

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Alec Ferretti,

Complainant

against

Docket # FIC 2021-0051

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

Respondents

September 10, 2025

The above-captioned matter was heard as a contested case on August 26, 2021, at which time the complainant appeared and presented testimony, but the respondents did not appear. A continued contested case hearing convened on September 24, 2021, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits, and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session).

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 email dated August 30, 2020, the complainant made the following request to the respondents: “[p]ursuant to FOIA and the Vital Statistics Statute I hereby request the index to births from 1920-2020.”
3. It is found that by email dated September 4, 2020, the respondents acknowledged the complainant's request.
4. It is found that by email dated February 1, 2021, the complainant contacted the respondents seeking an update on the status of the request described in paragraph 2, above.
5. It is found that by email dated February 3, 2021, the respondents denied the complainant's request described in paragraph 2, above, citing to §7-51a, G.S.

6. By letter of complaint filed on February 4, 2021 the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request for the records described in paragraph 2, above.¹

7. At the time of the request, §1-200(5), G.S., provided the following:

“[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 section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.²

8. Section 1-210(a), G.S., provides the following 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 [. . .] receive a copy of such records in accordance with section 1-212.

9. Section 1-211(a), G.S., provides the following in relevant part:

Any public agency which maintains public records in a computer storage system shall provide, to any person making a request [...], a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make such copy or have any such copy made.

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

¹ On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of §1-206(b)(1), G.S., which require the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, through June 30, 2021. Consequently, the Commission retains jurisdiction.

² Section 147 of Public Act 21-2 (June Sp. Sess.), effective June 23, 2021, amended the definition of “[p]ublic records or files” to also include data or information that is “videotaped.”

11. It is concluded that the requested records described in paragraph 2, above, to the extent that they exist and are maintained by the respondents, are public records within the meaning of §§1-200(5), 1-210(a), and 1-211(a), G.S.

12. At the hearing and in his complaint, the complainant contended that he is a professional genealogist who is entitled to in-person access to vital records maintained by the respondents in accordance with §§7-51 and 7-51a, G.S. However, due to the COVID-19 pandemic and the resultant office closures, the complainant made the request, described in paragraph 2, above, for *copies*, pursuant to the FOI Act.

13. The respondents contended that they do not maintain responsive records for all of the years requested. They also contended that all responsive records that exist and are maintained are exempt from disclosure pursuant to §§7-51 and 7-51a, G.S.

Maintenance of Responsive Records

14. It is found that the complainant, in his request for records described in paragraph 2, above, sought “indexes” as referenced in §7-51a(a), G.S., which provides the following, in relevant part:

[D]uring all normal business hours, members of genealogical societies incorporated or authorized by the Secretary of State to do business or conduct affairs in this state shall (1) have full access to ... indexes”

15. Section 7-47, G.S., entitled “Indexes,” requires each registrar of vital statistics to “keep alphabetically arranged separate indexes for each group of vital events” and “enter therein the name of each person whose birth, marriage, death or fetal death is recorded by the registrar.” It is also found that the respondents’ witness, the registrar of vital statistics, testified that the birth index is generally comprised of names, dates of birth, and locations of birth.

16. With respect to the years 1920-1947, it is found that the respondents maintain a database, referred to during the hearing as the “FoxPro” database, which catalogues birth records on microfilm. It is found, based on the credible testimony of the complainant, and the credible testimony of the respondents’ witness that, in prior years, the respondents could export an index from such database, and that, on at least one occasion, provided an index to the complainant for the year 1917.³

17. However, it is found that, at the time of the request described in paragraph 2, above, the respondents’ staff who had the knowledge and expertise to access the FoxPro database was

³ The respondents’ witness testified that the respondents maintain birth certificates on microfilm for the years 1897-2000, but that they did not begin maintaining the statutorily required indexes contemplated in §7-47, G.S., until 1948-49. However, the complainant subsequently testified that he had received a birth index for the year 1917 from a now deceased employee of the respondents, who possessed the expertise to retrieve it from the FoxPro database. The respondents’ witness did not dispute the veracity of the complainant’s testimony and stated that the disclosure of such index preceded her employment at the department.

deceased, and the remaining staff of the respondents were unable to export from the database. It is found that the respondents described the database as “archaic,” “old,” and “sunsetted” and were concerned that any data extraction could “corrupt” a file or impede the respondents’ ability to respond to customer service requests for certified copies of birth records.

18. Accordingly, it is concluded that, for the years 1920-1947, the respondents maintain records responsive to the request described in paragraph 2, above, albeit records which the respondents contend are inaccessible for the reasons set forth in paragraph 17, above.

