

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Carol Ann McClean,

Complainant

Against

Docket #FIC 2024-0843

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

Respondents

December 17, 2025

The above-captioned matter was heard as a contested case on May 29, 2025, and August 7, 2025, at which times the complainant and the respondents appeared, stipulated to certain facts 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 on February 2, 2022, the complainant filed, on behalf of her father, a complaint against Gladeview Rehabilitation and Health Care Center (“Gladeview”) with the respondent Department of Public Health’s (“DPH”) Facility Licensing and Investigations Section. It is also found that on March 13, 2023, she filed separate complaints, on behalf of her father, with the respondents’ Practitioner Licensing and Investigations Section against two healthcare practitioners (a physician and an APRN) who worked for Gladeview. It is found that the complaints filed against the facility and healthcare practitioners were all investigated by the respondents.
3. It is found that by letter dated July 3, 2023, the respondents provided the complainant with a copy of CMS-2567 form, “Statement of Deficiencies and Plan of Correction”, pertaining to the investigation of Gladeview in response to her complaints.
4. It is found that approximately a year later, the complainant requested that the respondents provide her with an opportunity to inspect the files pertaining to the Gladeview and practitioner investigations, described in paragraph 2, above. It is found that on March 12, 2024, during an on-site visit at DPH, the complainant inspected the files for all three investigations.
5. It is found that sometime in June 2024, the complainant requested another opportunity to inspect the Gladeview and practitioner investigation files.

6. It is found that by email, dated July 12, 2024, the respondents informed the complainant that the Gladeview file “would be the same info they shared with [her] previously since much of that file is protected by CMS¹ and requires a request through CMS to view additional records.” Subsequently, by separate email dated July 12, 2024, the respondents informed the complainant that they would have “the Gladeview records that are available without requiring a CMS freedom of information request”, made available to her the following week.

7. It is found that on July 25, 2024, the complainant was provided with access to and inspected the two practitioner files. It is found, however, that she was denied access to inspect the Gladeview file, including the CMS-2567 form, at that time.²

8. It is found that by email dated July 25, 2024, approximately three hours after inspecting the files as described in paragraph 7, above, the complainant informed the respondents that “to date I still do not have a complete Gladeview record for my father.”

9. It is found that by separate emails dated September 24, 2024, the complainant requested another opportunity to inspect the Gladeview and practitioner files.

10. It is found that by separate emails dated September 24, 2024, the respondents informed the complainant that they had provided her with “all of the information we can appropriately share”. The respondents also informed the complainant that due to her “excessive and duplicative correspondence”, they were no longer going to accept correspondence, including records requests, via email, and directed her to send all future correspondence via U.S. mail.

11. It is further found that by letter dated September 24, 2024, the respondents informed the complainant that “[t]he existing Gladeview file is the same limited file you have previously reviewed since most of the documents are federal and cannot be released by us. As we have already provided you with an opportunity to review the investigation file at DPH, we will not be scheduling an additional time to view this file.”³

¹ CMS stands for Centers for Medicare and Medicaid Services, a subdivision of the United States Department of Health and Human Services.

² The respondents testified that the DPH staff erroneously believed that they were not required to provide the complainant with another opportunity to inspect the Gladeview file on July 25, 2024, because she had already viewed the file, the file was closed and that no additional records had been added to such file after the March 2024 inspection. The respondents did not provide the complainant with an explanation at that time as to why she was not allowed to view the file again.

The respondents also testified that on March 12, 2024, the DPH staff inadvertently allowed the complainant to view certain records relating to the Gladeview investigation that were confidential under federal law. The respondents did not inform the complainant of such error prior to the July 2024 inspection.

³ At the May 29, 2025, hearing in this matter, the complainant testified that she never received the September 24, 2024, letter, described in paragraph 11, above. The respondents acknowledged that they

12. It is found that by letter dated September 26, 2024, the complainant again requested to inspect the Gladeview and practitioner investigation files. It is also found that by letter dated November 13, 2024, the complainant again requested to review the Gladeview investigation file, stating “I am entitled to review this file in its entirety, and it is unacceptable that this access continues to be withheld.”

13. It is found that by letter dated December 16, 2024, the complainant addressed a letter to Governor Lamont, and included the Secretary of the State and the respondents’ Public Health Office of Legal Compliance, wherein she posed multiple questions and requested an update on her requests to inspect records.

