



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission · 18-20 Trinity Street, Suite 100 · Hartford, CT 06106
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Lara Shepard-Blue and
Our Families Can't Wait,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-547

Commissioner, State of Connecticut, Department of
Developmental Services; and State of Connecticut,
Department of Developmental Services,
Respondent(s)

May 13, 2015

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, June 10, 2015**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE May 29, 2015**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE May 29, 2015**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE May 29, 2015**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Kevin A. Creane, Esq.
Jacqueline S. Hoell, Esq.

2015-05-13/FIC# 2014-547/Trans/wrbp/TCB//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Lara Shepard-Blue and Our
Families Can't Wait,

Complainants

against

Docket #FIC 2014-547

Commissioner, State of Connecticut,
Department of Developmental Services;
and State of Connecticut, Department
of Developmental Services,

Respondents

May 6, 2015

The above-captioned matter was heard as a contested case on March 20, 2015 at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that, by email sent July 15, 2014, the complainants made a request to the respondents for "a list of all guardians (including parents) of individuals who are in receipt of services from [Department of Developmental Services] including the guardians' names, addresses, phone numbers and email addresses."
3. It is found that, by email sent on July 16, 2014, the respondents responded to the complainants' request informing them in substance that the request had been reviewed and that a further response would be forthcoming.
4. It is found that by letter dated July 24, 2014, the respondents provided the complainants with the names of the guardians. It is found, however, that the respondents denied the complainants' request for addresses, phone numbers and emails claiming that the disclosure of that information would violate the Health Insurance Portability and Accountability Act ("hereinafter "HIPPA").

5. By e-mail sent and received on August 18, 2014, the complainants appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to fully comply with their records request.

6. Section 1-200(5), G.S., provides:

"Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

7. Section 1-210(a), G.S., provides in relevant part that:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, 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 in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

8. Section 1-212(a), G.S., provides in relevant part that “[a]ny person applying in writing shall receive promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

9. It is found that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212, G.S.

10. At the hearing on this matter and in a pre-hearing brief, the respondents contended that the records, and more specifically, the requested information within the records, are:

- a. confidential pursuant to §45a-670, G.S.;
- b. exempt from disclosure pursuant to HIPPA; and
- c. exempt from disclosure pursuant to §1-210(b)(2), G.S.

11. The complainants argued the following:

- a. that §45a-670, G.S., is intended to protect the person subject to the guardianship and not the guardian and that the statute allows public access to the guardian's identity, which also includes the contact information and therefore it should have been provided;
- b. that the complainants has asked for non-medical information provided in a non-medical capacity and therefore HIPPA is not applicable;
- c. that because the guardian's name is already publicly known, there should be no reasonable expectation that his/her contact information would be confidential and therefore there could be no invasion of privacy if the information was disclosed; and
- d. that the respondents failed to meet the test set forth in Perkins¹ for the exemption found at §1-210(b)(2), G.S.

12. With respect to the respondents argument that the addresses, telephone numbers and emails at issue are confidential pursuant to §45a-670, G.S., that statute provides in relevant part that:

- (a) An application for guardianship may be filed by the court on its own motion or by any adult person. The application and all records of Probate Court proceedings held as a result of the filing of such application, except for the name of any guardian of the respondent, shall be sealed and shall be made available only to the respondent or the respondent's counsel or guardian, and to the Commissioner of Developmental Services or the commissioner's designee, unless the Probate Court, after hearing held with notice to the respondent or the respondent's counsel or guardian, and to the commissioner or the commissioner's designee, determines that such application and records should be disclosed for cause shown....

13. It is found that the information requested by the complainant is contained within sealed records of Probate Court proceedings, which proceedings were held as a result of the filing of an application for guardianship and that those records were made available to the respondents pursuant to §45a-670, G.S. Further, it is found that there is no evidence in the record of this case that the Probate Court determined that the records should be disclosed.

¹ Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993)

14. It is found that §45a-670, G.S., explicitly precludes public access to all records of Probate Court proceedings held as a result of the filing of an application for guardianship and specifically limits public disclosure of any information contained in those records to the name of the guardian.

15. It is found, contrary to the complainants' contention, that the "name" of the guardian is not synonymous with their personally identifiable information which would include their name but also their addresses, phone numbers and email address.

16. It is concluded therefore that the requested information is confidential and exempt from disclosure pursuant to §45a-670, G.S.

17. Since the requested records are exempt pursuant to §45a-670, G.S., there is no need to consider the application of §1-210(b)(2), G.S., or HIPPA.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is hereby dismissed.



Attorney Tracie C. Brown
as Hearing Officer