



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Len Besthoff and NBC Connecticut,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-783

Sanitarian, Health Department, Town of Orange; Health
Department, Town of Orange; and Town of Orange,
Respondent(s)

April 9, 2015

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, May 13, 2015**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE May 1, 2015**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE May 1, 2015**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE May 1, 2015**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Len Besthoff
Philip C. Pires, Esq.

2015-04-09/FIC# 2014-783/Trans/wrbp/LFS/TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Len Besthoff and NBC Connecticut,

Complainants

against

Docket #FIC 2014-783

Sanitarian, Health Department, Town of
Orange; Health Department, Town of
Orange; and Town of Orange

Respondents

April 8, 2015

The above-captioned matter was heard as a contested case on February 13, 2015, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The matter was consolidated for hearing with Docket #FIC 2014-435; Kamran Niazi v. Commissioner, State of Connecticut, Department of Public Health; and State of Connecticut, Department of Public Health; and Docket #FIC 2014-519; Joseph Cole and the Orange Times v. Director of Health, Health Department, Town of Orange; Health Department, Town of Orange; and Town of Orange.

Following the hearing in this matter, the complainants offered two exhibits to prove that they were entitled to the records requested. The respondents objected to admission of such exhibits on the basis of relevancy and authentication.

Pursuant to Regs., Conn. State Agencies §1-21j-37, “[a]ny ... documentary evidence may be received; but ... shall, as a matter of policy, exclude irrelevant, immaterial or unduly repetitious evidence.” Moreover, “administrative tribunals are not strictly bound by the rules of evidence ... [They may consider exhibits [that] would normally be incompetent in a judicial proceeding, so long as the evidence is reliable and probative.” (Citation omitted; internal quotation marks omitted.) Gagliardi v. Commissioner of Children and Families, 165 Conn. App. 610, 619 (2015).

For the foregoing reasons, the hearing officer overruled the respondents’ objection and admitted the exhibits, marked Complainants’ C, after-filed and Complainants’ D, after-filed, as evidence.

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 on October 28, 2014, the complainants asked for copies of records pertaining to the closing of Oregano Joe's Pizza restaurant in Orange, CT.

3. It is found that on October 29, 2014, the respondents denied the complainants' request based on §19a-25, G.S. and associated regulations.

4. By letter filed July 10, 2014, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide them with the records they requested.

5. Section 1-200(5), G.S., provides:

Public 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, ... whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

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

Except 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 (1) inspect such records promptly during regular office or business hours, ... or (3) receive a copy of such records in accordance with section 1-212.

7. Section 1-212(a), G.S., provides in relevant part: "Any 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 requested by the complainants are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

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

All information, records of interviews, written reports, statements, notes, memoranda or other data ... procured by the Department of Public Health ... in connection with studies of morbidity and mortality conducted by the Department of Public Health ... or procured by the directors of health of towns, cities or boroughs or the Department of Public Health pursuant to section 19a-215, ... for the purpose of reducing the morbidity or mortality¹ from any

¹ Morbidity: "the incidence of disease;" mortality: "the number of deaths in a given time or a given community." Webster's Third New International Dictionary, Unabridged (1993).

cause or condition, shall be confidential and shall be used solely for the purposes of medical or scientific research and, for information obtained pursuant to section 19a-215, disease prevention and control by the local director of health and the Department of Public Health... 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. Notwithstanding the provisions of chapter 55, the Department of Public Health may exchange personal data for the purpose of medical or scientific research, with any other governmental agency or private research organization; provided such state, governmental agency or private research organization shall not further disclose such personal data. The Commissioner of Public Health shall adopt regulations consistent with the purposes of this section to establish the procedures to ensure the confidentiality of such disclosures.... This section shall not be deemed to affect disclosure of regular hospital and medical records made in the course of the regular notation of the care and treatment of any patient, but only records or notations by such staff committees pursuant to their work. (Emphasis added.)

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

(a) For the purposes of this section:

(1) "Commissioner's list of reportable diseases and laboratory findings" means the list developed pursuant to section 19a-2a.

(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 and laboratory findings to the director of health of the town, city or borough in which such case resides and to the Department of Public Health, no later than twelve hours after such provider's recognition of the disease. . . Such reports of disease shall be confidential and not open to public inspection except as provided in subsection (d) of this section.

