FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by FINAL DECISION

Todd Berton,

Complainant

against Docket #FIC 2024-0647

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

Respondents October 8, 2025

The above-captioned matter was heard as a contested case on April 24, 2025, 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, through the respondents' web-based request platform, "GovQA", on August 13, 2024, the complainant, through his attorney, made the following request for copies:

> [t]his office represents Todd Berton who is the son of Sandra Berton. Sandra Berton died from Legionnaires disease in New Haven, Connecticut, on December 18, 2023, at 11 p.m. The certificate of death refers to State File #2023-07-0331642. It is my understanding that your office performed an investigation. Would you kindly provide me a copy of any and all documents you obtained along with your findings. Thank you.

3. It is found that, by email dated August 13, 2024, the respondents acknowledged the complainant's request. It is also found that, by email dated October 2, 2024, the respondents denied such request.

4. By letter of complaint, dated and filed October 30, 2024, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the records, described in paragraph 2, above.

5. 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.

6. 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.

7. 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."

8. It is concluded that the requested records, to the extent they exist and are maintained by the respondents, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. At the hearing on this matter, and in their post-hearing brief, the respondents claimed that any responsive records are exempt from disclosure pursuant to §§19a-25 and 19a-215, G.S. Specifically, the respondents argued that, due to the specificity of the complainant's request, described in paragraph 2, above, the respondents could not acknowledge the existence of records responsive to such request because doing so would divulge certain exempt information in violation of §§19a-25 and 19a-215, G.S. Consequently, the respondents also asserted that, for the same reasons, they would oppose any order to submit records for in camera inspection.

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

> (a) [f]or the purposes of this section: .... (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....
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> (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 Department of Public Health …

(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 …

(d) When … the Department of Public Health receives a report of a disease or laboratory finding on the commissioner's list of reportable diseases, emergency illnesses and health conditions and laboratory findings, … 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 … 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 … shall not be divulged to anyone and shall be held strictly confidential pursuant to section 19a-25, … by the Department of Health.

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

(a) [a]ll information, records of interviews, written reports, statements, notes, memoranda or other data, including personal data as defined in subdivision (9) of section 4-190, procured by … (2) … the Department of Public Health pursuant to section 19a-215 … shall be confidential and shall be used solely for the purposes of, … disease prevention and control by … the Department of Public Health and reducing the morbidity and mortality from any cause or condition. 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 anyway, in whole or in part by any officer or representative of the Department of Public Health ..., by any person ... except as may be necessary for the purpose of furthering the ... health use to which it relates....
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> (c) The provisions of this section shall not affect: (1) [d]isclosure of regular hospital and medical records made in the course of the regular notation of the care and treatment of any patient....

12. It is found that Legionella is on the Commissioner of the Department of Public Health's ("DPH") list of reportable laboratory findings, and that Legionellosis is on the Commissioner of DPH's list of reportable diseases, emergency illnesses and health conditions, as referenced in §19a-215, G.S. It is also found that Legionnaires Disease is a type of Legionellosis caused by contamination from Legionella bacteria.

13. It is found that the respondents asserted what is commonly known as the "Glomar doctrine" or a "Glomar response" with respect to the complainant's request, described in paragraph 2, above. The Glomar doctrine originated in a federal FOI ("FFOI") Act case concerning records pertaining to the Hughes Glomar Explorer, an oceanic research vessel, wherein the Central Intelligence Agency ("CIA") claimed that "the existence or nonexistence of the requested records was itself a classified fact exempt from disclosure under ... [the FFOI Act]." Phillippi v. CIA, 546 F.2d 1009, 1011-12 (D.C.Cir.1976). Subsequent to Phillipi, the Glomar doctrine has been successfully utilized in several federal cases, arising from FFOI Act requests, and typically to protect information related to issues of national security.[1] It is further found that a limited number of states have also recognized the Glomar doctrine.

14. It is found that the Glomar doctrine is not a federal doctrine or state statute that has been recognized under the FOI Act in Connecticut. It is also found, however, that based upon the specific facts of this case, the Commission need not further address the applicability of the respondents' use of a Glomar response in this matter.

