DOCKET NO. HHB-CV23-6077479-S	:	SUPERIOR COURT
AVIVA STAHL; SETH WESSLER, *Plaintiffs*	: :	JUDICIAL DISTRICT OF NEW BRITAIN
v.	:	AT NEW BRITAIN
FREEDOM OF INFORMATION COMMISSION; COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION; STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION, *Defendants*	: : : : :	DECEMBER 5, 2024

MEMORANDUM OF DECISION

This administrative appeal arises from a case brought against the department of correction (the department) before the freedom of information commission (the commission). The plaintiffs sought a variety of records of inmates held by the department relating to their mental health.

After the plaintiffs filed their case with the commission, the parties attempted a resolution. The commission's hearing officer in his proposed decision of October 31, 2022 also ordered other records disclosed. The commission approved of the hearing officer's decision on November 16, 2022.

The plaintiffs have brought an administrative appeal to this court from one part of the commission's final decision. Before the court are two issues:

1. The department claims that the plaintiffs are not aggrieved, and

2. The plaintiffs claim that the department and the commission erred in the denial of

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Electronic notice sent to all counsel/record:
1) D. Schulz (Pltf.), 2) J. Hyde (Dft) 3) L. Moore and S. Barry (DOC)
FOIC A. Jordanopoulos, Chief Counsel 12/5/24

the medical records that it sought. These medical records could have been edited not to bear the name of any inmate; they could have been rendered anonymous.

Turning to the issue of plaintiffs' lack of aggrievement, as raised by the department, § 4-183 (a) requires that the plaintiffs must show a specific personal and legal interest in the subject matter of the decision, as distinct from a general interest such as a concern of all members of the community as a whole, and the plaintiffs must prove that the personal and legal interest has been specifically and injuriously affected by the commission's decision on appeal herein. *Cannavo Enterprises* v. *Burns*, 194 Conn. 43, 47 (1984).

The commission's hearing officer held that the plaintiffs' request failed as to certain de-identified medical records. On page 11 of the department's brief, the department contends: "As Plaintiff has no legal or equitable right to de-identified exempt records, they lack standing and cannot satisfy their burden of proof with respect to aggrievement."

The court rejects the department's contention and holds that the plaintiffs have the necessary aggrievement. With regard to administrative appeals from a final decision of the commission, our Supreme Court has resolved the issue of aggrievement in *State Library* v. *Freedom of Information Commission*, 240 Conn. 824 (1997).

In *State Library*, the Supreme Court did not require the plaintiff to demonstrate that it would prevail *before* finding aggrievement. Aggrievement was found because, as here, the plaintiff did not succeed in a favorable order from the commission. The denial of the plaintiffs' request by the commission's hearing officer thus proves that aggrievement exists. This was injurious to the plaintiffs for the purposes of aggrievement. *Freedom of Information Officer* v.

Freedom of Information Commission, 318 Conn. 769 (2015).

Turning to the merits, the plaintiffs were turned down by the hearing officer as to records of 281 inmates. The hearing officer found these records exempt from disclosure based on § 1-210 (b) (10) referring to, among others, the physician-patient privilege, the psychiatric-patient privilege, and a privilege relating to HIV.

The hearing officer then ruled on the plaintiffs' claim that by de-identifying the names of the inmates, the privileges preventing release of the records were resolved. The commission concluded as follows in the final decision:

> "58. The complainants contended that even if the requested health records are determined to be privileged, the respondents nevertheless are required to redact all identifying information contained therein, and to disclose such redacted records.
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> 59. Of the statutory privileges claimed by the respondents, only the psychiatrist-patient privilege set forth in § 52-146e (a), G.S., on its face permits disclosure of de-identified records. Specifically, as set forth in paragraphs 40 and 41, above, § 52-146e (a), G.S., prohibits disclosure of 'communications and records or the substance or any part or resume thereof which identify a patient. . . .' (emphasis added). Pursuant to § 52-146d, G.S., communications and records 'identify a patient' if they 'contain (A) names or other descriptive data from which a person acquainted with the patient might reasonably recognize the patient as the person referred to. . . .' (emphasis added). The other privileges claimed do not contain any language that may be construed to permit disclosure of de-identified records. Accordingly, it is concluded that §§§§ 52-146c, 52-146q, 52-146o, and/or 52-146s, G.S., do not permit disclosure of de-identified health records.
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> 60. However, even if disclosure of de-identified health records were permitted, based on a careful review of the in camera records, it is found that the requested health records cannot be redacted in accordance with the standard set forth in § 52-146e (a), G.S. In particular, because of the nature and extent of the information contained in the requested health records, combined with the information previously disclosed to the complainants about the deceased inmates, it is found that the requested health records cannot be redacted to ensure that they do not contain information from which a person acquainted with the patient might reasonably be able to recognize the patient as the person referred to. Accordingly, it is found that the respondents are not required to

disclose to the complainants redacted copies of the requested health records."

