

State of Connecticut
Freedom of Information Commission
Docket No. FIC 2021-0051
September 19, 2021

COMPLAINANT'S RESPONSE

The respondent's position can be summed quite simply: that Conn. Gen. Stat. § 7-51 and 7-51a renders birth indexes that are less than 100 years old confidential. This is not supported by the text of those laws. 7-51 reads:

(a) The department and registrars of vital statistics shall restrict access to and issuance of a certified copy of birth and fetal death records and certificates less than one hundred years old, to the following eligible parties: (1) The person whose birth is recorded, if over eighteen years of age; (2) such person's children, grandchildren, spouse, parent, guardian or grandparent; (3) the chief executive officer of the municipality where the birth or fetal death occurred, or the chief executive officer's authorized agent; (4) 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; (5) attorneys-at-law representing such person or such person's parent, guardian, child or surviving spouse; (6) a conservator of the person appointed for such person; (7) **members of genealogical societies incorporated or authorized by the Secretary of the State to do business or conduct affairs in this state;** (8) agents of a state or federal agency as approved by the department; and (9) researchers approved by the department pursuant to section 19a-25. Except as provided in section 19a-42a, access to confidential files on paternity, adoption, gender change or gestational agreements, or information contained within such files, shall not be released to any party, including the eligible parties listed in this subsection, except upon an order of a court of competent jurisdiction.

Indexes are not "certified cop[ies] of birth and fetal death records and certificates", thus my request is governed by other statutes and 7-51 is not particularly relevant. Conn. Gen. Stat. § 7-47 states that, "Each registrar of vital statistics shall keep alphabetically arranged separate indexes for each group of vital events and shall enter therein the name of each person whose

birth, marriage, death or fetal death is recorded by the registrar.” Thus birth indexes are a distinct series of records whose creations is both authorized and mandated by a separate statute. In fact, the FOI Commission adjudicated this nearly a decade ago in Docket No. FIC 2013-004. They wrote that, **“It is found that while access to birth, marriage, and death certificates is restricted by state statute (§§7- 51 and -51a, G.S.), the indexes are not subject to any similar restrictions.”** As there have been no changes since 2013 to the laws being referenced, the commission's former findings remain true. The indexes are not restricted. The Respondent cannot create restrictions by misconstruing the plain language of statute 7-51 and the commission should affirm in this matter that the indexes are open and not restricted.

The Respondent also relied on 7-51a to claim that their obligations to members of Genealogical Societies are satisfied. While the law does state that members of genealogical societies must, during business hours, “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,” it is silent on if the indexes are subject to FOIA, and thus, if the Respondent is required to produce copies of them upon request - either by genealogists or the general public. Although the Respondent stresses that access is available to me as a member of a genealogical society, that does not obviate access under FOIA¹. Records are presumed public unless they fall squarely under an exemption, and in this case, there is simply none. There is no law that

¹ It should further be noted to the commission, that there is no vetting process to join Genealogical Societies. One simply goes on their website, pays an annual fee of about \$20, fills out a contact form, and receives a membership card in the mail. To the extent that this is step is supposed to prevent “bad people” from accessing the records, it is security theater. There was no pretense that this was how genealogical societies function when the legislature passed this law, and there is functionally no distinction between a member of the general public, and a member of a Genealogical Society

prevents birth indexes from being released. In fact, the law allowing onsite access to records pretty implicitly demonstrates there is no harm in reproducing the index for members of genealogical societies, or to the public are large, for that matter.

The Respondent devotes several lines regarding reading the legislature's statutes as written. Here that must include treating a birth index as separate records from birth records. The legislature could have referenced the birth indexes when restricting access and issuance to certified copy copies of birth and fetal death records and certificates but the legislature did not choose to do so. As such, there is no law that prevents birth indexes from being released. Due to the ease with which any person can join a genealogical society and gain on site access, these records can hardly be considered private. If members of genealogy societies want to manually transcribe a the state's birth index for the years being requested, they can do so. It may be a time consuming process but there is no prohibition on it and they would have the ability to include greater information than what is in the birth indexes.

Even if the Commission were to reverse its past findings, and decide that vital records indexes actually *are* vital records, Conn. Gen. Stat. § 7-51 *does* permit me, in my capacity as a member of a Genealogical Society to receive this information:

(b) No person other than the eligible parties listed in subsection (a) of this section shall be entitled to examine or receive a copy of any birth or fetal death record or certificate, **access the information contained therein**, or disclose any matter contained therein, except upon written order of a court of competent jurisdiction.

As the Commission implicitly agreed in 2013, a birth index is not information “contained therein.” They are different records, and the statute notes this.

Furthermore, the birth index is not exempt from FOIA because the records represent “an invasion of personal privacy.” This type of information is regularly made public pursuant to FOIA, most notably through the publication of voter registration information which is released regularly by the Secretary of State, and contains the name, date of birth, and current address of every registered voter in the state. Information about one’s birth is also noted on any marriage or death certificate in the state, which is a public record, even in certified form. The legislature never intended to restrict one’s fact of birth. § 7-51 and 7-51a exist specifically to prevent the general public from obtaining certified copies of birth certificates. They do not relate to indexes in any way, shape, or form.

I request that the Commission grant this request for birth indexes through the present.



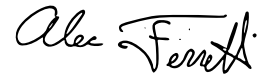
Alec Ferretti, Complainant

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 19th day of September, 2021 to the following:

Elizabeth Bannon

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Alec Ferretti, Complainant