14. It is found that by email dated December 20, 2024, at 12:08 a.m., the complainant requested an update on her request to inspect and review the Gladeview and practitioner investigation files.

15. By email received and filed on December 20, 2024, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“Act”) by not allowing her to inspect the Gladeview and practitioner investigation files. Specifically, the complainant alleged:

I made an appointment to inspect all the files regarding complaint ##CT 00041067, #CT31656-Petition 2023-336 and 2023-337, that are all matters that I have reported. I arrived on our scheduled date of July 25, 2024 to discover out of 3 files, I could only view 2.... To date I have been obstructed from seeing these files.

At the end of the August 7, 2025, hearing in this matter and in her post-hearing Rebuttal to Respondents’ Brief, the complainant also requested the imposition of civil penalties, among other remedies.

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

“Public 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, ...whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

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

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 are required by any law or by any rule or

had sent such letter to an outdated mailing address. The Commission notes that the respondents subsequently sent the complainant a copy of the September 24th letter on December 20, 2024.

regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, ... or (3) receive a copy of such records in accordance with section 1-212.

18. 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.”

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

JURISDICTION

20. The respondents contended that the complainant’s complaint in this matter was not filed within 30 days of the alleged FOI violation, and therefore the Commission lacks jurisdiction over the complaint.

21. Section 1-206, G.S. provides in relevant part:

(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, except when the request is determined to be subject to subsections (b) and (c) of section 1-214, in which case such denial shall be made, in writing, within ten business days of such request. Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

(b)(1) Any person denied the right to inspect or copy records under section 1-210 . . . or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial. . . (Emphasis added).

22. Our Supreme Court has held that the FOI Act “does not bar successive requests, nor does it bar successive denials, nor does it require an appeal within thirty days of the denial of any particular request.” Board of Education v. Freedom of Information Comm’n., 208 Conn. 442, 451 (1988). Such a rigid requirement “would frustrate the ‘strong legislative policy in favor of the open conduct of government and free public access to government records.’” Wilson v. Freedom of Information Comm’n., 181 Conn. 324, 328 (1980). See also Docket #FIC 2004-552, David Reynolds and the Connecticut Catholic Conference v. Commissioner, State of Connecticut, Department of Public Health, et al., (August 10, 2005) (complaint was timely filed

because less than thirty days prior to filing the complaint with the Commission the complainant sent a letter to the respondents requesting information concerning the respondent's denial of records, which letter the Commission determined constituted a renewal of the complainants' request for records); Docket #FIC 2019-0159, Ross Garber v. Commissioner, State of Connecticut, Department of Banking, State of Connecticut Department of Banking (March 11, 2020) (complaint was timely filed when the last email exchange between the parties occurred five days prior to filing of the complaint with the Commission, even though the initial records request occurred more than thirty days prior).

23. The respondents contended that the Commission does not have jurisdiction because the complaint was filed more than 30 days after the alleged denial on July 25, 2024. They contended that any subsequent request to inspect files or records made after July 25, 2024, must be considered a new and separate request; and that the complainant had to have filed an appeal within 30 days of each request in order for the Commission to have jurisdiction.

24. It is found that the complainant's ongoing communications with the respondents constituted renewals of her request to inspect the three investigation files. It is also found that the complainant communicated with the respondents about such request within 30 days of filing the complaint in this matter.

25. It is therefore concluded that the Commission has jurisdiction over the complaint.

ACCESS TO RECORDS

Practitioner Investigation Files

26. With respect to the request for the practitioner files, the respondents contend that, pursuant to §19a-12e(g), G.S., the records of the investigations were confidential and not subject to disclosure under the FOI Act; and that such files were only available to the complainant under a special right of access under §19a-14(a)(12)(B), G.S.

