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STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

DR. ANDREW BOSTOM	:	
Plaintiff	:	
	:	
vs.	:	C.A. No.
	:	
RHODE ISLAND DEPARTMENT OF HEALTH	:	
Defendant	:	

COMPLAINT

This is an action pursuant to the Rhode Island Access to Public Records Act, (APRA), G.L.1956 Chapter 2 of Title 38.

1. Plaintiff, Dr. Andrew Bostom, is a resident of the Town of Glocester, Rhode Island.
2. Defendant, Rhode Island Department of Health (RIDOH) is an "agency" or "public body" within the meaning of R.I. Gen. Laws §§ 38-2-1 *et seq.*, of APRA, and is, therefore, subject to the requirements and provisions of APRA.
3. This Court has jurisdiction over this matter pursuant to § 38-2-8(b) and § 38-2-9 of APRA and venue is proper in this Court pursuant to § 38-2-8(b) of APRA.
4. Andrew Bostom, MD, MS is an academic, internist, epidemiologist, and clinical trialist who has worked as an allied health professional as a physical therapist, and later as a physician, for over 40 years. He has testified as an expert on COVID-19, including issues involving the COVID-19 vaccine (vaccine). He retired as an associate professor of internal medicine and family medicine at Brown University after 24 years. He has studied the effects of COVID-19 since the outbreak, and he has testified as an expert witness in both federal and state courts, including signing on to an amicus brief before the US Supreme Court.
5. As part of his work, Dr. Bostom reviews medical information related to COVID-19 vaccine injuries. Dr. Bostom has also written for prestigious lay publications such as the Brownstone

Institute, on cases involving young people who have suffered and died from a condition known as myocarditis which has been linked to the vaccine.

6. Dr. Bostom has also reviewed publications of RIDOH involving the vaccine. He reviewed a report in the RI Medical Society Journal (RIMSJ) in September of 2021, co-authored by the then Director Nicole Alexander-Scott and current Interim Director Utpala Bandy of the RI Department of Health titled: "Monitoring Vaccine Adverse Event Reporting System (VAERS) Reports." (Exh. 1)

7. This report noted that of approximately one million Covid vaccines given to Rhode Islanders between January and September of 2021, there were nearly 1,500 adverse reactions, including 89 hospitalizations , and 16 deaths. The report concluded:

> [T]here is still a challenge to confirm validity of some self-reported reactions as VAERS does not require submission of clinical evidence of the reaction. It is difficult for the state to draw conclusions about vaccinations in Rhode Island or to make recommendations. However, because the VAERS program is national and pooling data from all states, it aims to rapidly detect unusual or unexpected patterns of adverse events, also known as "safety signals." At the national level, if a safety signal is found in VAERS, further analyses and studies are performed to better assess health risks and possible connections between adverse events and a vaccine. Ensuring COVID-19 vaccine safety and building vaccine confidence are critical to ending the pandemic. RIDOH is committed to supporting Rhode Islanders in reporting to VAERS and to contribute to the national significance of this safety-monitoring program.

8. The RIMSJ report further described how a RIDOH "vaccine surveillance team" met regularly (i.e., each week) to review VAERS data from Rhode Island residents categorizing the severity, and updating the frequency, of adverse events associated with COVID-19 vaccination. These efforts were geared, allegedly, toward identifying, "cases of significant interest and respond to media and data requests in a timely manner." VAERS and the RIDOH "vaccine surveillance team" included myocarditis/pericarditis, specifically, as a serious adverse event of (particular) interest: "Events of interest include reports of anaphylaxis,

Guillain-Barré syndrome, immediate allergic reactions, thromboembolic events, myocarditis/(pericarditis), and select others."

9. Contrary to the claim in the report that RIDOH's vaccine surveillance team's ostensible mission was to report "cases of significant interest and respond to media and data requests in a timely manner," particularly, cases of myocarditis/pericarditis, this never happened.
10. For example, Dr. Bostom had an email exchange with RIDOH's spokesman Joseph Wendelken, regarding a published Brown University Cardiology Division report of 14 Rhode Island cases of post-covid-19 vaccine myopericarditis in young men. He also referenced an account of how Connecticut's Department of Health (DOH) had responded to similar cases in Connecticut. Already by then, Connecticut's DOH tabulated 18 such cases in 16-to 34-year-old men, noting further that the "number and severity of cases is being tracked…by the state of Connecticut to gain more information." (Exh. 2)
11. Mr. Wendelken's response to Dr. Bostom's inquiries about whether RIDOH had "1) issued any similar statements, in 2021 or 2022; and 2) is RIDOH in fact compiling and tracking such cases?", was: "As you know, CDC (Centers For Disease Control and Prevention), FDA (Food and Drug Administration), and HHS (Health and Human Services) maintain a reporting and tracking system for vaccine adverse events. The State (RI) does not maintain a separate system. We have not issued any statements on myopericarditis post-COVID-19 vaccination."
12. This response from the RIDOH spokesman led Dr. Bostom to investigate the publicly available website for VAERS. Earlier this year, he discovered that someone had reported to VAERS the case of a 37-year-old Rhode Island woman who was found drowned in her bathtub 12 days after having received the vaccine. The cause of death was listed as myocarditis. (See attached Exh. 3)

13. On March 16, 2023, Dr. Bostom sent an email to RIDOH seeking information related to the VAERS report. (Exh. 4) His email stated:

> I am a retired Brown University Medical School Associate Professor of Medicine and Family Medicine (1997-2021). In searching CDC's public record Vaccine Adverse Event Record System (VAERS), I came across this admittedly very flimsy report on a possible RI medical examiner's case. Can you confirm whether or not such a case in fact exists, based upon the details in the report, which at least includes age, sex, date of death, covid-19 mRNA vaccine administration date, & speculative cause of death, i.e., "lymphocytic (spelled correctly) myocarditis"? If such a case & accompanying report exist, I would like a redacted/de-identified copy of the autopsy report.

