

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Diana Waller,

Complainant

against

Docket # FIC 2021-0076

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

Respondents

March 25, 2026

The above-captioned matter was heard as a contested case on August 27, 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).

This matter was consolidated for hearing with Docket #FIC 2021-0077, Diana Waller v. Commissioner, State of Connecticut, Department of Public Health; and State of Connecticut, Department of Public Health. The Commission takes administrative notice of the record in Docket #FIC 2021-0077.

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 February 5, 2021, the complainant requested that the respondents provide her with a copy of the following records:
 - (a) School immunization data for 2018-19, 2019-20, 2020-21 for kindergarten students broken down by school, number of children enrolled in the kindergarten program, number of students utilizing religious exemption *broken into whole numbers not percentages*.
 - (b) School immunization data for the 2018-19, 2019-20, 2020-21 for 7th grade students broken down by school, number of children enrolled in the 7th grade program, number of students utilizing religious exemption *broken into whole numbers not*

percentages.

3. It is found that on February 5, 2021, the respondents acknowledged the complainant's request.

4. By complaint filed February 18, 2021, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying her request for "the whole number data" described in paragraph 2(a) and (b), above.¹

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

"[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

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

[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 that "[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 records described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S., and that access to such records must be granted in accordance with §1-210(a), G.S., unless they are exempt from disclosure.

9. It is found that by email dated June 4, 2021, the complainant requested an update from the respondents regarding the status of her February 5, 2021, request. It is found that, also

¹ On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of §1-206(b)(1), G.S., which requires the 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 Special Session) amended the definition of "public records or files" to include data or information that is "videotaped." Such amendment was effective on June 23, 2021.

by email dated June 4, 2021, the respondents notified the complainant that her request was denied, stating that all responsive records are confidential.

10. It is found that by email dated June 7, 2021, the complainant requested that the respondents provide her with the “legal basis” for the June 4, 2021, denial.

11. It is found that, also by email dated June 7, 2021, the respondents explained that the records responsive to the request described in paragraph 2, above, were withheld pursuant to §19a-25, G.S., and privacy concerns in relation to the identities of children in particular schools.³

12. At the time of the request in this matter, §19a-25, G.S., provided, in relevant part:

All information, records of interviews, written reports, statements, notes, memoranda or other data, including personal data as defined in subdivision (9) of section 4–190⁴, procured by the Department of Public Health ... in connection with studies of morbidity and mortality⁵ conducted by the Department of Public Health ... for the purpose of reducing the morbidity or mortality from any cause or condition, shall be confidential and shall be used solely for the purposes of medical or scientific research ... 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....

13. Section 19a-25-1(12), Regs. Conn. State. Agencies, provides:

³ Notwithstanding, the Commission notes that the respondents provided the complainant with data that it otherwise made available to the public that is located on their website.

⁴ Section 4-190(9), G.S., defines “personal data” as any information about a person's education, finances, medical or emotional condition or history, employment or business history, family or personal relationships, reputation or character which because of name, identifying number, mark or description can be readily associated with a particular person.

⁵ In prior cases pending before the Commission involving §19a-25, G.S., the Commission has relied on the following definitions of the terms “morbidity” and “mortality”: (1) Morbidity: the incidence of disease; and (2) Mortality: the number of deaths in a given time or a given community. *Webster's Third New International Dictionary, Unabridged* (1993).

‘Studies of morbidity and mortality’ means the collection, application, and maintenance of health data on:

(A) the extent, nature, and impact of illness and disability on the population of the state or any portion thereof;

(B) the determinants of health and health hazards, including but limited to,

(i) infectious agents of disease,

(ii) environmental toxins or hazards,

(iii) health resources, including the extent of available manpower and resources, or

(iv) the supply, cost, financing or utilization of health care services.

(C) diseases on the commissioner's list of reportable diseases and laboratory findings pursuant to section 19a-215 of the Connecticut General Statutes; or

(D) similar health or health related matters as determined by the commissioner.

14. The respondents’ immunization program manager appeared and testified at the hearing in this matter.

15. It is found that the immunization program resides within the respondents’ infectious disease section. It is found that, pursuant to §10-204a, G.S., the respondents procure data regarding the immunization of children attending Connecticut schools. Section 10-204a(e), G.S., requires schools to collect and report immunization data to the respondents for “compilation and analysis.”

