



Department of Health

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Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

April 24, 2018

David B. Rankin, Esq.
Beldock Levine & Hoffman LLP
99 Park Avenue PH/26th Floor
New York, NY 10016-1601

Re: FOIL Appeal # 17-09-123 (Brooke Ganz)

Dear Mr. Rankin:

This regards the administrative appeal to the New York State Department of Health ("DOH") as to the above-captioned request of your client, Brooke Ganz, for certain records pursuant to the Freedom of Information Law ("FOIL"), Public Officers Law ("POL") Article 6.

By email on September 12, 2017, your client requested under FOIL that DOH's Records Access Office ("RAO") provide:

...a copy of the New York State marriage index, from 1881 (or as early as such records are available) through December 31, 2016, inclusive. This request is for the basic index only, which might also be known as a "marriage log" or a "finding aid" or a "database extract" or similar terms. Please note that I am not requesting any actual marriage certificates or marriage licenses.

The RAO acknowledged your client's request on September 13, 2017, continued to communicate with your client, and on February 15, 2018 provided responsive records through December 31, 1965 on a drive by mailing them to your client. The RAO's response of February 15, 2018 specified your client's appeal rights. DOH received this appeal on April 10, 2018 (though it is dated April 9, 2018 and seemingly was mailed that date).

Your client's FOIL Request specified that the RAO's response should be mailed as follows:

For mailed responses, please address (see note):
MuckRock
DEPT MR 42930
411A Highland Avenue
Somerville, MA 02144-2516

The "note" says that if the requestor's name is used rather than MuckRock News and the department number, the mail might be returned as undeliverable. The RAO used the address exactly as specified and added the name "Brooke Ganz" but did not

change any elements of the prescribed address. The mail sent by the RAO to your client on February 15, 2018 was not returned as undeliverable.

POL §89(4)(a) provides that a person denied access to information requested under FOIL must appeal the denial in writing within 30 days. This appeal was sent by USPS mail well over 30 days after the RAO responded to your client's request. Accordingly, your appeal on behalf of your client is denied in its entirety as untimely. See, Tinker Street Cinema v New York Dept of Transportation, 254 AD2d 293, 294 (2d Dept. 1998).

Please be aware, however, that even if your client had timely-filed her appeal, she would not have prevailed on the merits because FOIL precludes DOH from releasing the records sought on appeal. The applications of POL §§87(2)(a), (b), (f), and (i) all require DOH to deny releasing the requested records apart from those already provided.

POL § 87(2)(a) provides an exception to the release of records under FOIL when the records are exempt from release by law. Here, Domestic Relations Law § 20 mandates DOH to keep an indexed file of all New York marriage records outside the City of New York; the regulations at 10 NYCRR §35.5(c)(4) specify that no information shall be released from a record of marriage unless the record has been on file for at least fifty years and the parties to the marriage are known to the applicant for the information to be deceased (unless the applicant for the information is a descendant or has been designated to act on behalf of a descendant of the parties to the marriage). Your client is not entitled to the indices of the fifty years subsequent to the records she has already received.

POL § 87(2)(b) provides an exception to the release of records under FOIL when their disclosure would constitute an unwarranted invasion of personal privacy. Here the fields in the more recent marriage indices include the date of the marriage, the location of the marriage, the full names of the two parties to the marriage, the social security numbers and dates of birth of both parties to the marriage, whether this is a second or subsequent ceremony, the previous married name for a spouse if previously married and changed names, the place where each party was born, and the gender of each spouse. Releasing each element of this information constitutes an unwarranted invasion of personal privacy for each of the couples in the index.

Moreover, the unintended consequences of such a release would provide the means for the most virulent form of unwarranted invasions of personal privacy from identity thieves and data brokers. Full names, social security numbers, and dates of birth are the informational coin of the realm for identity thieves. Even the release of limited information would allow these thieves to use other data they possess to extrapolate from these records and pin-point the identifying characteristics of individuals from whom they wish to phish or plunder. Likewise, data brokers and those who wish to use these records for marketing, voter fraud, and other illicit purposes would greatly profit from the release of these records. If released to your client for her legitimate purposes, there are no possible safeguards that the records will not wind-up in the hands of hackers globally. I take administrative notice that 87 million people had their personal information significantly compromised recently on Facebook. An agency that has provided such records in the past is not estopped from increasing its safeguards in the face of a newly-comprehended threat, such as with US Health and Human Services currently reissuing all Medicare cards to cease the practice of using the social security number as the basis for Medicare numbers (a practice that was efficient in more innocent times but now poses a great personal privacy security risk to those covered).

Indeed, Section 26 of the 2011 revisions to the Model State Vital Statistics Act and Regulations, promulgated by the US Department of Health and Human Services National Center for Health Statistics, urges doubling the time in which these records would be unavailable from 50 years to 100 years.

POL §87(2)(f) has application here because there are circumstances in which the life and safety of individuals could be endangered by disclosing these current marriage indices, most especially when there has been domestic violence or the threat thereof to one or both parties to a marriage and the information in the indices could be used by a perpetrator (most commonly an "ex" and/or stalker) to locate an intended victim. The exception of POL § 87(2)(i) is likewise applicable because the disclosure of the data within a number of the modern index fields that are designed for internal systemic purposes would jeopardize the capacity of DOH to guarantee the security of DOH's information technology assets.

For the reasons stated above, your appeal is denied in its entirety. Judicial review of this decision may be obtained pursuant to CPLR Article 78.

Sincerely,



David J. Spellman

DOH Records Access Appeals Officer

cc: Robert J. Freeman, Executive Director, NYS Committee on Open Government