14. On March 21, 2023, Dr. Bostom received a response from the legal department of RIDOH, acknowledging Dr. Bostom's request as one under APRA. (Exh. 5)

15. On March 29, 2023, RIDOH responded to Dr. Bostom's request (Exh. 6) by providing a redacted autopsy report. (Exh. 7)

16. Upon receiving the redacted autopsy report, Dr. Bostom discovered that the 37-year-old female decedent was free of any serious, chronic comorbidity including all the major organ systems examined, and the cardiovascular system. Moreover, she was not on medical therapy, and had no evidence of significant external injury, per the report.

17. To help determine whether the vaccine caused this woman's death, Dr. Bostom made an additional request for the following information:

> 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.

18. On April 10, 2023, an attorney for RIDOH responded to this request by denying any further records. The letter stated: (Exh. 8)

> 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.

19. Dr. Bostom then engaged the assistance of legal counsel to send an appeal to the Interim Director of RIDOH, Dr. Utpala Bandy. (Exh. 9)

20. In response to this appeal, on June 13, 2023, Director Bandy again refused to produce the requested records. (Exh. 10). As part of its denial, Director Bandy attached an affidavit from Dr. Alexander Chirkov, Acting Chief Medical Examiner for RIDOH. (Exh. 11), and a so-called "tweet" from Dr. Bostom dated March 29, 2023. (Exh. 12)

21. In her denial, Director Bandy relied upon the exemption contained in R. I. Gen. Laws § 38-2-2(4)(S) of the APRA, which prohibits the disclosure of any information that has been deemed to be confidential by applicable law or court rule. She wrote:

> 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.

22. Director Bandy relied upon the affidavit and tweet as her basis for actual knowledge that if RIDOH released the requested records, this could lead to the disclosure of the identity of the 37-year-old woman.

23. The affidavit falsely states that Dr. Bostom "demanded the decedent's name and family contact information for outreach." At no time did Dr. Bostom make such a demand, and

such a statement is belied by the fact that Dr. Bostom's requests specifically state that he seeks deidentified records.

24. As for the "tweet", Director Bandy stated: "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." That statement is a lie; the tweet simply states:

> BREAKING: Did a 37yo female suffer a fatal (Moderna) mRNA vaccine-induced myocarditis that has not been made known to RIHEALTH? Autopsy report (redacted) & VAERS report (misspellings)

25. Nowhere in his tweet did Dr. Bostom "solicit" any information from the public which could lead to re-identifying the patient. In fact, in his over 40 years of practice as an allied health professional and physician, which has also included overseeing a large multinational clinical trial involving more than four thousand patients followed continuously for almost 10-years, Dr. Bostom has never been accused of attempting to violate any patient's privacy rights.

26. Defendant gave as a second reason for denying Dr. Bostom's request as follows:

> 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.

27. Defendant's denial of Plaintiff's request is a violation of the APRA.

28. When evaluating withholdings information under the APRA, there is a presumption in favor of disclosure that is as strong as can be found anywhere in the Act. An agency may withhold personal information only if disclosure would compromise a substantial, as opposed to a de minimis, privacy interest.

29. 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.
30. RIDOH has failed to demonstrate how the requested information would compromise a substantial, as opposed to a de minimis, privacy interest. 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.
31. 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.
32. First, Dr. Bostom's Request sought information with all "personal identifiers" removed. 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.
33. 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, one of which she received 12 days before her death. 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. 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.

34. Finally, even if some of the requested information is protected under R. I. Gen. Laws § 38-2-2(4)(A)(I)(b), the agency is still obligated to produce reasonably segregable information. R. I. Gen. Laws § 38-2-3(b). Under APRA, the public body has the burden of demonstrating that no reasonably segregable information exists within documents withheld. 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." However, based upon the categories of records Dr. Bostom has requested, it can be reasonably assumed that at least a portion of the responsive lab results would contain non-exempt factual information, easily segregable from any personal identifying information. Thus, RIDOH's determination that no reasonably segregable information exists was improper.

WHEREFORE, Plaintiff demands judgment against Defendant, and requests the following relief:

A. A Declaration of this Court that Defendant has been and continues to be in violation of APRA;

B. An Order of this Court requiring Defendant to forthwith produce any and all records and documents as requested by Plaintiff s March 16, 2023, APRA request, as amended, at no cost to Plaintiff, and to otherwise comply with APRA;

C. An assessment of a civil fine against Defendant for its knowing or reckless violations of APRA, pursuant to R.I. Gen. Laws § 38-2-9(d);

D. For an award of Plaintiff" s reasonable attorney's fees and costs pursuant to R.I. Gen. Laws § 38-2-9(d); and

E. Such other and further relief as the Court deems just and proper under the circumstances.

Plaintiffs,
By his Attorney,

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