16. In order to collect such data, the respondents prepare and distribute a “school immunization survey,” to be completed by Connecticut schools and returned to the respondents. See Regs., Conn. State. Agencies §10-204a-4(b) (“Annually, the department shall prepare and distribute to all public and nonpublic schools a school immunization survey summary form. Schools shall complete the survey form and return the completed form to the department at a place and time determined by the department.”).

17. It is found that the school immunization survey includes data for the number of students who completed each vaccination in kindergarten and 7th grade, as well as the number of students with vaccine exemptions. It is also found that subsection c of the aforementioned regulation provides that “all immunization information collected by the [respondents] shall be

confidential.”

18. It is found that the respondents collect, maintain and analyze the school survey data at the school, local, and state level in order to assess potential health risks, including potential for disease outbreak in a community. It is found that such data is procured by the respondents in connection with studies of morbidity and mortality, and for the purpose of reducing morbidity or mortality from vaccine preventable diseases, within the meaning of §19a-25, G.S.⁶

19. Accordingly, it is concluded that §19a-25, G.S., prohibits disclosure of the requested records, described in paragraph 2, above.

20. It is therefore concluded that the respondents did not violate the disclosure provisions of the FOI Act when they declined to provide the complainant with a copy of the requested records, 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. The complaint is hereby dismissed.

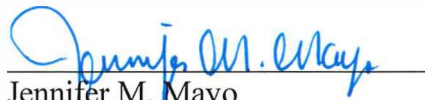
⁶ The Commission notes that the respondent Commissioner has the discretion to make aggregate health data publicly available if such data is prepared for the purpose of medical and scientific research and is not personally identifiable. See Regs., Conn. State Agencies §19a-25-2(a). In reliance on the foregoing authority, beginning in 2017, in response to concerns about declining vaccination rates and rising measles cases, the respondents began publishing immunization *rates*, as well as medical and religious immunization exemption *rates* for Connecticut schools with per grade level sizes of more than thirty (30) students. The published data included the immunization rate for children in kindergarten and 7th grade for each school; and the rate of students claiming exemption from vaccination. The respondents utilized the annual school survey data in order to compile and publish such information. However, due to concerns regarding the potential disclosure of the identity of any individual student, the respondents have not published the whole number data that the complainant seeks and that is responsive to the request described in paragraph 2, above.

The Commission further notes that, at the time of the request and hearing in this matter, the respondents were a party to an appeal wherein petitioners challenged the respondents’ disclosure of the aforementioned immunization rates, contending that doing so constituted a violation of the confidentiality provisions of §19a-25, G.S., (“All information ... procured by the Department of Public Health ... shall be confidential....”) and §10-204a-4(c), Regs., Conn. State Agencies (“All immunization information collected by the department shall be confidential”). See *Festa v. Dep’t of Pub. Health*, No. HHBCV206059758S, 2021 WL 5111914, at *1 (Conn. Super. Ct. Oct. 12, 2021).

However, while such appeal was pending, on April 28, 2021, the Governor signed Public Act No. 21-6, “An Act Concerning Immunizations,” which amended §§19a-25 and 10-204a, G.S., essentially codifying the respondents’ practice since 2017. Section 10-204a(e)(2), G.S., now requires the respondents to release “annual immunization *rates* for each public and nonpublic school in the state, *provided such immunization data may not contain information that identifies a specific individual*.” Section 19a-25, G.S., likewise requires the respondents to release “annual immunization *rates* ... pursuant to Section 10-204a.”

The court in *Festa* concluded that the statutory changes rendered the petitioners’ appeal moot and dismissed the appeal.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 25, 2026.


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:

DIANA WALLER, c/o Attorney John I. Bolton, 101 Franklin Street, Suite D, Westport, CT 06880

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC HEALTH; AND STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC HEALTH, c/o Assistant Attorney General Shawn Rutchick, Office of the Attorney General, 165 Capitol Avenue, Hartford, CT 06106 and Attorney Lisa Kessler, Department of Public Health, 410 Capital Avenue, Hartford, CT 06134


Jennifer M. Mayo
Acting Clerk of the Commission