

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
David A. Schoolcraft (Norwich  
Bulletin),

FINAL DECISION

Complainant

DOCKET #FIC81-181

against

Chief Medical Examiner of the  
State of Connecticut,

August 10, 1982

Respondent

The above captioned matter was heard as a contested case on February 18, 1982, at which time the complainant and the respondent 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:

1. The respondent is a public agency as defined by § 1-18a(a), G.S.
2. On October 21, 1981, the complainant made an oral request of the respondent for access to inspect the report of an autopsy performed on one Dwayne Dodd, at which time the request was denied by the respondent.
3. By letter of complaint filed with the Commission on November 2, 1981, the complainant alleged that the requested information was a public record which could only be withheld on the basis of a court order.
4. It is found that the subject of the autopsy in question died as the result of a shooting incident involving the subject and a police officer.
5. The respondent claims that the requested record is not subject to disclosure on the following bases:
  - a) pursuant to § 19-525-10(b) and (c) of the Regulations of Connecticut State Agencies;
  - b) pursuant to § 1-19(b)(2), G.S.;
  - c) the state's attorney had requested that the report not be released;
  - d) pursuant to § 1-19(b)(3)(B) and (C) G.S.; and

- e) the report was not complete at the time of the complainant's request.
6. It is found that pursuant to § 1-19(a), G.S., the disclosure of the requested report is governed by the terms of § 19-535, G.S.
7. § 19-535, G.S., provides that autopsy reports may be made available to the public only through the office of the respondent and in accordance with § 1-19, G.S., and the regulations of the commission on medicolegal investigations.
8. It is found that § 19-525-10(b) of the Regulations of Connecticut State Agencies provides that autopsy reports are not open to public inspection, "pursuant to Section 1-19 of the Connecticut General Statutes."
9. It is found that § 19-525-10(c) of the Regulations of Connecticut State Agencies provides for disclosure of autopsy reports to persons with certain specific interests therein.
10. A state agency, however, cannot, by regulation, supersede the mandate of a state statute.
11. Therefore, § 19-525-10(b) of the Regulations of Connecticut State Agencies can only exempt the requested record to the extent that the regulation does not conflict with the intention of the legislature, as expressed in § 1-19, G.S.
12. It is concluded that the per se non-disclosure rule contained in § 19-525-10(b) does not exempt the subject report from disclosure unless such report is found to be exempt under a provision of § 1-19, G.S.
13. The respondent claims that the report in question is exempt from disclosure pursuant to § 1-19(b)(2), G.S., as a medical or similar file, the disclosure of which would constitute an invasion of the personal privacy of the decedent and his family.
14. The autopsy report contains a description of the external appearance of the deceased, including a description of clothing, a description of how the body was opened, descriptions of organs, old and new injuries, and a toxicology report.
15. It is found that the autopsy report is a personnel, medical or similar file within the meaning of § 1-19(b)(2), G.S.
16. It is also found, however, that disclosure of the subject autopsy report would not constitute an invasion of personal privacy of either the deceased or his family.
17. The respondent claims that an autopsy report might, under certain circumstances, contain references to individuals other than the deceased and that the disclosure of such a report might invade such other persons' personal privacy.

18. It is found that references to living persons contained in an autopsy report, which references might reveal personal details of the lives or health of such persons might constitute an invasion of their personal privacy.

19. The respondent failed to prove by any credible evidence, however, that the autopsy report in question contains references to persons other than the deceased.

20. It is concluded that the report in question is not exempt from disclosure by § 1-19(b)(2), G.S.

21. The respondent claims that pursuant to § 19-525-10(c) of the Regulations of Connecticut State Agencies, if an autopsy report relates to a criminal case, she cannot release the report without the approval of the state's attorney who has, in this case, not completed his investigation and has requested that the report not be released.

22. It is found that the opinion of the state's attorney that the record in question should remain confidential does not operate to exempt such record from disclosure in the absence of a statute or court order to such effect.

23. The respondent also claims that the requested record is exempt under the terms of § 1-19(b)(3), G.S., as a record of a law enforcement agency, which record reveals:

- a) information to be used in a prospective law enforcement action, the release of which would be prejudicial to such action, and
- b) investigatory techniques not otherwise known to the general public.

24. It is found that there exists a possibility that the circumstances of the deceased's death will lead to a law enforcement action.

25. It is further found, however, that the respondent failed to prove by any credible evidence that it is a law enforcement agency.

26. It is further found that no prospective law enforcement action was contemplated at the time of the hearing on this matter and that, in any event, it is found that disclosure of the subject record would not be prejudicial to any such prospective law enforcement actions.

27. It is further found that the respondent failed to prove by any credible evidence that the report in question contains any information which would reveal investigatory techniques not otherwise known to the general public.

28. It is therefore concluded that the requested record is not exempted from disclosure by § 1-19(b)(3).

29. The respondent further claims that the requested record should not be released due to the complainant's inability to properly interpret the information contained therein.

30. It is found that the complainant's ability to interpret the requested record is immaterial to the determination of the record's disclosability under the Freedom of Information Act.

31. The respondent has stated that the requested report would have been released to the complainant following the conclusion of any criminal investigation, provided the complainant received permission from the family of the decedent.

32. It is found that permission for disclosure from the decedent's family is not a statutory precondition for such disclosure, but is merely a practice adopted by the respondent.

33. In the absence of statutory authority, it is concluded that under § 1-19, G.S., the respondent cannot create a precondition to disclosure of a public record.

34. The respondent further contends that the report in question has not been completed and is therefore not subject to disclosure.

35. Although not explicitly raised as a claim of exemption pursuant to § 1-19(b)(1), G.S., it is found that the claim described in paragraph thirty four, above, was intended as such.

36. It is found, however, that the respondent failed to offer proof that she had made a determination pursuant to § 1-19(b)(1), G.S., that the public interest in withholding the requested record clearly outweighs the public interest in disclosure, or indeed what the interest in withholding would be.

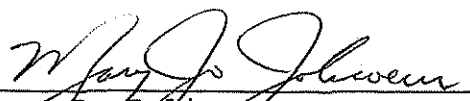
37. It is therefore concluded that the record in question is not exempt from disclosure pursuant to § 1-19(b)(1), G.S.

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

1. The respondent shall provide the complainant with a copy of the autopsy report referred to in paragraph 2 of the findings, above.

2. References to living persons in the autopsy report, as described in paragraph eighteen of the findings, above, may be masked or otherwise concealed from the complaint.

Approved by order of the Freedom of Information Commission at its regular meeting of July 28, 1982.

  
Mary Jo Jolicœur  
Clerk of the Commission