

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jeff Graves,

Complainant

against

Docket #FIC 2018-0586

Chief Medical Examiner, State of
Connecticut, Office of the Chief Medical
Examiner; State of Connecticut, Office of
the Chief Medical Examiner,

Respondents

July 10, 2019

On November 27, 2018, the respondents moved to dismiss the above-captioned matter pursuant to §19a-411, G.S., contending that the complainant failed to state a claim upon which relief could be granted by the Freedom of Information Commission (the "Commission"). The complainant filed a brief in opposition to the motion, dated December 26, 2018.

This appeal was reviewed and decided pursuant to §1-206(b)(4), G.S., which provides that an appeal to the Commission may be dismissed without a hearing.

After consideration of the entire record, the Commission hereby grants the respondents' motion to dismiss for the following reasons:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. By letter dated September 17, 2018, the complainant requested from the respondents a copy of the autopsy report of Adam Lanza pursuant to the Freedom of Information ("FOI") Act.
3. The respondents notified the complainant by letter (undated) that the request did not meet the requirements of §19a-411, G.S., and its implementing regulations, and therefore, refused to provide the autopsy report described in paragraph 2, above.
4. By letter of complaint filed on October 18, 2018, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to disclose the autopsy report described in paragraph 2, above.
5. Section 1-200(5), G.S., defines "public records or files" as follows:

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, (2) copy such records in accordance with subsection (g) of section 1-212, 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 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 found that the record requested by the complainant is a public record within the meaning of §§1-200(5), 1-210(a), 1-212(a), G.S., and must be disclosed unless otherwise provided by law.

9. Section 1-206(b)(4), G.S., provides that:

Notwithstanding any provision of this subsection to the contrary, in the case of an appeal to the commission of a denial by a public agency, the commission may, upon motion of such agency, confirm the action of the agency and dismiss the appeal without a hearing if it finds, after examining the notice of appeal and construing all allegations most favorably to the appellant, that (A) the agency has not violated the Freedom of Information Act, or (B) the agency has committed a technical violation of the Freedom of Information Act that constitutes a harmless error that does not infringe the appellant's rights under said act.

10. The respondents contended that, pursuant to §19a-411, G.S., and its implementing regulations, the Office of the Chief Medical Examiner ("OCME") has the sole authority to grant or deny the general public access to an autopsy report; only members of the public with a legitimate interest are provided such reports, and access by any other member of the public is discretionary. The respondents denied the request because the complainant did not set forth a legitimate interest for which to grant the

complainant a copy of the autopsy report.

11. The complainant asks for the Commission to order disclosure of the autopsy report. The complainant contends that he is conducting independent research into the circumcision status of mass murderers in the United States.

12. Section 19a-411, G.S., provides:

(a) The Office of the Chief Medical Examiner shall keep full and complete records properly indexed, giving the name, if known, of every person whose death is investigated, the place where the body was found, the date, cause and manner of death and containing all other relevant information concerning the death and a copy of the death certificate. The full report and detailed findings of the autopsy and toxicological and other scientific investigation, if any, shall be a part of the record in each case. The office shall promptly notify the state's attorney having jurisdiction of such death and deliver to the state's attorney copies of all pertinent records relating to every death in which further investigation may be advisable. Any state's attorney, chief of police or other law enforcement official may, upon request, secure copies of such records or other information deemed necessary by such official for the performance of his or her official duties.

(b) The report of examinations conducted by the Chief Medical Examiner, Deputy Chief Medical Examiner, an associate medical examiner or an authorized assistant medical examiner, and of the autopsy and other scientific findings may be made available to the public only through the Office of the Chief Medical Examiner and in accordance with this section, section 1-210 and the regulations of the commission [on Medicolegal Investigations]. Any person may obtain copies of such records upon such conditions and payment of such fees as may be prescribed by the commission [on Medicolegal Investigations], except that no person with a legitimate interest in the records shall be denied access to such records, and no person may be denied access to records concerning a person in the custody of the state at the time of death. As used in this section, a "person in the custody of the state" is a person committed to the custody of (1) the Commissioner of Correction for confinement in a correctional institution or facility or a community residence, (2) the Commissioner of Children and Families, or (3) the Commissioner of Developmental Services.

(c) Upon application by the Chief Medical Examiner or state's attorney to the superior court for the judicial district in which the

death occurred, or to any judge of the superior court in such judicial district when said court is not then sitting, said court or such judge may limit such disclosure to the extent that there is a showing by the Chief Medical Examiner or state's attorney of compelling public interest against disclosure of any particular document or documents. Public authorities, professional, medical, legal or scientific bodies or universities or similar research bodies may, in the discretion of the commission [on Medicolegal Investigations], have access to all records upon such conditions and payment of such fees as may be prescribed by the commission. Where such information is made available for scientific or research purposes, such conditions shall include a requirement that the identity of the deceased persons shall remain confidential and shall not be published. (Emphasis added.)

13. It is found that the autopsy report described in paragraph 2, above, constitutes a record of the Chief Medical Examiner within the meaning of §19a-411, G.S.

