

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Ryan Sullivan,

Complainant

against

Docket #FIC 2022-0210

Commissioner, State of Connecticut,
Department of Public Health; and
State of Connecticut, Department of
Public Health,

Respondents

April 26, 2023

The above-captioned matter was heard as a contested case on September 21, 2022, at which time the complainant and the respondents appeared and presented testimony, exhibits, and argument on the complaint.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that, by letter dated April 11, 2022, the complainant requested that the respondents provide him with copies of the following records:
 - . . . the complete investigative report, and any related documents, memorandum, complaints or findings, prepared or received by the Connecticut Department of Public Health concerning a food-borne illness or outbreak at Gerry's Donuts, located at 180 Windsorville Road, Ellington, Connecticut, in May 2021.
3. It is found that, by email dated April 12, 2022, the respondents acknowledged the request.
4. It is found that, by email dated May 12, 2022, the complainant inquired into the status of his request.
5. It is found that, by email dated May 12, 2022, the respondents denied the request.

6. By letter of complaint, dated and filed May 12, 2022, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with copies of the records referenced in paragraph 2, above.

7. Section 1-200(5), G.S., provides:

“[p]ublic records or files” means any recorded data or information relating to the conduct of the public’s business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

8. Section 1-210(a), G.S., provides, in relevant part:

[e]xcept 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 are required by any law or by any rule or regulation, shall be public records and every person shall have the right to ... (3) receive a copy of such records in accordance with section 1-212.

9. Section 1-212(a), G.S., provides, in relevant part: “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

10. It is found that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

11. It is found that, on or around May 14, 2021, the North Central District Health Department (“NCDHD”), a local health department, issued a warning due to the receipt of several reports of gastrointestinal illness from individuals who recently consumed donuts and other products from Gerry’s Donuts in Ellington, Connecticut. It is found that the warning explained that Gerry’s Donuts was closed while the NCDHD investigated the cause of the illness. The warning cautioned that customers who still had products should not consume or serve them and should discard them immediately and that anyone experiencing symptoms should consult a healthcare provider. It is further found that it was ultimately determined that the outbreak was caused by norovirus.

12. At the contested case hearing, the complainant contended that the investigation was conducted pursuant to the provisions of §19a-36k, G.S., and, as such, the requested records are not exempt from public disclosure. The complainant further contended that, even if the provisions of §19a-215, G.S., applied in this case, the respondents should only be permitted to redact the personal information contained in the responsive records gathered or created by the

respondents in connection with their investigation. In response, the respondents contended that the investigation was conducted pursuant to §19a-215, G.S., and, as such, the requested records are exempt from disclosure in their entirety.

13. Section 19a-36k, G.S., provides, in relevant part that:

If a director of health has reasonable cause to suspect the possibility of a food-borne illness or food-borne outbreak, such director shall complete an investigation and take action to control the illness or outbreak. Such action may include, but need not be limited to, securing employee morbidity histories, requiring medical and laboratory examinations of an employee, modification of a menu and any other restriction or action deemed necessary by such director of health to control the illness or outbreak. . . .

14. Section 19a-25, G.S., provides in relevant part that:

(a) All information, records of interviews, written reports, statements, notes, memoranda or other data, including personal data, . . . procured by: (1) The Department of Public Health . . . [or] (2) the directors of health of towns, cities or boroughs or the Department of Public Health pursuant to section 19a-215, . . . for the purpose of reducing the morbidity or mortality¹ from any cause or condition, shall be confidential and shall be used solely for the purposes of medical or scientific research and, for information obtained pursuant to section 19a-215, disease prevention and control by the local director of health and the Department of Public Health. Such information, records, reports, statements, notes, memoranda or other data shall not be admissible as evidence in any action of any kind in any court or before any other tribunal, board, agency or person, nor shall it be exhibited or its contents disclosed in any way, in whole or in part, by any officer or representative of the Department of Public Health or of any such facility, by any person participating in such a research project or by any other person, except as may be necessary for the purpose of furthering the research project to which it relates. (Emphasis supplied).

¹ Morbidity: “the incidence of disease;” mortality: “the number of deaths in a given time or a given community.” Webster’s Third New International Dictionary, Unabridged (1993).

15. Section 19a-215, G.S., provides in relevant part that:

(a) For the purposes of this section:

(1) "Clinical laboratory" has the same meaning as provided in section 19a-490.

(2) "Commissioner's list of reportable diseases, emergency illnesses and health conditions" and "commissioner's list of reportable laboratory findings" means the lists developed pursuant to section 19a-2a.

(3) "Confidential" means confidentiality of information pursuant to section 19a-25.

(4) "Health care provider" means a person who has direct or supervisory responsibility for the delivery of health care or medical services, including licensed physicians, nurse practitioners, nurse midwives, physician assistants, nurses, dentists, medical examiners and administrators, superintendents and managers of health care facilities.

(5) "Reportable diseases, emergency illnesses and health conditions" means the diseases, illnesses, conditions or syndromes designated by the Commissioner of Public Health on the list required pursuant to section 19a-2a.

