

## **RHODE ISLAND ARPA APPEAL**

May 5, 2023

Dr. Utpala Bandy  
Interim Director of Health  
Rhode Island Department of Health  
Attention: Legal Division  
3 Capitol Hill  
Providence, RI 02908

*Re: Rhode Island Department of Health Records Request AP23-0319*

To Whom It May Concern:

On April 10, 2023, The Rhode Island Department of Health (“**RIDOH**”) provided its final determination regarding a public record request (“**Request**”) our client submitted pursuant R.I. Gen. Laws §§ 38-2-1 et seq. (the “**Access to Public Records Act**”). In that final determination, RIDOH stated the records our client requested are not subject to disclosure (“**Final Response**”). We write now to appeal RIDOH’s Final Response, on behalf of our client.

### **A. The Request**

Within RIDOH’s April 10, 2023 Final Response, it characterized our client’s request – in relevant part – as the following:

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 decedents 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.

(Attachment 1.)<sup>1</sup>

**B. RIDOH's Final Response**

In RIDOH's April 10, 2023 Final Response, it stated in relevant part,

RIDOH has determined that the records you have requested are not subject to disclosure because doing so would constitute a clearly unwarranted invasion of personal privacy, triggering the protections of R. I. Gen. Laws § 38-2-2(4)(A)(I)(b). No portion of the document(s) or record(s) that you have requested would contain reasonably segregable information that is releasable to ensure that the documentation alone or in combination with other information received may identify the individual who is the subject of the information.

(Attachment 1.)

**C. Argument**

RIDOH has improperly withheld responsive records under R. I. Gen. Laws § 38-2-2(4)(A)(I)(b). The statute RIDOH cited, states in relevant part, "Personnel and other 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 pursuant to 5 U.S.C. § 552 et seq." In other words, to determine whether requested information can be properly withheld under this statute, the information must be deemed confidential by federal or state law or regulations, or constitute a clearly unwarranted invasion of personal privacy as defined by Exemption 6 of the Federal Freedom of Information Act ("FOIA"). 5 U.S.C. § 552(b)(6). Under FOIA, the agency bears the burden to demonstrate that the requested information properly falls under the claimed exemption. *American Civil Liberties Union v. DOD*, 628 F.3d 612, 619 (D.C. Cir. 2011).

When evaluating withholdings under FOIA's Exemption 6, there is a "presumption in favor of disclosure [that] is as strong as can be found anywhere in the Act." *Multi AG Media LLC v. U.S. Dep't of Agric.*, 515 F.3d 1224, 1227 (D.C. Cir. 2008) (quoting *Nat'l Ass'n of Homebuilders v. Norton*, 309 F.3d 26, 32 (D.C. Cir. 2002)) (internal quotation marks omitted). Therefore, an agency may withhold personal information only if "disclosure would compromise a substantial, as opposed to a de minimis, privacy interest." *Nat'l Ass'n of Retired Fed. Emps. v. Horner*, 879 F.2d 873, 875 (D.C. Cir. 1989).

Furthermore, even when a privacy interests exist, courts must "weigh the privacy interest in non-disclosure against the public interest in the release of the records in order to determine whether, on balance, the disclosure would work a clearly unwarranted invasion of privacy."

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<sup>1</sup> All "Attachments" referenced herein are appended to this letter.

*Lepelletier v. FDIC*, 164 F.3d 37, 46 (D.C. Cir. 1999) (internal quotation marks omitted); *see also U.S. Dep't of State v. Washington Post Co.*, 456 U.S. 595, 598 (1982).

In this instance, RIDOH determined the requested information fell under the scope of R. I. Gen. Laws § 38-2-2(4)(A)(I)(b) because disclosure “would constitute a clearly unwarranted invasion of personal privacy” as defined by FOIA. However, RIDOH has failed to demonstrate how the requested information would compromise a substantial, as opposed to a de minimis, privacy interest. *Nat'l Ass'n of Retired Fed. Emps.*, 879 F.2d at 875. Furthermore, it does not appear RIDOH conducted any balancing test weighing the privacy interest in non-disclosure against the public interest in the release of records. *Lepelletier*, 164 F.3d at 46.

Beyond RIDOH's failure to properly demonstrate that the release of the withheld records would constitute a clearly unwarranted invasion of personal privacy, its withholding of the requested records was improper for at least three reasons. First, our client's Request sought information with all “personal identifiers” removed. (**Attachment 1.**) Therefore, if the information was released, no substantial privacy interest would be compromised because the individual to whom the information relates would not be identified.

Second, the information requested related to lab results regarding an abnormal death of a young female who may have suffered from a known deadly adverse event (myocarditis) caused by COVID-19 vaccines, which she received 12 days before her death. (**Attachment 2.**) The public has an interest in the requested information to better understand whether the death was attributable to the decedent's receipt of the COVID-19 vaccines, and the other possible risk factors that contributed to the death. Furthermore, the public has an interest in learning whether Rhode Island health officials are accurately reporting deaths that are most likely caused by serious adverse events from COVID-19 vaccines, or whether there is an underlining effort to avoid such reporting. Nearly 600 million doses of COVID-19 vaccines have been administered to people five years and older, with at least 78.5% of the U.S. population receiving at least one shot.<sup>2</sup> Thus, even if some privacy interest would be compromised by the release of the requested information, the public's interest in understanding (1) the underlining health factors that may have contributed to the serious adverse event that led to a young person's death, and (2) whether health authorities are accurately reporting such serious adverse events likely caused by COVID-19 vaccines.

Finally, even if some of the requested information is protected under R. I. Gen. Laws § 38-2-2(4)(A)(I)(b) pursuant to FOIA Exemption 6, the agency is still obligated to produce reasonably segregable information. R. I. Gen. Laws § 38-2-3(b). Under FOIA, the public body has the “burden of demonstrating that no reasonably segregable information exists within . . . documents withheld.” *Loving v. DOD*, 550 F.3d 32, 41(D.C. Cir. 2008). RIDOH only makes the conclusory determination that “no portions of the documents(s) or record(s) that [our client has] requested would contain reasonably segregable information that is releasable to the ensure that the documentation alone or in combination with other information received may identify the individual who is the subject of the information.” (**Attachment 1.**) However, based upon the categories of records our client has requested, it can be reasonably assumed that at least a portion

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<sup>2</sup> See <https://www.npr.org/sections/health-shots/2021/01/28/960901166/how-is-the-covid-19-vaccination-campaign-going-in-your-state>.

of the responsive lab results would contain non-exempt factual information, easily segregable from any personal identifying information. Thus, it appears RIDOH's determination that no reasonably segregable information exists was improper.

**D. Appellant's Request**

Our client hereby requests that the documents responsive to the Request be produced as soon as possible and appropriate legal justifications are provided for all responsive records exempt from disclosure. Thank you for your time and attention to this matter. If you require any additional information, please contact us at **(212) 532-1091** or through email at **foia@sirillp.com**.

Very truly yours,

*/s/ Aaron Siri*

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Aaron Siri, Esq.

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Enclosures