14. In Galvin v. Freedom of Information Commission, the Connecticut Supreme Court determined that §19a-411, G.S., is a state statute that falls within the “except as otherwise provided” provision of §1-210(a), G.S. Galvin, 201 Conn 448, 462 (1986). The Galvin court recognized that a request for records from the Office of the Chief Medical Examiner (“OCME”) required “the reconciliation of the provisions of the [FOI Act and §19a-411, G.S.], each of which deals with the public’s right of access to records kept on file by public agencies.” Id. at 454. The court determined that the statutory guidelines of §19a-411, G.S., “impose stricter limitations on the disclosure of such records than the [FOI Act] permits.” Id.

15. The Galvin court further found that §19a-411, G.S., set forth three classes of record seekers. Galvin, 201 Conn. at 457. The first class included “[a]ny state’s attorney, chief of police or other law enforcement official.” Id. The court stated that such an official “may, upon request, secure copies of such records or other information *deemed necessary by him to the performance of his official duties.*” Id. (Emphasis in original). The court found that the second class of record seekers included “public authorities, professional, medical, legal or scientific bodies or universities or similar research bodies.” Id. Within this category, the court stated that access to records kept by the medical examiner’s office is “in the discretion of the commission [on medicolegal investigations] . . . upon which conditions and payment of fees as may be prescribed by the commission.” Id. (Emphasis in original). Finally, the court identified a third class of record seekers that included members of the general public. In this regard, the court stated that “autopsy reports and other investigative reports may be made available to the public *only through the office of the chief medical examiner and in accordance with . . . the regulations of the commission.*” Id. at 458. (Emphasis in original).

16. It is found that complainant has requested the record described in paragraph 2, above, as a member of the general public.

17. The Court in Galvin found that §19a-411, G.S., conditions the availability of autopsy reports to the general public on compliance with the regulations of the commission on medicolegal investigations. Id at. 458. It is found that, because the complainant is making the request as a member of the general public, the respondents' regulations control the release of records.

18. Regulations of Connecticut State Agencies, §19a-401-12(c)(2) provide: “[i]f the requester of the records is a member of the general public, he or she may obtain access to such records if the person has a legitimate interest in the documents and no court has issued an order prohibiting disclosure pursuant to §19a-411(c) of the Connecticut General Statutes.” (Emphasis added.)

19. The Commission takes administrative notice of the respondents' website, in which respondents set forth the following:

In accordance with the regulations of the Commission on Medicolegal Investigation, the complete records of all investigations are made available to the family of the deceased, to any federal state or municipal governmental agency or public health authority investigating the death; to insurance companies with a legitimate interest in the death; to all parties in civil litigative proceedings, and to treating physicians. In addition, records may be made available to any other individual with the written consent of the family or by court order. Legitimate scientific research organizations may also have access to the records provided the identity of the decedents are not published or otherwise made public. Records are not otherwise open to the general public.

20. This Commission also takes administrative notice of its prior decisions recognizing the validity of the respondents' interpretation of a “legitimate interest.” See AbleChild v. Chief Medical Examiner, State of Connecticut, Office of the Chief Medical Examiner, and State of Connecticut, Office of the Chief Medical Examiner, Docket #FIC 2013-197 (Oct. 23, 2013) and Paul J. Ganim and the Bridgeport Probate Court v. State of Connecticut, Office of the Chief Medical Examiner, Docket #FIC 2010-328 (Apr. 27, 2011).

21. It is found that §19a-411(c), G.S., and §19a-401-12(c)(2), R.C.S.A., “embod[y] a policy of conditional rather than unfettered disclosure.” Galvin, 201 Conn. at 459.

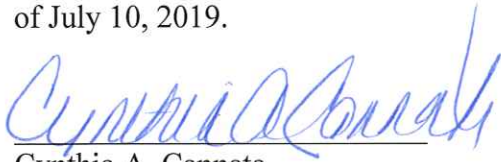
22. Since it is within the respondents' discretion to interpret whether the complainant set forth a legitimate interest, it is found that the Commission cannot grant the complainant his requested relief absent proof of an abuse of discretion.

23. Therefore, after consideration of the record, and construing all allegations most favorably to the complainant, it is found that the respondent did not violate the FOI Act as alleged in the complaint.

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

1. The respondents' motion to dismiss is granted, and the complaint is dismissed without a hearing pursuant to §1-206(b)(4), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 10, 2019.



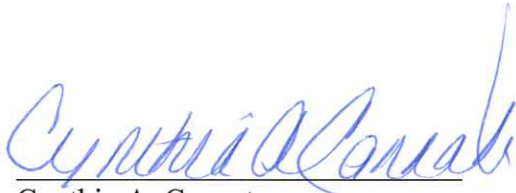
Cynthia A. Cannata
Acting Clerk of the Commission

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:

JEFF GRAVES, 1108 N. Almansor Street, Alhambra, CA 91801

CHIEF MEDICAL EXAMINER, STATE OF CONNECTICUT, OFFICE OF THE CHIEF MEDICAL EXAMINER; AND STATE OF CONNECTICUT, OFFICE OF THE CHIEF MEDICAL EXAMINER, c/o Assistant Attorney General Patrick Kwanashie, Office of the Attorney General, 55 Elm Street, PO Box 120, Hartford, CT 06141-0120



Cynthia A. Cannata
Acting Clerk of the Commission