(c) When a local director of health or his authorized agent or the Department of Public Health receives a report of a disease or laboratory finding on the commissioner's list of reportable disease and laboratory findings, either 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. . . .

(d) All personal information obtained from disease prevention and control investigations as performed in subsection (c) of this section including the health care provider's name and the identity of the reported case of disease and suspected source persons and contacts shall not be divulged to anyone and shall be held strictly confidential pursuant to section 19a-25, by the local director of health and his authorized agent and by the Department of Public Health.

(e) Any person who violates any reporting or confidentiality provision of this section shall be fined not more than five hundred dollars. No provision of this section shall be deemed to supersede section 19a-584. (Emphasis added.)

11. Section 19a-2a, G.S., provides in relevant part:

The Commissioner of Public Health shall employ the most efficient and practical means for the prevention and suppression of disease and shall administer all laws under the jurisdiction of the Department of Public Health and the Public Health Code. . . The commissioner shall have the power and duty to. . . (9) annually issue a list of reportable diseases and reportable laboratory findings and amend such list as he deems necessary. . . .

12. It is found that the Commissioner's 2014 annual list of reportable diseases and laboratory findings, referred to in paragraphs 10.a.1, 10.b, 10.c and 11, above, lists "outbreaks of foodborne illnesses involving two or more persons" as a reportable disease.

13. It is found that, pertinent to the complainants' request, described in paragraph 2, above, the respondents received a report pursuant to §19a-215(b), G.S., of an outbreak of a foodborne illness involving two or more persons. It is found that the respondents and the Orange Director of Health each then undertook coordinated investigations pursuant to §19a-215(c), G.S., to "obtain such information as may be necessary to lead to the effective control of further spread of such disease."

14. It is further found that the information that the respondents obtained through their investigation is contained in many pages of records.

15. At the close of the hearing on the matter, the respondents submitted such records to the Commission for an in camera inspection (hereinafter the "in camera records").

16. After a careful review of the in camera records, it is found that the records consist of information, records of interviews, written reports, statements, notes, memoranda or other data

procured by the respondents pursuant to §19a-215, G.S., for the purpose of controlling the further spread of a foodborne illness.

17. It is found, in addition, that such information, records of interviews, written reports, statements, notes, memoranda or other data was *also* procured by the respondents pursuant to §19a-215, G.S., for the purpose of reducing morbidity or mortality from such disease, within the meaning of §19a-25, G.S.

18. It is concluded, therefore, that §19a-25, G.S., prohibits the disclosure of the requested records to the complainants. See also, Janice Coppola v. Supervising Sanitarian, City of Waterbury; and City of Waterbury; Docket #FIC 2009-307 (October 28, 2009); Carmela Juliano v. Commissioner, State of Connecticut, Department of Public Health; and State of Connecticut, Department of Public Health; Docket #FIC 2002-307 (May 28, 2003).

19. It is concluded that the references to personal data in both §§19a-25 and 19a-215, G.S., are intended to explicitly permit and regulate the exchange of personal data in certain limited circumstances that may be prohibited in the absence of statutory permission. It is concluded that the references do not mean that all other non-personal information procured is subject to disclosure.

20. Although much of the testimony at the hearing in this matter concerned whether the respondents' investigation could be fairly characterized as a "study of morbidity and mortality" within the meaning of §19a-25, G.S., it is concluded, as set forth above, that resolution of that issue is not necessary in this matter.

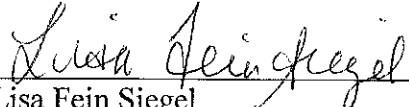
21. The complainants contended that the respondents' investigation was more of an enforcement action than an undertaking "for the particular purpose of reducing instances of morbidity or mortality." Babcock v. Bridgeport Hospital et al, 251 Conn. 790, 845 (1999). Babcock held that §19a-25, G.S., confidentiality protections apply only to records generated "primarily" or "principally" for the purpose of reducing morbidity or mortality. Id., 843.

22. It is found that the respondents' particular and primary purpose was to reduce morbidity and mortality from a suspected outbreak of salmonella poisoning in more than one person, and enforcement may have been one aspect of that overall purpose.

23. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by declining to provide the complainants with a copy of the requested records identified 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 dismissed.



Lisa Fein Siegel
as Hearing Officer