



Department of Health  
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Providence, RI 02908-5097  
TTY: 711

VIA EMAIL ONLY

June 13, 2023

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RE: ACCESS TO PUBLIC RECORDS  
AP23-0319 APPEAL

To the Persons Listed Above:

I am writing in response to your appeal of the April 10, 2023 denial of a records request which sought the following additional information:

“Is the separate examination of the by a cardiovascular pathologist also perhaps available in redacted form?” “In follow-up to my initial request, I am now requesting the full (but redacted from any personal identifiers) cardiovascular pathology report from the cardiovascular pathologist, as well as the toxicology report, the latter with particular attention to testing done to rule in/rule out specific etiologies of myocarditis, including infectious, autoimmune, chemical/toxic, as well as antibody testing (i.e., SARS-CoV-2 spike AND nucleocapsid antibodies, etc.), and PCR antigen testing germane to BOTH SARS-CoV-2 infection, and COVID-19 vaccination, the latter with particular attention to COVID-19 mRNA vaccination. I am also requesting any redacted clinical records in the possession of RIDOH/The Medical Examiner’s Office which elaborate the decedent’s clinical history just prior to death, including known conditions/comorbidities treated (if any), and what RIDOH/The Medical Examiner’s Office has in its possession regarding any confirmation of the timing of her COVID-19 vaccine administration, given the independent data in VAERS report 2375029-1, which I have attached, yet again.”

You have appealed this decision to the Director and asked RIDOH for a second review of the documents withheld to determine if they can be reasonably redacted and released.

RIDOH has reviewed your appeal and reiterates that the stated basis for the April 10, 2023, denial still holds. I arrived at this conclusion because a request for the specified materials triggers the protections of R. I. Gen. Laws § 38-2-2(4)(S) from the Access to Public Records Act (“APRA”), which explicitly prohibits the disclosure of any information that has been deemed to be confidential by applicable law or court rule. Here, the law that requires the information to be kept confidential is found in federal regulatory law: in 45 CFR § 164.514 of the HIPAA Privacy Rule, standards and requirements for deidentification of protected health information. Specifically, 45 CFR § 164.514(b)(2)(ii) states that the covered entity may not disclose personal health information if it has *actual knowledge* that the information could be used alone or in combination with other information to identify an individual who is a subject of the information. In this case, the requester shared a redacted document that he received pursuant to an earlier public records request via Twitter and used that document to solicit information from the public for the purpose of re-identifying the patient whose information had been redacted. RIDOH maintains that these facts and circumstances amount to actual knowledge that the requester could re-identify the patient from the document whose health information had been redacted. RIDOH’s position is supported by an affidavit by the Acting Chief Medical Examiner, reflecting a conversation with the requester related to the subject. (Both Dr. Bostom’s Tweet and Dr. Chirkov’s Affidavit are attached as exhibits to this letter).

Additionally, RIDOH maintains that R.I. Gen. Laws § 38-2-2(4)(A)(1)(b) applies. This section of APRA reserves from public disclosure “personal individually identifiable records otherwise deemed confidential by federal or state law or regulation or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” The same rationale that sustains the argument about the HIPAA Privacy Rule in the paragraph above also sustains the argument in this paragraph.

R. I. Gen. Laws § 38-2-8 requires we give you notice of your right to file an objection or complaint regarding this denial with the Department of the Attorney General, 150 South Main Street, Providence, Rhode Island, 02903, or the Rhode Island Superior Court of the county where the record(s) are maintained.

Further information concerning APRA may be available through the Attorney General’s website at [www.riag.ri.gov](http://www.riag.ri.gov).

Thank you for your interest in keeping government open and accountable to the public.

Sincerely,



Utpala Bandy, MD, MPH  
Interim Director of Health