This administrative appeal followed.

The plaintiffs' administrative appeal from the final decision must be reviewed under the following standard:

"The standard of review applicable to agency decisions under the UAPA is well established. 'Our review of an agency's factual determination is constrained by . . . § 4-183 (j), which mandates that a court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. . . . [I]t is [not] the function of the trial court [or] of this court to retry the case. . . . An agency's factual determination must be sustained if it is reasonably supported by substantial evidence in the record taken as a whole. . . . Substantial evidence exists if the administrative record affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . This substantial evidence standard is highly deferential and permits less judicial scrutiny than a clearly erroneous or weight of the evidence standard of review.' (Internal quotation marks omitted.) *Board of Education* v. *Commission on Human Rights and Opportunities*, 266 Conn. 492, 504-504, 832 A.2d 660 (2003)."

"Even with respect to conclusions of law, '[t]he court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of it discretion. . . . [Thus] [c]onclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from

such facts.' (Internal quotation marks omitted.) *Meriden* v. *Freedom of Information Commission*, 338 Conn. 310, 318-19, 258 A.3d 1 (2021)."

Commissioner of Mental Health and Addiction Services v. *FOIC*, 347 Conn. 675, 688 (2023); *Town of Greenwich* v. *FOIC*, 226 Conn. App. 40, 55 (2024).

Regarding de-identification and its effect on privileges, the plaintiffs argue that this resolves issues with release of the records under FOIC. They argue that such privileges must be construed narrowly. They argue such construction will benefit a potentially injured class - inmates under the supervision of the department with medical disabilities.

The court, however, construes such privileges that prohibit release broadly, not narrowly. These privileges were placed in the statutes to protect the public through a veil of secrecy. *Freedom of Information Officer* v. *Freedom of Information Commission*, 318 Conn. 769, 791 (2015).

In addition, the court concludes that each common law and statutory privilege should be considered similarly. The psychiatric-patient privilege § 52-146g (b) has an exception for researchers, but this does not mean that de-identification is impliedly approved.

The substantial evidence doctrine requires that the hearing officer look at the record. The hearing officer in this case looked at thousands of exemplars. She saw that in the prison context de-identification was insufficient. She concluded that redaction or de-identification would not solve the possibility that a recipient of a record would recognize the de-identified individual.

The legislature was very concerned that stopping a revelation of person's mental health, serious physical injuries or AIDS history called for legislative protection. The hearing officer

properly concluded that de-identification was an inadequate protection for those seeking the records of these wards of the department.

The cases cited by the plaintiffs do not resolve the issue of de-identification and the commission. In *Fischer* v. *Hartford Hospital*, Judicial of Hartford, Docket No. CV0569702 (Jan. 23, 2002), the court ordered the hospital to release records after redaction. This is not a case arising out of the freedom of information act. More importantly the court did not have to consider the issue of whether non-parties would be able to identify the patient from the redacted records.

In *Commissioner of Mental Health* v. *Freedom of Information Commission*, 347 Conn. 675 (2003), the Supreme Court majority found that the police report in question was not a privileged hospital record. In any case, the court ordered redactions before disclosure.

Lacking Connecticut precedent, two cases from the New York Appellate Division appropriately illustrate that the position taken by the commission's hearing officer was correct. In *Thomas* v. *New York City Department of Education*, 962 N.Y.S. 2d 29 (2013), a school teacher sought records on the possible misuse of federal funds. The case was remanded to the trial court "for an in camera inspection of the documents to determine if redaction could strike an appropriate balance between personal privacy and public interests and which material could be properly disclosed." *Id.* at 33. The hearing officer in the pending case reviewed numerous records and concluded that the de-identification would not resolve the privacy claims of inmates regarding these records.

The issue of de-identification was raised in the recent case of *Gruber* v. *Suffolk County*

Board of Elections, 192 N.Y.S. 3d 657 (2023). A defeated candidate sought to obtain from a freedom of information commission a prior ballot cast by the successful candidate. His intent was to demonstrate that the prevailing candidate did not vote for Donald Trump in the prior election, but had case his vote for his father as a write-in instead.

The Appellate Division affirmed the trial court that had approved of a freedom of information decision refusing to order the election board to produce the record. This was an attempt to violate the privilege of the secrecy of the ballot. In addition: "the ballot can be identified *despite facial anonymity*."

In the plaintiffs' appeal, protections of privilege outweigh the goals sought in the release of the records, and making the records anonymous does not sufficiently correct the legislative concern for privacy.

For the foregoing reasons, the appeal is dismissed.

So Ordered.

Henry S. Cohn, JTR