15. It is found that the respondents refused to either confirm or deny whether any responsive records exist, whether they maintain any responsive records, or even, whether the

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[1] See Ctr. for Constitutional Rights v. Dep't of Def., 968 F. Supp. 2d 623, 638-39 (S.D.N.Y. 2013), aff'd sub nom. Ctr. for Constitutional Rights v. C.I.A., 765 F.3d 161 (2d Cir. 2014), cert. denied, 575 U.S. 903 (2015) (citing "the uniquely executive purview of national security" to find that the CIA properly invoked the Glomar doctrine in response to a FFOI Act request for records pertaining to al-Qahtani, a detainee held at the Naval Station, Guantanamo Bay, Cuba); Wilner v. Nat'l Sec. Agency, 592 F.3d 60, 64 (2d Cir. 2009), cert. denied, 562 U.S. 828 (2010) (finding that the NSA may invoke the Glomar doctrine in response to a FFOI Act request for records obtained under the Terrorist Surveillance Program); Am. Civil Liberties Union v. Dep't of Def., 752 F. Supp. 2d 361, 368 (S.D.N.Y. 2010) (upholding the CIA's Glomar response to a FFOI Act request seeking records related to Bagram detainees); and Wolf v. C.I.A., 473 F.3d 370, 376-77 (D.C. Cir. 2007) (finding it "plausible that either confirming or denying an Agency interest in a foreign national reasonably could damage sources and methods by revealing CIA priorities..."). But see Eberg v. U.S. Dep't of Def., 193 F. Supp. 3d 95, 118 (D. Conn. 2016) (rejecting the Department of Defense's use of the Glomar doctrine to protect an individual's privacy interests, where the public's interest in disclosure of the requested records outweighs such individual's interest in keeping the information private).

respondents conducted an investigation into the death of Sandra Berton (the "decedent"). It is also found, however, that the complainant credibly testified that the decedent was his mother, that she died of Legionnaires Disease, and that, subsequent to the death of his mother, the complainant was contacted by the respondent DPH regarding her death.

16. It is therefore found that the decedent died of Legionnaires Disease, and DPH conducted, at least, a preliminary investigation into her death from such disease. Consequently, it is found that "[a]ll information, records of interviews, written reports, statements, notes, memoranda or other data", other than regular hospital and medical records[2], procured by DPH, pursuant to §19a-215, G.S., are exempt from public disclosure under §1-210(a), G.S., by operation of §19a-25, G.S. It is therefore concluded, based upon the limited facts and circumstances of this case, that the respondents did not violate the FOI Act by withholding any such records from the complainant.

17. It is also found, however, that pursuant to §19a-25(c), G.S., the confidentiality provisions in §19a-215, G.S., do not apply to "regular hospital and medical records made in the course of the regular notation of the care and treatment of any patient." It is therefore found that any responsive records maintained by DPH that consist of regular hospital and medical records made in the course of the regular notation of the care and treatment of the decedent, are not subject to the confidentiality provisions of §19a-215, G.S.

18. It is found that the respondents failed to provide any evidence or testimony specific to the records at issue, here, including whether they maintain any responsive records that are "regular hospital and medical records made in the course of the regular notation and care and treatment" of the decedent.

19. In their post-hearing brief, the respondents argued, in a footnote, that §19a-215(c), G.S., is inapplicable to this request because "DPH does not operate any hospital or other medical treatment facilities and therefore does not make medical records in the course of the regular notation of the care and treatment of any patient. As such, DPH could not have any hospital or medical records responsive to this request."[3] It is found, however, that the respondents testified and §19a-215(e), G.S., makes clear, that a "hospital … 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."

20. In their Objection to Order To Submit Records for In Camera Inspection and Motion for Reconsideration of Order by Full Commission, the respondents argued, for the first time, that even if they did procure and maintain any "regular hospital and medical records made in the course of the regular notation of the care and treatment of any patient" that are responsive to this request, such records would be exempt from disclosure under §1-210(b)(2), G.S.

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[2] See paragraph 17, below.

[3] See Brief of the Department of Public Health, FN 1.

21. Section 1-210(b)(2), G.S., provides that disclosure is not required of "[p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy."