(b) A health care provider shall report each case occurring in such provider's practice, of any disease on the commissioner's list of reportable diseases, emergency illnesses and health conditions to the director of health of the town, city or borough in which such case resides and to the Department of Public Health, no later than twelve hours after such provider's recognition of the disease. Such reports shall be in writing, by telephone or in an electronic format approved by the commissioner.

(c) A clinical laboratory shall report each finding identified by such laboratory of any disease identified on the commissioner's list of reportable laboratory findings to the Department of Public Health not later than forty-eight hours after such laboratory's finding. A clinical laboratory that reports an average of more than

thirty findings per month shall make such reports electronically in a format approved by the commissioner. Any clinical laboratory that reports an average of less than thirty findings per month shall submit such reports, in writing, by telephone or in an electronic format approved by the commissioner. The Department of Public Health shall provide a copy of all such reports to the director of health of the town, city or borough in which the affected person resides or, in the absence of such information, the town where the specimen originated.

(d) When a local director of health, the local director's authorized agent or the Department of Public Health receives a report of a disease or laboratory finding on the commissioner's lists of reportable diseases, emergency illnesses and health conditions and laboratory findings, the local director of health, the local director's authorized agent or the Department of Public Health may contact first the reporting health care provider and then the person with the reportable finding to obtain such information as may be necessary to lead to the effective control of further spread of such disease. . . .

(e) A hospital, as defined in section 19a-490 and licensed pursuant to chapter 368v,1 shall provide the Department of Public Health with access, including remote access, in a manner approved by the Commissioner of Public Health, to the entirety of each electronic medical record that concerns a reportable disease, emergency illness or health condition listed by the commissioner pursuant to subdivision (9) of section 19a-2a that occurs at such hospital. Such remote access shall take place on or before October 1, 2022, if technically feasible.

(f) All personal information obtained from disease prevention and control investigations pursuant to this section including the health care provider's name and the identity of the reported case of disease and suspected source persons and contacts shall not be divulged to anyone and shall be held strictly confidential pursuant to section 19a-25, by the local director of health and the director's authorized agent

and by the Department of Public Health.

(g) Any person who violates any reporting or confidentiality provision of this section shall be fined not more than five hundred dollars. No provision of this section shall be deemed to supersede section 19a-584. (Emphasis supplied).

16. Section 19a-2a, G.S., provides in relevant part that:

The Commissioner of Public Health shall employ the most efficient and practical means for the prevention and suppression of disease and shall administer all laws under the jurisdiction of the Department of Public Health and the Public Health Code. . . The commissioner shall have the power and duty to:
(9) annually issue a list of reportable diseases, emergency illnesses and health conditions and a list of reportable laboratory findings and amend such lists as the commissioner deems necessary. . . .

17. It is found that the Commissioner's 2021 annual list of reportable diseases and laboratory findings, referred to in paragraphs 15 and 16, above, lists "outbreaks of foodborne illnesses involving two or more persons" as a reportable disease.

18. It is found that, pertinent to the complainant's request, described in paragraph 2, above, the respondents received a report of an outbreak of a foodborne illness involving two or more persons. It is found that the respondents undertook an investigation pursuant to §19a-215(d), G.S., to "obtain such information as may be necessary to lead to the effective control of further spread of such disease."

19. It found that, while §19a-36k, G.S., concerns the obligations of local departments of health to investigate foodborne outbreaks, §19a-215, G.S., applied to the investigation in this case conducted by the respondents.

20. It is found that all of the information procured or created by the respondents was for the purpose of reducing morbidity or mortality from such disease, within the meaning of §19a-25, G.S. It is found that such information included records concerning environmental studies, witness interviews, timelines, sample studies, food processing steps, food sources, investigators' notes, and communications among and between the respondents, staff, management, or owners of Gerry's Donuts, and the NCDHD.

21. It is concluded that the provisions of §19a-25, G.S., prohibit the disclosure of the requested records to the complainant.

22. It is further concluded that the references to personal data in §19a-25, G.S., or personal information §19a-215(f), G.S., are intended to explicitly permit and regulate the

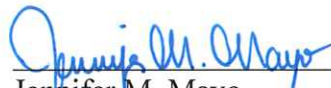
exchange of personal data or personal information in certain limited circumstances, which, without such statutory language, would be prohibited. It is concluded that the references do not mean that all other non-personal information or data is subject to disclosure.

23. It is concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by declining to provide the complainant with a copy of the requested records identified in paragraph 2, above.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 26, 2023.



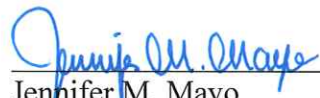
Jennifer M. Mayo
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

RYAN SULLIVAN, RisCassi & Davis P.C., 131 Oak Street, Hartford, CT 06106

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC HEALTH; AND STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC HEALTH
c/o Attorney Shawn Rutchick, Office of the Attorney General, 165 Capitol Avenue, Hartford, CT 06106



Jennifer M. Mayo
Acting Clerk of the Commission