rights" that Adam Lanza's family is said to possess. Respondent has not explained how the precise information AbleChild seeks would somehow invade the privacy interests of family members. They have no defined interest in Lanza's toxicology, autopsy, and drug history records in the absence of Lanza and, certainly, if they can articulate some interest it is far less weighty than the interest of AbleChild and other members of the public in finding answers to Lanza's murderous rampage. Put simply, the fact that Respondent would withhold information about a decedent in this exceptional case only supports AbleChild's argument that, under the OCME's strict rule, only certain individuals can ever obtain such records regardless of the interests involved. To reiterate, if the OCME truly thought that disclosure would infringe on Lanza's relatives' privacy interests, Section 19a-411(c) provided the proper means to assert those interests on behalf of his family and that would be in a court of law.[2] OCME chose not to abide by that statutory requirement and, instead, by dictatorial rule forbid release without answering to any review authority.

The Respondent summarily dismissed AbleChild's request based on the OCME's opinion that AbleChild's mission and purpose is "fictional." *See* Resp. Letter at 3 (stating that AbleChild's structure "undermine[s] any claim that the Complainant's interest in the requested records is real, genuine or bona fide rather than fictional"). The Respondent therefore ignores the case-by-case analysis required by the Connecticut Courts, and rests its argument on nothing more than overt prejudice, clinging to unconstitutional speaker-based and viewpoint-based discrimination. *See Ottochian v. Freedom of Info. Comm'n*, 604 A.2d 351, 354 (Conn. 1992) ("When the legislature uses a broad term ... in an administrative context, without attempting to define that term, it evinces a legislative judgment that the agency should define the parameters of that term on a case-by-case basis").

[2] Perhaps startling to those families in Newtown, particularly the 263 residents who signed AbleChild's petition for the release of Lanza's records (*see* AbleChild Ex. 3), Respondent here argues that "[i]f nothing else, we still in this country accord respect to the person of decedents … regardless of the circumstances of their death." *See* Resp. Letter at 3. Thus, by failing to balance the interests in this case, the OCME has prioritized the privacy interests of decedent Adam Lanza, a mass murderer, over the interests of society and Lanza's victims in discovering information related to Adam Lanza's heinous crime.

Moreover, far from fictional, AbleChild is an organization representative of the interests of those with the most at stake, parents and caregivers of children who suffer from mental illness. For more than 10 years AbleChild has worked to "raise public awareness regarding the psychiatric labeling and drugging of children, and the risks of mandatory mental health screening."[3] AbleChild has "champion[ed] human rights to protect all children and teens by disseminating all necessary information to educate parents and caregivers on the real risks of psychotropic drugs on children and inform them of alternative resources for behavior and attention issues." *Id.* Investigating the use of drugs in violent crime is an integral part of AbleChild's mission. Moreover, far from "fictional," AbleChild's mission is buoyed by the FDA's decision years ago that psychiatric drugs do, in fact, create heightened risk of violence and suicidality in adolescents and young adults. *See generally* AbleChild Ex. 4. Respondent has not countered any of that evidence.

In addition, Respondent depends on a false syllogism. In its September 17 letter at 2-3, Respondent argues that because most children do not commit suicide, we should ignore those instances where drugs have resulted in suicidal behavior. Thankfully the FDA did not adopt that false logic, choosing instead to mandate black box warnings of the potential of psychiatric drugs to cause an increase in thoughts of violence and suicide.

Moreover, here the Respondent's argument is contradicted by its own selective release of information. As explained, Respondent has selectively leaked to certain media information sought by Able Child. The OCME therefore (1) refused to provide AbleChild information based on specious reasoning and an unlawful definition of "legitimate interest"; (2) released a subset of that same information to select media outlets that had no formal request pending under Section 19a-411(b); and then (3) claimed that the limited information released to *other parties* undercuts AbleChild's very interest in seeking those records *ab initio*. Upholding the Respondent's selective non-disclosure under Conn. Agencies Regs. § 19a-401-12(c)(2) would fundamentally change and defeat the Connecticut public records law by giving the OCME blanket discretion to decide based on nothing more than rank bias who may receive information in its possession, an authority the legislature expressly denied OCME in Section 19a-411(b).

C. Respondent misconstrues AbleChild's Meritorious Constitutional Claims

The Respondent fails to grasp AbleChild's constitutional arguments. The core purpose of the First Amendment was to prevent government censorship based on government valuation of the content of proposed speech. Yet that is exactly what OCME admits to doing in this case. The OCME disagreed with AbleChild's mission, and the OCME opposed the conclusions it expects AbleChild will reach and the advocacy AbleChild will engage in if given Lanza's records. Thus, the OCME rejected AbleChild's request on grounds that its mission was

[3] *See* AbleChild website, "Our Mission," *at* http://ablechild.org/about-us/mission-statement/.

illegitimate or, as Respondent put it, "fictional." *See* Resp. Letter at 3. The OCME therefore assessed AbleChild's request for records not based on AbleChild's explanation of its legitimate interest in those records, but on its assumptions about who AbleChild is and what AbleChild advocates. That violated the First Amendment. Government action that censors based on the speaker's viewpoint is presumptively unconstitutional, subject to strict scrutiny. *See Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 115 (1991); *Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 530, 536 (1980); *Boos v. Barry*, 485 U.S. 312, 313 (1988); *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).