19. It is found that the records maintained by the respondents in the FoxPro database are public records maintained in a computer storage system, within the meaning of §1-211(a), G.S.

20. “[Section] 1-211(a) places the burden on the public agency to demonstrate that it cannot reasonably make the copy requested.” Hartford Courant Co. v. Freedom of Information Commission, 261 Conn. 86, 97 (2002) (“Courant”). Our Supreme Court has held that, pursuant to §§1-211(a) and 1-212(b), G.S., if a public agency cannot comply with a records request because it does not have the technological capability to separate exempt from nonexempt data, such request still falls within the scope of the FOI Act. Accordingly, the disclosing agency must comply with the request by either developing a program or contracting with an outside entity to develop a program, provided that the requester is willing to cover the associated cost. Courant, 261 Conn. at 94-95. See also Maher v. Freedom of Information Commission, et al., 192 Conn. 310, 316 (1984).⁴

21. It is found that the complainant testified to his willingness to cover the expense that may be incurred by the respondents in retrieving the requested records, should an outside professional need to be engaged.

22. Based on the foregoing, it is concluded that the respondents did not meet their burden of demonstrating that they could not reasonably provide a copy of records responsive to the request described in paragraph 2, above, for the years 1920-1947.

23. With respect to the years 1948-2000, the respondents did not dispute, and therefore it is concluded that they maintain paper copies of records responsive to the request described in paragraph 2, above, for the period of 1948 through 2000.

24. With respect to the years 2001 through 2020, it is found, based on the testimony of the respondents’ witness, that the respondents can generate an index from their data repository (referred to as the “electronic birth registry system”) that is responsive to the request described in paragraph 2, above.

25. Therefore, it is concluded that the respondents maintain records responsive to the request described in paragraph 2, above, for the years 2001-2020.

⁴ The Commission notes that the Appellate Court recently reaffirmed Courant and Maher in Town of Greenwich v. Freedom of Info. Comm’n, 226 Conn. App. 40, cert. denied, 349 Conn. 924 (2024).

26. Accordingly, it is concluded that the respondents maintain records responsive to the request described in paragraph 2, above, for all the years requested.

Claims of Exemption

27. Next, the respondents contended that all of the records that are responsive to the request described in paragraph 2, above, are exempt from disclosure pursuant to §§7-51 and 7-51a, G.S.

28. Section 7-51(a)(1), G.S., entitled, in relevant part, “Access to and examination and issuance of certified copies of birth and fetal death records restricted,” provides as follows:

The department [DPH] and registrars of vital statistics shall restrict access to and issuance of a **certified copy⁵ of birth and fetal death records and certificates less than one hundred years old**, to the following eligible parties: (A) The person whose birth is recorded, if such person is (i) over eighteen years of age, (ii) a certified homeless youth, as defined in section 7-36, (iii) a minor emancipated pursuant to sections 46b-150 to 46b-150e, inclusive; (B) such person’s child, grandchild, spouse, parent, guardian, or grandparent; (C) the chief executive officer of the municipality where the birth or fetal death occurred, or the chief executive officer’s authorized agent; (D) the local director of health for the town or city where the birth or fetal death occurred or where the person who gave birth was a resident at the time of the birth or fetal death, or the director’s authorized agent; (E) attorneys-at-law representing such person or such person’s parent, guardian, child or surviving spouse; (F) a conservator of the person appointed for such person; (G) a member of a genealogical society incorporated or authorized by the Secretary of State to do business or conduct affairs in this state; (H) an agent of a state or federal agency as approved by the department; and (I) a researcher approved by the department pursuant to section 19a-25. [Emphasis added.]⁶

29. Section 7-51a(a), G.S., which is entitled, in relevant part, “Copies of vital records.⁷ Access to vital records by members of genealogical societies,” provides as follows:

⁵ Section 7-36(5), G.S., defines “certified copy” as “a copy of a birth, death, fetal death, or marriage certificate that (A) includes all information on the certificate except such information that is nondisclosable by law, (B) is issued or transmitted by any registrar of vital statistics, (C) includes an attested signature and the raised seal of an authorized person, and (D) if submitted to the department [DPH], includes all information required by the commissioner.” It does not include “index” to birth or death records.

⁶ Public Act 24-68, §2, effective October 1, 2024, amended §7-51(a)(1)(B) to give a person’s legal custodian the right to access the person’s birth or fetal death records and certificates; it also specifies that for guardians, this right applies to legal guardians.

⁷ Section 7-36(4), G.S., defines “vital records” as “a certificate of birth, death, fetal death or marriage.”