22. It is well settled that, in order to prove the applicability of §1-210(b)(2), G.S., the claimant must first establish that the files in question are personnel or medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy, by establishing both of two elements: (1) the information sought does not pertain to a legitimate matter of public concern; and (2) disclosure of such information would be highly offensive to a reasonable person. See Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993).

23. It is found that the records described in paragraphs 18 and 20, above, if they exist, are medical files by their very definition. It is also found, however, that the respondents offered no evidence that the records described in paragraphs 18 and 20, above, do not pertain to a legitimate matter of public concern or that disclosure of such information would be highly offensive to a reasonable person.[4]

24. The Commission notes that the general rule under the FOI Act is disclosure; exceptions to this rule must be narrowly construed, and the burden of establishing the applicability of an exemption clearly rests upon the party claiming the exemption. See New Haven v. FOI Commission, 205 Conn. 767, 775 (1988); Ottochian v. FOI Commission, 221 Conn. 393 (1992). "This burden requires the claimant of the exemption to provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested." Director, Retirement & Benefits Service v. FOI Commission, 256 Conn. 764, 773 (2001), citing New Haven, supra.

25. The Commission also notes that, even if the respondents had provided testimony regarding the applicability of §1-210(b)(2), G.S., in this matter, they could not meet their burden of establishing the applicability of such exemption to disclosure under the FOI Act, based upon general testimony regarding hypothetical records. See Town of Greenwich v. FOI Commission, 226 Conn. App. 40, 59, cert. denied, 349 Conn. 924, cert. denied, 349 Conn. 924 (2024) ("without first conducting a search to determine whether the records … exist and, to the extent they exist, reviewing such records, the plaintiffs cannot satisfy their burden of establishing that those records are exempt from disclosure….").

26. Moreover, the Commission has consistently found, and the courts have upheld, that an individual's privacy rights are extinguished at death. See Office of Corp. Counsel of City of Danbury v. FOI Commission, No. HHBCV126017045S, 2013 WL 5289790, at *5 ("the disclosure of the requested records would not be an invasion of personal privacy under General Statutes §1-210(b)(2) because no such privacy right exists with respect to the deceased");

[4] The Commission notes that due to the findings in paragraphs 2 and 15, above, that the complainant in this matter is the decedent's son and next of kin, concerns regarding the invasion of privacy of the decedent are greatly diminished.

Commissioner, State Dept. of Pub. Safety v. FOI Commission, No. CV094021543S, 2010 WL 2926174, at *3; Docket #FIC 2020-0037, Maryanne Hornish v. Chief, Police Department Town of Suffield, et al. (June 18, 2021); Docket #FIC 2019-0165, Anne Howard v. Chief, Police Department, City of Stamford, et al. (December 11, 2019); Docket #FIC 2007-123, Jessica Crowley, et al., v. Commissioner, State of Connecticut, Department of Public Health (August 8, 2007); and Docket #FIC 1999-019, David K. Jaffe v. State of Connecticut, Connecticut Lottery Corporation (April 29, 1999). See also Freedom of Info. Officer v. FOI Commission, 318 Conn. 769, 810 (2015) (McDonald, J., concurring in part and dissenting in part).

27. Based upon the foregoing, it is found that the respondents failed to prove that the records described in paragraphs 18 and 20, above, are exempt from disclosure pursuant to §1-210(b)(2), G.S., and that they conducted a thorough and diligent search for the records described in paragraphs 18 and 20, above.

28. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to prove that they provided all responsive records to the complainant that are not exempt from disclosure.

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

1. Forthwith, the respondents shall undertake a thorough and diligent search for the responsive records described in paragraphs 18 and 20 of the findings, above, and if such records exist provide a copy of such records, free of charge, to the complainant within 14 days of the Notice of Final Decision in this matter.

2. In complying with paragraph 1 of this Order, the respondents may redact any personally identifying information contained in such records.

3. Henceforth, the respondents shall strictly comply with the provisions of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 8, 2025.

Molly E. Steffes
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:

TODD BERTON, c/o Attorney Michael F. O'Connor and Attorney Ryan J. McKone, Williams, Walsh & O'Connor LLC, 37 Broadway, North Haven, CT 06473

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 Capital Avenue, Hartford, CT 06134

Molly E. Steffes
Acting Clerk of the Commission

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