27. Section 19a-12e(g), G.S., provides, in relevant part:

The department shall investigate each petition filed pursuant to this section in accordance with the provisions of subdivisions (10) and (11) of subsection (a) of section 19a-14, to determine if probable cause exists to issue a statement of charges and to institute proceedings against the health care professional under subsection (j) of this section. Such investigation shall be concluded not later than eighteen months after the date the petition is filed with the department and, unless otherwise specified by this subsection, the record of such investigation shall be deemed a public record, in accordance with section 1-210, at the conclusion of such eighteen-month period. Any such investigation shall be confidential prior to the conclusion of such eighteen-month period and no person shall disclose his or her knowledge of such investigation to a third party

unless the health care professional requests that such investigation and disclosure be open, except the department shall provide information to the person who filed the petition as provided in subdivision (12) of subsection (a) of section 19a-14. If the department determines that probable cause exists to issue a statement of charges, the entire record of such proceeding shall be public unless the department determines that the health care professional is an appropriate candidate for participation in the assistance program. If at any time subsequent to the filing of a petition and during the eighteen-month period following the filing of the petition, the department makes a finding of no probable cause, the petition and the entire record of such investigation shall remain confidential, except as provided in subdivision (12) of subsection (a) of section 19a-14, unless the health care professional requests that such petition and record be open. (Emphasis added).

28. Section 19a-14(a)(12)(B), G.S., provides:

Upon request of the person who filed the complaint, provide such person with an opportunity to review, at the department, records compiled as of the date of the request pursuant to any investigation of the complaint, including, but not limited to, the respondent's written response to the complaint, except that such person shall not be entitled to copy such records and the department (i) shall not disclose (I) information concerning a health care professional's referral to, participation in or completion of an assistance program in accordance with sections 19a-12a and 19a-12b, that is confidential pursuant to section 19a-12a, (II) information not related to such person's specific complaint, including, but not limited to, information concerning patients other than such person, or (III) personnel or medical records and similar files the disclosure of which would constitute an invasion of personal privacy pursuant to section 1-210, except for such records or similar files solely related to such person; (ii) shall not be required to disclose any other information that is otherwise confidential pursuant to federal law or state statute, except for information solely related to such person; and (iii) may require up to ten business days written notice prior to providing such opportunity for review. (Emphasis added).

29. It is found that, as of the complainant's July 25, 2024, inspection, described in paragraph 7, above, which was less than eighteen months after the complainant filed the complaints against the two practitioners, the respondents had not concluded either of the investigations. Accordingly, it is found that, at the time of the complainant's July 25, 2024, inspection, the records of the practitioner investigations were confidential and not subject to disclosure pursuant to §19a-12e(g), G.S.

30. It is further found that the complainant has a special right of access to view the investigation files pursuant to §§19a-12e(g) and 19a-14(12)(B), G.S. The Commission, however, is entirely a creature of statute and can only administer and enforce the provisions set forth in the FOI Act. See Dept. of Public Safety v. Freedom of Information Commission, 103 Conn. App. 571, 577 (2007). The Commission does not have jurisdiction to enforce any of the complainant's rights which are not conferred by the FOI Act.

31. It is therefore concluded that, at the time of the alleged violation on July 25, 2024, the respondents did not violate the FOI Act with respect to the practitioner investigation files.⁴

Gladeview Investigation File

32. With respect to the Gladeview investigation file, the respondents maintain that they have provided the complainant with copies of the only records that they are directly permitted to disclose with respect to the investigation.

33. The respondents contend that they conducted the Gladeview investigation "as an agent of the federal government" and are therefore "required to adhere to federal restrictions governing the disclosure of information" from the investigation. In addition, according to the respondents, the only records they may directly disclose from an investigation file of a nursing facility, such as Gladeview, are restricted to what is enumerated in 42 U.S.C. §1395i-3(g)(5)(A)⁵ and 42 U.S.C. §1396r(g)(5)(A)⁶; and that for disclosure of all other information, federal

⁴ The Commission notes that the respondents ultimately made a finding of no probable cause regarding the physician, and therefore the entire record of the investigation must remain confidential pursuant to §19a-12e(g), G.S. The respondents also determined, however, that probable cause existed to issue a statement of charges against the subject APRN, and therefore the entire record of the investigation must be made public. In her post-hearing Rebuttal to Respondents' Brief (page 3), the complainant states that "[o]n September 9, 2025, DPH released what I believe to be all documents related to the APRN matter."

