

**STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION**

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| ALEC FERRETTI, | : | DOCKET NO.: FIC 2021-0051 |
| <i>Complainant</i> | : | |
| | : | |
| v. | : | FREEDOM OF INFORMATION |
| | : | COMMISSION |
| | : | |
| COMMISSIONER, STATE OF CT, | : | |
| DEPT. OF PUBLIC HEALTH and | : | |
| STATE OF CT, DEPT. OF | : | SEPTEMBER 17, 2021 |
| PUBLIC HEALTH, | : | |
| <i>Respondents</i> | : | |

RESPONDENTS' RESPONSE TO COMPLAINT

The respondents, Commissioner of the Connecticut Department of Public Health and the Connecticut Department of Public Health (“Department”), respectfully submit this response to the Complaint, filed by the complainant, Mr. Ferretti, on or about February 4, 2021, which alleges that the respondents violated the Freedom of Information Act (“FOIA”), codified in Conn. Gen. Stat. § 1-200 et seq., and/or Conn. Gen. Stat. § 7-51a in that they failed to produce the following documents requested pursuant to FOIA: “birth indexes from the embargo period, 1920-2020” (Complaint, 1).

Based upon the express language of the relevant statutes, the records requested by complainant are exempt from the general requirements of the FOIA. The statutes specifically and explicitly restrict not only persons who may access the records requested, but also the way in which those persons may access the records, and for that reason, the respondents respectfully submit that they did not violate either the FOIA or Conn. Gen. Stat. § 7-51a by authorizing the complainant to access the requested records in person during normal business hours.

Pursuant to Conn. Gen. Stat. § 1-210(a), “all records maintained or kept by any public agency . . . 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 . . . , or (3) receive a copy of such records” The statute, however, contains the caveat that such records are disclosable “[e]xcept as otherwise provided by any federal law or state statute” (Emphasis added.) Conn. Gen. Stat. § 1-210(a). Our courts consistently “have required that any exemption from disclosure under the ‘otherwise provided’ language of § 1-210(a) be based on the express terms in the state or federal law that either provide for the confidentiality of the documents or otherwise limit disclosure, copying, or distribution of the documents at issue.” *Comm’r of Emergency Services & Pub. Prot. v. Freedom of Info. Comm’n*, 330 Conn. 372, 390 (2007). In other words, the federal or state law must “by [its] terms, provide for confidentiality of records or some other shield from public disclosure.” (Emphasis added.) *Chief of Police v. Freedom of Info. Comm’n*, 252 Conn. 377, 399 (2000).

In the present case, the complainant seeks copies of birth indexes for births that occurred from 1920 through 2020.¹ Conn. Gen. Stat. § 7-51, by its terms, limits public disclosure of birth records by restricting access to records less than 100 years old to limited, specifically enumerated categories of persons:

- (A) The person whose birth is recorded, if such person is (i) over eighteen years of age, (ii) a certified homeless youth, as defined in section 7-36, or (iii) a minor emancipated pursuant to sections 46b-150 to 46b-150e, inclusive;
- (B) such person’s child, grandchild, spouse, parent, guardian or grandparent;
- (C) the chief executive officer of the municipality where the birth or fetal death occurred, or the chief executive officer’s authorized agent;
- (D) the local director of health for the town or city where the birth or fetal death occurred or where the mother was a resident at the time of the birth or fetal death, or the director’s authorized agent;
- (E) attorneys-at-law representing such person or such person’s parent, guardian, child or surviving spouse;
- (F) a conservator of the person appointed for such person;
- (G) ***a member of a genealogical society incorporated or***

¹ The complainant, by way of email dated August 26, 2021, amended his original request to include indexes of births to the present date. This amendment does not affect the respondents’ position.

authorized by the Secretary of State to do business or conduct affairs in this state; (H) an agent of a state or federal agency as approved by the department; and (I) a researcher approved by the department pursuant to section 19a-25.

(Emphasis added.) Conn. Gen. Stat. § 7-51(a)(1).

The Department does not dispute that the complainant is a member of a genealogical society incorporated or authorized by the Secretary of State to do business or conduct affairs in Connecticut, and therefore falls within a class of persons eligible to access records less than 100 years old. Nevertheless, our statutes do not grant even eligible persons unfettered access to such records. Rather, Conn. Gen. Stat. § 7-51a, by its terms, explicitly restricts genealogists' access as follows:

During all normal business hours, members of genealogical societies incorporated or authorized by the Secretary of State to do business or conduct affairs in this state shall (1) have full access to all vital records in the custody of any registrar of vital statistics, including certificates, ledgers, record books, card files, indexes and database printouts, except for those records containing Social Security numbers protected pursuant to 42 USC 405 (c)(2)(C), and confidential files on adoptions, gender change, gestational agreements and paternity, (2) be permitted to make notes from such records, (3) be permitted to purchase certified copies of such records, and (4) be permitted to incorporate statistics derived from such records in the publications of such genealogical societies.

(Emphasis added.) Conn. Gen. Stat. § 7-51a(a). Thus, in the present case, the complainant, as a member of a genealogical society, may *during normal business hours*: (1) have full access to the requested indexes, (2) take notes from said indexes, (3) purchase certified copies of the underlying vital records, and (4) incorporate statistics derived from those records in a genealogical publication. The complainant does and will have access to these records as provided in the statute.

In drafting sections 7-51 and 7-51a, the legislature restricted access to these records not only by specifically enumerating the *categories* of persons who may access the records, but also specifically restricted the *manner in which* members of genealogical societies may access those records. If the legislature had intended for the Department to provide copies, electronic or

otherwise, of documents enumerated in section 7-51a(a)(1) to members of genealogical societies, it easily could have included specific language expressing such intent. *See, e.g., Windels v. Environmental Protection Comm'n*, 284 Conn. 268, 299 (2007) (legislature knows how to convey its intent expressly). The statute contains no such authorization, and courts and other quasi-judicial bodies “are not permitted to supply statutory language that the legislature may have chosen to omit.” *Conn. Light & Power Co. v. Dept. of Public Utility Control*, 266 Conn. 108, 119 (2003). *See also Dep't of Pub. Safety v. Freedom of Info. Comm'n*, 298 Conn. 703 (2010) (“When construing a statute, [the reviewing body’s] fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, [it] seek[s] to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case” (Internal citations and quotation marks omitted.) *Id.*, 720-21.)

Pursuant to Conn. Gen. Stat. § 1-210(a), disclosure of the records sought by the complainant is otherwise limited by Conn. Gen. Stat. § 7-51a. The Department has complied with the law in this particular case, as the complainant, as a member of a genealogical society authorized to do business in Connecticut, may during normal business hours (1) have full access to the requested indexes, (2) take notes from said indexes, (3) purchase certified copies of the underlying vital records, and (4) incorporate statistics derived from those records in a publication.

WHEREFORE, for the foregoing reasons, the respondents respectfully request that the Commission dismiss the Complaint.

RESPONDENTS

COMMISSIONER, STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH and
STATE OF CONNECTICUT DEPARTMENT OF
PUBLIC HEALTH

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CERTIFICATION

This is to certify that a copy of the foregoing was electronically filed with the Freedom of Information Commission and electronically delivered on this 17th day of September, 2021 to the following:

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Elizabeth H. Bannon
Assistant Attorney General