

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
Joan Barbuto and the Jackson  
Newspapers,

FINAL DECISION

Complainant(s)

Docket #FIC84-79

against

Commissioner of the Connecticut  
Department of Consumer Protection;  
Deputy Commissioner of the  
Department of Consumer  
Protection, and Connecticut  
Department of Consumer Protection

April 24, 1985

Respondent (s)

The above captioned matter was heard as a contested case on June 25, 1984 at which time the complainants and the respondents 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 section 1-18a(a), G.S.
2. On April 11, 1984 the complainant requested to inspect or copy certain records:
  - A. The names and addresses of physicians arrested in the last five years on charges of violating drug or controlled substance laws enforced by the Department of Consumer Protection.
  - B. The charges against each of the arrested physicians including specific factual description of each violation and a citation of the statute(s) under which each was charged. The date of the arrest, the arresting agency disposition of each charge.
  - C. An explanation of why the case against Dr. Milton Unger was resolved informally and the same information regarding Dr. Unger as was requested at (B) above.

- D. An opportunity to inspect or copy all information in the files of the Department of Consumer Protection concerning physicians whom it has investigated against whom the cases have been closed.
- E. An opportunity to inspect or copy all information about the arrested physicians and Drs. Milton Unger, David D. Roberts, Joyce E. Millette, Boris Pukay, John J. Parks, George A. Little, Richmand C. Hubbard, Harvey L. Fritz, and Barry M. Winters.

3. In addition to information received from the respondent that 13 physicians had been arrested for violations of controlled substance laws the complainant had established through sources outside the respondent department and by inspection of records at the health department that 30 to 40 physicians had surrendered their controlled substance registration certificates and that between 13 and 20 physicians had been subject to arrest in the last five years.

4. The respondent supplied copies of the following records to the complainant; complaints and consent orders containing agreements to suspend certificates of registration for Doctors Winters, Roberts and Little; consent orders only for Doctors Pukay and Hubbard; complaints for Doctors Unger and Fritz; and affidavit from Doctor Unger, and a decision and final order for Doctor Joyce E. Milette, and copies of all voluntary surrenders of certificates.

5. Sections 1-15, G.S. and 1-19(a), G.S. provide that any person is entitled to inspect or copy public records provided such records are not exempted from disclosure by state statute or federal law.

6. It is found that insofar as the information sought by the complainant is contained in a public record which is not otherwise exempt from disclosure that she is entitled to inspect or copy such records, however, she is not entitled under the law to require that the respondents answer questions.

7. The respondents base their denial of access to inspect or copy records on the exemption for disclosure of records at §1-19(b)(10), G.S. which exempts records, reports and statements exempted by state statutes.

8. The respondents claim that the documents are specifically exempted from disclosure by §54-142a, G.S.; and §21a-274; and §21a-306 G.S.

9. The respondent refused to disclose any records pertaining to 9 of the 13 doctors who it admitted were arrested in the last five years on charges of violating drug or controlled-substance laws enforced by the Department of Consumer Protection because the "physicians to the best of the department's knowledge were granted

accelerated rehabilitation pursuant to §54-56e of the general statutes."

10. Section 54-56e, G.S. provides in relevant part that there shall be a pretrial program for accelerated rehabilitation and that if a defendant successfully completes a period of probation under the program that he may apply for dismissal of the charges against him. Upon dismissal all records of such charges shall be erased pursuant to §54-142a, G.S.

11. Section 54-142a provides in turn that

Whenever in any criminal case, on or after October 1, 1969, the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be erased upon the expiration of the time to file a writ of error or take an appeal, if an appeal is not taken, or upon final determination of the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken.

12. It is found that even if the statutes which set up accelerated rehabilitation did create an exemption from disclosure, that the respondent failed to prove that the physicians whose records were sought had been granted accelerated rehabilitation.

13. The respondent also based its denial of the complainant's request on §21a-306 and §21a-274, G.S.

14. Section 21a-306, G.S. provides

Information received by the department of health services, state department of consumer protection or commission of pharmacy through filed reports, inspection or as otherwise authorized under chapters 382 and 418 and this chapter shall not be disclosed publicly in such a manner as to identify individuals or institutions, except in a proceeding involving the question of licensure or right to practice.

15. Section 21a-274, G.S. provides for cooperation and the exchange of information pertaining to the enforcement of laws governing controlled substances between the commissioners of consumer protection, and health services, the states attorneys and law enforcement officers.

16. Section 21a-275, G.S. authorizes the Commissioner of Consumer Protection to hold hearings to determine whether a person is violating §21a-242 to 21a-282, G.S. inclusive.

17. It is concluded, however, since no hearings have been held by the respondents pursuant to powers granted under §21a-275 within the last five years that none of the records generated by these proceedings fall within the scope of the complainant's request.

18. Section 21a-317, G.S. requires any physician who prescribes, administers, or dispenses controlled substances to obtain a certificate or registration from the Commissioner of Consumer Protection.

19. Section 21a-322, G.S. permits suspension or revocation of registration for sufficient cause by the Commissioner.

20. Prior to suspending or revoking a registration the respondent Commissioner of Consumer protection holds two types of hearings.

21. The first type of hearing is held pursuant to §4-182 (c) which provides that:

No revocation, suspension, annulment or withdrawal of any license is lawful unless prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for retention of the license. If the agency finds that public health, safety or welfare imperatively require emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

22. The respondents call this first type of hearing a compliance meeting.

23. The compliance meeting is tape recorded.

24. The documentation considered at the meeting consists of the letter of notification which has been presented to the practitioner calling for compliance with the law, a report of the investigation pertaining to the practitioner which has been presented to the hearing officer, and any documentary evidence offered.

25. At the conclusion of this proceeding the hearing officer recommends either that no further hearing be held or that a hearing on a formal complaint held pursuant to §21a-323g.

26. Section 21a-323, G.S. provides that

Before denying, suspending or revoking a registration, the commissioner shall afford the applicant an opportunity for hearing in accordance with the provisions of chapter 54. Notice of such hearing shall be given by certified mail.

27. It is found that hearings conducted pursuant to §4-182(c), or pursuant to §21a-323, G.S. are proceedings which involve the question of licensure or the right to practice.

28. It is concluded that although 21a-306 exempts from disclosure information received by the department of health services through filed reports inspection, or as otherwise authorized by Chapters 382 and 418; nonetheless documents generated for hearing proceedings pursuant to §4-182(c) G.S. or §21a-323, G.S. including but not limited to the record in such proceedings (including tape recordings), any notice or complaint, any reports, and any decision or agreements which result from the initiation of such proceedings are not exempt under §21a-306, G.S.

29. It is further found that §21a-274, G.S. does not create any exemption to disclosure for the records maintained by the respondent.

30. It is concluded, therefore, that the complainant is entitled to inspect or copy any and all non-exempt records pertaining to the physicians who were arrested for controlled substance violations within the last five years which are not specifically exempted by §21a-306.

31. It is further concluded that since the scope of the complainant's request included not only physicians who were arrested but also those who were investigated and with respect to whom cases were closed, the complainant is entitled to inspect or copy non-exempt documents in those cases also.

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

1. The respondent shall provide the complainant with access to inspect and or receive a copies of the records which are not exempt from disclosure under §21a-306 which were requested in her letter of April 11, 1984.

Approved by order of the Freedom of Information Commission at its regular meeting of April 24, 1985.

  
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Mary Jo Policoeur  
Clerk of the Commission