⁵ 42 U.S.C. §1395i-3(g)(5)(A) provides that:

- Each State, and the Secretary, shall make available to the public -
- (i) information respecting all surveys and certifications made respecting skilled nursing facilities, including statements of deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans of correction,
 - (ii) copies of cost reports of such facilities filed under this subchapter or subchapter XIX,
 - (iii) copies of statements of ownership under section 1320a-3 of this title, and
 - (iv) information disclosed under section 1320a-5 of this title.

⁶ 42 U.S.C. §1396r(g)(5)(A) provides that:

- Each State, and the Secretary, shall make available to the public--
- (i) information respecting all surveys and certifications made respecting nursing facilities, including statements of deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans of correction,
 - (ii) copies of cost reports of such facilities filed under this subchapter and under subchapter XVIII,

regulation establishes that the Freedom of Information Act Officer for the CMS, and not the respondents, must determine whether or not any other records may be disclosed.⁷ Additionally, the respondents argue that “the federal disclosure restrictions” are codified in §1-210(b)(26) of the FOI Act.

34. In Docket #FIC 2010-043, Ronald Sydor v. Commissioner, State of Connecticut, Department of Public Health, et. al. (December 15, 2010), the Commission concluded that the DPH violated the FOI Act when they failed to provide the requester with access to a nursing home investigation completed by the Department’s Facility Licensing and Investigations Section. The DPH argued in Sydor that, pursuant to federal regulation, their employees were federal employees when performing the investigation; that federal employees are prohibited from disclosing the information contained in the investigation report; and that the respondents must comply with the directive from the federal CMS not to disclose the investigative report. The Commission concluded that the requested records were not exempt from disclosure under any reasonable construction of federal and state law.

35. Subsequently, at the end of the 2011 legislative session, the General Assembly passed Public Act 11-242 (§38), *An Act Concerning Various Revisions to Public Health Related Statutes*,⁸ apparently at least in partial response to the Commission’s decision in Sydor, creating a new exemption from disclosure for certain records relating to Medicare and Medicaid programs, which exemption is now codified in §1-210(b)(26) of the FOI Act.

36. Section 1-210(b)(26) of the FOI Act provides that disclosure is not required of:

All records obtained during the course of inspection, investigation, examination and audit activities of an institution, as defined in section 19a-490,⁹ that are confidential pursuant to a contract between the Department of Public Health and the United States

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- (iii) copies of statements of ownership under section 1320a-3 of this title, and
 - (iv) information disclosed under section 1320a-5 of this title.

⁷ 45 C.F.R. §5.3 defines a Freedom of Information Act Officer as “an [Department of Health and Human Service’s] official who has been delegated the authority to release or withhold records. . . Apart from records subject to proactive disclosure pursuant to subsection (a)(2) of the FOIA [Federal Freedom of Information Act], only FOIA Officers have the authority to release or withhold records. . . in response to a FOIA request.” Freedom of Information Act (“FOIA”) is defined as “the law codified at 5 U.S.C. 552 that provides the public with the right to request agency records from Federal executive branch agencies.”

⁸ The Commission notes that this provision was not the subject of a public hearing and there is little legislative history on such provision.

⁹ Section 19a-490(o), G.S., defines a “nursing home” or “nursing home facility” as “(1) any chronic and convalescent nursing home or any rest home with nursing supervision that provides nursing supervision under a medical director twenty-four hours per day, or (2) any chronic and convalescent nursing home that provides skilled nursing care under medical supervision and direction to carry out nonsurgical treatment and dietary procedures for chronic diseases, convalescent stages, acute diseases or injuries.”

Department of Health and Human Services relating to Medicare and Medicaid programs. (emphasis added).

37. Section 1864 of the Social Security Act, codified as 42 U.S.C. §1359aa, provides that the Secretary of the United States Department of Health and Human Services (“DHHS”) shall enter into agreements with states under which appropriate state or local survey agencies determine whether providers meet Medicare conditions of participation, suppliers meet Medicare conditions of coverage, and rural health clinics meet Medicare conditions of certification.

