

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
David Obarowski,

FINAL DECISION

Complainant

Docket #FIC83-5

against

September 21, 1983

Department of Health  
Services of the State of  
Connecticut,

Respondent

The above captioned complaint was heard as a contested case on April 11, 1983, at which time the complainant and the respondent appeared and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record the following facts are found:

1. The respondent is a public agency within the meaning of §1-18a(a), G.S.
2. By letter dated December 21, 1982, the complainant made a request of the respondent for access to inspect and copy records with respect to the performance of abortions in Connecticut institutions.
3. The complainant's request was denied by letter dated December 27, 1982, based upon §19-6a, G.S. and "a 1981 Hartford Superior Court decision."
4. By letter dated January 19, 1983, the complainant renewed his request, referring to the December 27, 1982 denial:

Whereas that denial only addressed the disclosure of Form MCH-155, and whereas my request addressed all abortion-related records, please find this as a renewal of that request to inspect and copy all other records kept on file by the Department with respect to the performance of abortions in Connecticut.

Further, it is my understanding that the Department's refusal to disclose Form MCH-155 in its entirety is based upon contentions that the disclosure of certain information on that form would compromise specified state interests. Therefore, please find this as a request to inspect and copy all copies of Form MCH-155 on file with the Department, with Item B, "Date of

Induced Abortion", and Item H, "Known Medical Complications Resulting from Procedure(s)" of that form deleted therefrom.

Please know that this request is made without waiver of any rights I may have with respect to the inspection and copying of Form MCH-155 in its entirety.

5. By letter of complaint filed with the Commission on January 26, 1983, the complainant alleged that the respondent had failed to provide him with the requested access, and requested a hearing on the matter pursuant to §1-21i(b), G.S.

6. On January 27, 1983 the complainant and the respondent agreed to extend until February 2, 1983 the deadline for a response from the respondent to the complainant's request.

7. By letter dated March 1, 1983 the respondent denied the complainant's request to inspect and copy all copies of Form MCH-155 with items B and H deleted. The respondent stated that the only other record kept on file with respect to the performance of abortions was an annual statistical summary of legal induced abortions occurring in Connecticut. The respondent enclosed copies of the summaries for the calendar years 1977 through 1981.

8. At hearing, the issue of additional records was raised, but no evidence relating to the disclosability or existence of additional records was presented at the time. At the close of the hearing the parties understood that an additional hearing might become necessary if they were unable to reach an agreement regarding any such additional records. By letter dated May 31, 1983 the complainant informed the Commission that, based upon assurances from the respondent's counsel, a second hearing would not be necessary. The complainant requested, however, that his right to request such a hearing in the future be reserved.

9. Form MCH-155 is filed pursuant to §19-13-D54(b) of the Regulations of Connecticut State Agencies, which provides as follows:

All induced abortions will be reported within seven days by the physician performing the procedure to the state commissioner of health who will maintain such reports in a confidential file and use them only for statistical purposes except in cases involving licensure. Such reports will specify date of abortion, place where performed, age of woman and state of residence, approximate duration of pregnancy, method of abortion, explanation of any complications, name and address of the physician. The name of the woman will not be given. These records will be destroyed within two years after date of receipt.

10. One of the "statistical purposes" of the MCH-155 form is its use by the respondent's Maternal and Child Health section for use in its "Rh" program. That program involves the monitoring of hospitals and clinics to ensure that globulin is being provided.

11. The MCH-155 form also assists research analysts in their monitoring of maternal mortality, adolescent pregnancies, and mortality and morbidity in babies of adolescent mothers.

12. §19a-25, G.S., provides as follows:

Confidentiality of records concerning morbidity and mortality. All information, records of interviews, written reports, statements, notes, memoranda or other data, . . . procured by the department of health services or by staff committees of facilities accredited by the department of health services in connection with studies of morbidity and mortality conducted by the department of health services or such staff committees, or carried on by said department or such staff committees jointly with other persons, agencies or organizations, for the purpose of reducing the morbidity or mortality from any cause or condition, shall be confidential and shall be used solely for the purpose of medical or scientific research. Such information . . . [shall not] be exhibited or its contents disclosed in any way, in whole or in part, . . . except as may be necessary for the purpose of furthering the research project to which it relates . . . This section shall not be deemed to affect disclosure of regular hospital and medical records made in the course of the regular notation of the care and treatment of any patient, but only records or notations by such staff committees pursuant to their work.

13. It is found that the MCH-155 form was not created specifically for the Rh program, nor was it created specifically for the purpose of monitoring maternal mortality.

14. It is found, however, that the information is procured by the respondent in connection with studies of morbidity and mortality for the purpose of reducing the morbidity and mortality from the performance of abortions.

15. It is therefore found that the MCH-155 form is exempted from disclosure by §1-19(a) and 19a-25, G.S.

16. In view of the statutory exemption of the records in question, the Commission need not address other bases for non-disclosure raised by the respondent, such as the possibilities of a chilling effect on doctors performing abortions and of the invasion of privacy of women upon whom abortions are performed.

The following order by the Commission is hereby recommended on the basis of the record concerning the above captioned complaint:

1. The complaint is hereby dismissed.

Approved by order of the Freedom of Information Commission at its regular meeting of September 14, 1983.

  
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Mary Jo Jolicœur  
Clerk of the Commission