

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Kay Cahill
(Hartford Courant),

FINAL DECISION

Complainant

Docket #FIC83-44

against

October 19, 1983

Department of
Consumer Protection,

Respondent

The above captioned matter was heard as a contested case on June 7, 1983, and continued to June 20, 1983, at which times the complainant and the respondent appeared 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 within the meaning of §1-18a(a), G.S.

2. By letter dated February 22, 1983, the complainant made a request of the respondent for access to records relating to consumer complaints and product, food and drug testing.

3. By letter of complaint filed with the Commission on March 21, 1983, the complainant alleged that on March 15, 1983 a representative of the respondent had verbally denied her requests to review and/or copy all consumer complaints filed with the respondent before the referral of such complaints for investigation, and to review the results of all product, food and drug testing conducted or commissioned by the respondent, including the name of the manufacturer, producer or distributor of the items tested.

4. At hearing, the parties stipulated that "records of drug test results" as used in paragraph 3, above, refers to drug test reports under the Uniform Food, Drug and Cosmetic Act, Chapter 418, G.S., concerning adulteration or misbranding of drugs.

5. The parties also stipulated that "records of product testing" as used in paragraph 3, above, refers to those records resulting from testing within the jurisdiction of the product safety division of the respondent.

6. The parties also stipulated that test reports received by the respondent pursuant to §21a-12, G.S. would be made available to the complainant with possible trade secrets deleted, without prejudice to the complainant's right to request access to the deleted materials.

7. §21a-8(8), G.S. provides that the respondent:

shall receive complaints concerning the work and practices of persons licensed, registered or certified by boards or commissions [within the respondent] and shall receive complaints concerning unauthorized work and practice by persons not licensed, registered or certified by such boards or commissions.

8. §21a-11, G.S. provides that the commissioner of consumer protection, for the purpose of inquiring into any suspected violation of the provisions of the general statutes within his or her jurisdiction, may:

take from any person, firm or corporation samples of any article which he suspects is sold, offered for sale, kept with intent to sell, made or manufactured contrary to any provision of [Chapter 416] or related chapters under the jurisdiction of said commissioner. He may analyze such samples or have them analyzed by a state chemist or by an experiment station or by the laboratories of the department of health services.

9. §21a-306 provides that:

information received by the ...[respondent] ... through filed reports, inspection or as otherwise authorized under chapter 382 [regarding the commission of pharmacy] and 418 [The Uniform Food, Drug and Cosmetic Act] and [Chapter 420b, regarding dependency-producing drugs] shall not be disclosed publicly in such a manner as to identify individuals or institutions, except in a proceeding involving the question of licensure or right to practice.

10. It is found that consumer complaints and records of the results of product, food and drug tests conducted pursuant to chapter 382, 418 and 420b, G.S. constitute "information received" by the respondent pursuant to §21a-306, G.S.

11. It is therefore found that the portions of such records which identify individuals or institutions are not subject to mandatory disclosure, pursuant to §1-19a and 21a-306, G.S.

12. The respondent claims that test results under Chapter 420d, G.S. are disclosable solely at the discretion of the commissioner of consumer protection, pursuant to §21a-345(b), G.S. and 21a-119(b), G.S.

13. §21a-345 provides as follows:

(a) The administrator may cause to be published from time to time reports summarizing any judgments, decrees or court orders which have been rendered under this chapter, including the nature of the charge and the dispositions thereof.

(b) The administrator may also cause to be disseminated information regarding hazardous substances in situations involving, in the opinion of the administrator, imminent danger to health. Nothing in this section shall be construed to prohibit the administrator from collecting, reporting and illustrating the results of the investigations of the agency.

14. §21a-119 provides:

(a) The commissioner may cause to be published, from time to time, reports summarizing all judgments, decrees and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(b) The commissioner may also cause to be disseminated such information regarding food, drugs, devices or cosmetics as the commissioner deems necessary in the interest of public health and the protections of the consumer against fraud. Nothing in this section shall be construed to prohibit the commissioner and director from collecting, reporting and illustrating the results of their examinations and investigations under this chapter.