38. It is found that, pursuant to §1864 of the Social Security Act, the State of Connecticut has entered into an agreement with the Secretary of DHHS, and that the respondent DPH is the agency designated as the State Survey Agency (“SA”), to carry out the state’s functions and responsibilities under the Agreement (“Agreement”).¹⁰

39. Article III of the Agreement (Compliance with Regulations and General Instructions) provides that: “The State shall comply with such regulations and general instructions as the Secretary may prescribe for the administration of this Agreement...” Article XIII of the Agreement (Confidential Nature and Limitations on Use of Information and Records) provides that:

- A) The State shall adopt policies and procedures to ensure that information contained in its records and obtained from the Secretary or from any provider or supplier of service will be disclosed only as provided in the Act or regulations.
- B) The Privacy Act of 1974, 5 U.S.C. 552a, is applicable to this agreement....

40. The respondents rely on an October 2, 2009, memorandum issued by the Secretary of DHHS to State Survey Agency Directors, wherein the Secretary offers guidance for the handling of subpoenas duces tecum seeking records in the possession of the SA as a result of a SA’s implementation of its agreement under §1864 of the Social Security Act (the “2009 Memorandum”). The respondents contend that “[t]hrough the [2009 Memorandum] focuses on subpoenas duces tecum, it underscores the Secretary’s rules that a state agency or SA, may only directly disclose a few specified documents, and that all other documents may only be disclosed upon approval of the CMS.” (Respondents’ Post-Hearing Brief, p. 9).

41. The CMS Memorandum provides in part:

In response to FOIA requests by members of the public....copies of CMS-2567s are directly releasable by the SA or RO in paper or electronic format without further review by the CMS Freedom of Information Group....

¹⁰ The Agreement Between the Secretary of Health and Human Services and The State of Connecticut, effective October 1, 1993, has been marked as Respondents’ Exhibit 8.

[Additionally,] [i]f the subpoena seeks some records that SOM 3308, 3308A, 3314, 7900 and 7903A authorize the SA to disclose and other records that the SA is not authorized to disclose:

- A. Partially comply with the subpoena by releasing the records the SOM authorizes the SA to release in compliance with any conditions specified in the SOM;
- B. Advise the requester, in writing, that the remaining records are not within the SA's authority to release, and that they have been forwarded to the applicable CMS RO FOIA Coordinator for disposition. Specifically explain that under 45 C.F.R. Part 2 the records at issue are Federal records under the control of DHHS, and that Federal law and governmental privileges affect their release.

(2009 CMS Memo, Ref: S&C-10-01-ALL) (pp. 2, 7).¹¹

42. It is found that the respondents conducted the Gladeview investigation in their role as a contractor for the CMS.

43. It is found that the Gladeview investigation was concluded on July 3, 2023.

44. As found in paragraph 3, above, the respondents provided the complainant with a copy of the CMS-2567, as required by 42 U.S.C. §1395i-3(g)(5)(A) on July 3, 2023.

45. It is found that the CMS-2567 form is the only record that the respondents may directly release to the complainant, without review and approval by CMS, pursuant to state and federal law.¹²

46. Based on the foregoing, and under the facts and circumstances of this case, it is concluded that the records in the Gladeview investigation file are exempt from disclosure under §1-210(b)(26), G.S., and that the respondents did not violate the FOI Act as alleged in the complaint.¹³

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

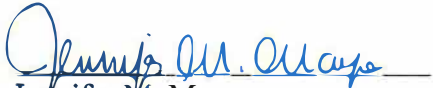
¹¹ See Memorandum "State Survey Agency Treatment of Subpoenas Duces Tecum for Federal and Joint Federal/State Documents" https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/SCLetter10_01.pdf (last accessed on December 5, 2025).

¹² The Commission also notes that the respondents had advised the complainant to submit a FOI request for records related to the Gladeview investigation file to CMS, which she did.

¹³ During the course of the proceedings, the respondents acknowledged that the complainant should have been provided another opportunity to view the CMS-2567 form on July 25, 2024. Accordingly, the Commission declines to find a violation with respect to such record.

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of December 17, 2025.

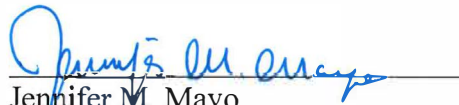

Jennifer M. Mayo
Acting Clerk of the Commission

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:

CAROL ANN MCCLEAN, PO Box 2201, Columbia, CT 06237

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC HEALTH; AND STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC HEALTH,
c/o Attorney Lisa Kessler, Department of Public Health, 410 Capitol Avenue, Hartford, CT
06134



Jennifer M. Mayo
Acting Clerk of the Commission