Respondent has failed to submit, let alone acknowledge, its need for establishing a compelling state interest in non-disclosure, choosing instead to argue (incorrectly) that "neither the First Amendment nor the Fourteenth Amendment mandates a right to access [sic] to government information or sources of information within the government's control." Resp. Letter at 3. To the contrary, the First Amendment protects individuals from arbitrary acts of speaker based and content based discrimination, where an agency, like OCME, selectively reveals information to those it favors while selectively withholding information from those it does not, as AbleChild has explained in prior briefing.[4] *See* AbleChild Ex. 2, at 12-14; *Brazburg v. Hayes*, 408 U.S. 665, 681 (1972) ("without some protection for seeking out the news, freedom of the press could be eviscerated"); Vincent Blasi, *The Checking Value in First Amendment Theory*, 1977 Am. Bar Found. Research J. 521 (1977); ALEXANDER MEIKLEJOHN, POLITICAL FREEDOM: THE CONSTITUTIONAL POWERS OF THE PEOPLE (Greenwood Press 1979); William J. Brennan, Jr. *The Supreme Court and the Meiklejohn Interpretation of the First Amendment*, 79 Harv. L. Rev. 1 (1965).[5] The First Amendment prohibits government discrimination based on the speaker's message. *R.A.V. v. St. Paul*, 505 U.S. 377, 382 (1991) ("the First Amendment generally prevents government from proscribing speech or even expressive conduct because of disapproval of the ideas expressed"). Furthermore, when government discriminates against a citizen in a way that infringes fundamental rights, the government violates the Equal Protection

[4] Ironically, the OCME's definitional rule that limits "legitimate interests" to a select few does not focus on the use of records once received by those eligible parties. *See* OCME Website, FAQ, *at* http://www.ct.gov/ocme/cwp/view.asp?a=2166&Q=295104&ocmeNav=|. For instance, the OCME would provide access to "treating physicians" regardless of the intended use of those records by the physician. *Id.* The physician could therefore request records solely to investigate whether antidepressant drugs were a causal factor in the patient's suicide, and the OCME would provide those records under its rule. Therefore, in addition to viewpoint discrimination, the OCME's rule unconstitutionally discriminates based on the identity of the speaker without any compelling reason.

[5] *See also see also Capital Cities Media, Inc. v. Chester*, 797 F.2d 1164, 1184-86 (3d Cir. 1986) (discussing "checking value" of First Amendment); *National Magazine v. U.S. Dept. of Defense*, 762 F.Supp. 1558, 1572 (S.D.N.Y. 1991) (same); *Herbert v. Lando*, 441 U.S. 153, 185 n.4 (1979) (discussing application of "checking value"); *Mills v. Alabama*, 384 U.S. 214, 219 (1966) (stating "[T]he press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials . . . Suppression of the right of the press to praise or criticize governmental agents and to clamor and contend for or against change . . . muzzles one of the very agencies the Framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free").

Clause of the Fourteenth Amendment unless its actions survive strict scrutiny. *Kerrigan v. Comm'r of Publ. Health*, 289 Conn. 135, 144, 158 (2008). The exercise of free speech is a fundamental right. *See De Jonge v. State of Oregon*, 299 U.S. 353, 364 (1937) ("Freedom of speech and of the press are fundamental rights which are safeguarded by the due process clause of the Fourteenth Amendment of the Federal Constitution").

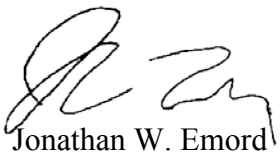
Rather than perform its statutory function by recognizing that AbleChild had established a legitimate interest in the requested records, the OCME went far afield, basing its denial in part on the unconstitutional basis of its disdain for the requester and its opposition to the views it presumed AbleChild would advocate based on the information requested.

In its September 17 letter, Respondent unabashedly adds to its record of unconstitutional speaker-based and content-based discrimination, stating that it rejected AbleChild's request because the OCME had a subjective opinion that AbleChild's use of information would "exploit a handful of particularly violent and highly publicized incidents to advance its declared goal of ridding the educational system of psychotropic medications…" Resp. Letter at 2-3.

Even assuming such overt discrimination a lawful rationale for non-disclosure (it is not),[6] the OCME's repeated assertion of such speaker-based and content based discrimination violates the First and Fourteenth Amendments. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 49 (1983) ("the courts may not accept appellate counsel's post hoc rationalizations for agency action"); *Manin v. Nat'l Transp. Safety Bd.*, 627 F.3d 1239, 1243 (D.C. Cir. 2011) ("the law does not allow us to affirm an agency decision on a ground other than that relied upon by the agency").

Accordingly, for the foregoing reasons and those stated in AbleChild's post-hearing brief, the FOIC should grant AbleChild's complaint, reverse the OCME's decision, and order the release of the requested records of decedent Adam Lanza.

Sincerely,



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[6] *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 49 (1983) ("the courts may not accept appellate counsel's post hoc rationalizations for agency action"); *Manin v. Nat'l Transp. Safety Bd.*, 627 F.3d 1239, 1243 (D.C. Cir. 2011) ("the law does not allow us to affirm an agency decision on a ground other than that relied upon by the agency").

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