Any person eighteen years of age or older may purchase certified copies of marriage and death records, and **certified copies of records of births or fetal deaths which are at least one hundred years old**, in the custody of any registrar of vital statistics. The department may issue uncertified copies of death certificates for deaths occurring less than one hundred years ago, and uncertified copies of birth, marriage, death, and fetal death certificates for births, marriages, deaths, and fetal deaths that occurred at least one hundred years ago, to researchers approved by the department pursuant to section 19a-25, and to state and federal agencies approved by the department. During all normal business hours, members of genealogical societies incorporated or authorized by the Secretary of State to do business or conduct affairs in this state shall (1) have full access to all vital records in the custody of any registrar of vital statistics, including certificates, ledgers, record books, card files, **indexes** and database printouts, except for those records containing Social Security numbers protected pursuant to 42 USC 405 (c)(2)(C), and confidential files on adoptions, gender change, gestational agreements and paternity, (2) be permitted to make notes from such records, (3) be permitted to purchase certified copies of such records, and (4) be permitted to incorporate statistics derived from such records in the publications of such genealogical societies [...]. [Emphasis added.]

30. This Commission has held that indexes to births, marriages and deaths are not subject to the same statutory disclosure restrictions as birth, marriage and death certificates. See Quattro v. Vital Statistics Registrar, State of Connecticut, Department of Public Health, et al., Docket #FIC 2011-541 (June 27, 2012) (indexes to death and marriage records do not contain confidential information; therefore, public access to them is permissible); Rowley v. Director, Vital Statistics, City of New Haven, et al., Docket #FIC 2013-004 (August 28, 2013) (“while public access to birth, marriage, and death certificates is restricted by state statute (§§7-51 and 7-51a, G.S.), the indexes are not subject to any similar restrictions,” and although §7-51a, G.S., gives members of genealogical societies full access to both the certificates and the indexes of such certificates, nothing in §7-51a, G.S., authorized the respondents to deny the complainant’s right to access the indexes in a reasonable manner unless the person became a member of genealogical society); and Quattro v. Town Clerk, Town of East Hartford, et al., Docket #FIC 2015-166 (October 28, 2015) (“Town Clerk permitted the complainant to inspect the index of death records, which index itself does not contain exempt information”).

31. Based on the foregoing, it is concluded that, while access to birth, marriage, and death certificates is restricted by §§7-51 and 7-51a, G.S., the indexes requested and described in paragraph 2, above, are not subject to such restrictions.

32. It is therefore concluded that the respondents violated the disclosure provisions of the FOI Act when they declined to provide the complainant with a copy of the records responsive to his request, as described 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. Within 15 days of the date of the Notice of Final Decision in this matter, the respondents shall provide to the complainant, free of charge, copies of the birth indexes for the years 1948 through 2020.

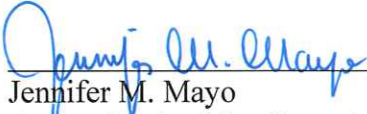
2. Within 30 days of the date of the Notice of Final Decision in this matter, the respondents shall investigate the feasibility of retrieving responsive records from the respondents' FoxPro computer-based storage system for the years 1920-1947. In doing so, the respondents shall consult with the Department of Administrative Services Bureau of Information Technology Solutions ("BITS"), which provides state agencies with IT services, and an outside entity, in accordance with §1-212(b), G.S., to comply with the order described herein.

3. If a consulted entity can perform the retrieval described in paragraph 2 of this order, the respondents shall provide the complainant with copies of any responsive records within 15 days after receiving such records from the entity. Because the complainant has agreed to pay the costs associated with compliance with his request, the respondents may pass the cost of retrieving such records to the complainant, in accordance with §1-212(b), G.S.

4. If the consulted entities cannot perform the retrieval described in paragraph 2 of this order, within 60 days of the date of the Notice of Final Decision in this matter the respondents shall provide the complainant with an affidavit averring that such retrieval was not feasible and the reasoning in support thereof.

5. Henceforth, the respondents shall strictly comply with the disclosure provisions of §§1-210(a), 1-211(a), and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 10, 2025.

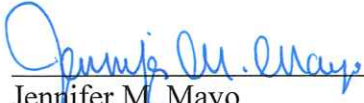

Jennifer M. Mayo
Acting Clerk of the Commission

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:

ALEC FERRETTI, c/o Attorney Alexa T. Millinger, Hinckley, Allen & Snyder LLP, 20 Church Street, 18th Floor, Hartford, CT 06103

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC HEALTH; AND STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC HEALTH, c/o Assistant Attorney General Elizabeth Bannon, Office of the Attorney General, 165 Capitol Avenue, PO Box 120, Hartford, CT 06106



Jennifer M. Mayo
Acting Clerk of the Commission