15. It is found that §§21a-345, G.S. (formerly §19-568, G.S.) and 21a-119(b) (formerly §19-238) establish minimum, not maximum, limits to disclosure of test results.

16. It is therefore found that neither §21a-345, G.S. nor §21a-119(b) prohibit disclosure of the requested test results.

17. The respondent also claims that food and drug test results are exempted from disclosure by §1-19(b)(3)(A) and (B), G.S.

18. It is found that the respondent failed to prove that it is a law-enforcement agency.

19. It is also found that the respondent failed to prove that disclosure of drug or food test results, with identification of individuals and institutions deleted, could prejudice a prospective law enforcement action or disclose the identity of informants not otherwise known.

20. The respondent claims that consumer complaints are "similar files" within the meaning of §1-19(b)(2), G.S., and that the disclosure of consumer complaints would constitute an invasion of personal privacy.

21. It is found that consumer complaints are not "similar files" within the meaning of §1-19(b)(2), G.S.

22. It is also found that the respondent failed to prove that the disclosure of any information contained in a consumer complaint would constitute an invasion of personal privacy.

23. §42-110b(a) provides that "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."

24. "Trade" and "commerce" are defined in §42-110a(4) as "the advertising, the sale or rent or lease, the offering for sale or rent or lease, or the distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value in this state."

25. The respondent's authority to conduct investigations with respect to alleged or potential unfair trade practices is derived from Chapter 735a of the General Statutes, which at §42-110d(a) provides that "[f]or purposes of this chapter the commissioner shall have the power to order an investigation and examination to be made."

26. §42-110d(a) further provides that:

information obtained pursuant to the powers conferred by this chapter shall not be made public or disclosed by the commissioner or attorney general or their employees beyond the extent necessary for law enforcement purposes in the public interest, except as provided in subsection (f) of this section.

27. §42-110d(f) provides that:

[T]he commissioner or the attorney general or their employees shall disclose, upon written request, information concerning complaints for which an investigation is not pending at the time said written request is made, as follows: (1) The name and address of a person against whom a complaint or complaints have been filed alleging a violation or violations of the provisions of this chapter; (2) the total number of complaints filed against a specific person for the current calendar year and the previous calendar year; and (3) a numerical breakdown of the disposition of complaints."

28. Consumer complaints of unfair trade practices do not fall within the limited disclosure provisions of §42-110d(f), G.S.

29. It is therefore found that pursuant to §§1-19(a) and 42-110d(a), G.S., consumer complaints of unfair trade practices are not subject to mandatory disclosure.

30. It is found, however, that nothing in Chapters 382, 418 or 420b specifically exempts from disclosure consumer complaints unrelated to unfair trade practices.

31. It is therefore concluded that consumer complaints which do not fall within §42-110d(a), regarding unfair trade practices, are subject to disclosure as described at paragraph 11 of the findings, above.

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

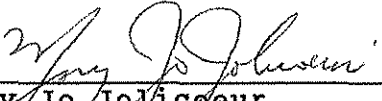
1. The respondent shall forthwith provide the complainant with access to inspect or copy records of product and food testing as described at paragraphs 2 and 5 of the findings, above.

2. The respondent shall forthwith provide the complainant with access to inspect or copy records of drug test results as described at paragraph 4 of the findings, above.

3. The respondent shall forthwith provide the complainant with access to inspect or copy consumer complaints with the exception of complaints of unfair trade practices received pursuant to Chapter 735a, G.S. The respondent shall forthwith provide the complainant with access to information concerning complaints for which an investigation was not pending at the time of the complainant's request, pursuant to §42-110d(f), G.S.

4. The respondent may, pursuant to §§21a-306 and 1-19(a), G.S. mask or delete information from records received under chapters 382, 418 and 420b of the General Statutes in such manner as to avoid identification of individuals or institutions.

Approved by order of the Freedom of Information Commission at its regular meeting of October 12, 1983.



Mary Jo Jolicœur
Clerk of the Commission