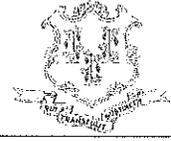


Since 1975



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Aaron Romano,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2013-360

Commissioner, State of Connecticut,  
Department of Consumer Protection; and State  
of Connecticut, Department of Consumer  
Protection,

Respondent(s)

April 24, 2014

### Transmittal of Proposed Final Decision Dated April 24, 2014

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 dated April 24, 2014, 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, May 14, 2014**. 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 2, 2014*. 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 2, 2014*.

**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 **fourteen (14) copies** be filed *on or before May 2, 2014* 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: Aaron Romano  
Michael Skold, AAG

2014-04-24/FIC# 2013-360/Trans/wrbp/TCB//KKR

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Revised Report of Hearing  
Officer

Aaron Romano,

Complainant

against

Docket #FIC 2013-360

Commissioner, State of Connecticut,  
Department of Consumer Protection;  
and State of Connecticut, Department  
of Consumer Protection,

Respondents

April 24, 2014

The above-captioned matter was heard as a contested case on October 29, 2013 at which time the complainant 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 letter dated May 3, 2013, the complainant made a request to the respondents for the names and addresses of all physicians who have submitted or have pending submissions for written certifications for medical marijuana with the Department of Consumer Protection.
3. It is found that by letter dated May 8, 2013, the respondents informed the complainant that his request was denied stating that the names and addresses requested are not subject to public disclosure pursuant to §21a-408d(b), G.S.
4. It is found that by e-mail dated May 13, 2013, the complainant challenged the respondents' denial of his request stating he was a private entity performing research and would fall within the "ambit of the statute contained in §21a-408d(b)(3), G.S.," and asked that the respondents reconsider his request.

5. It is found that by e-mail dated May 14, 2013, the complainant was informed that the respondents maintained their position with respect to the requested records and that his request was denied.

6. By letter dated and filed on June 13, 2013, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his records request.

7. 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.

8. 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. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void.

9. 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."

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

11. Section 21a-408d, G.S., provides in relevant part as follows:

**Qualifying patient and primary caregiver to register with Department of Consumer Protection. Change in information. Fee. Confidentiality of registry information.**

(a) Each qualifying patient who is issued a written certification for the palliative use of marijuana under subdivision (1) of subsection (a) of section 21a-408a, and the primary caregiver of such qualifying patient, shall register with the Department of Consumer Protection. Such registration shall be effective from the date the Department of Consumer Protection issues a certificate of registration until the expiration of the written certification issued by the physician. The qualifying patient and the primary caregiver shall provide sufficient identifying information, as determined by the department, to establish the personal identity of the qualifying patient and the primary caregiver. The qualifying patient or the primary caregiver shall report any change in such information to the department not later than five business days after such change. The department shall issue a registration certificate to the qualifying patient and to the primary caregiver and may charge a reasonable fee, not to exceed twenty-five dollars, for each registration certificate issued under this subsection. Any registration fees collected by the department under this subsection shall be paid to the State Treasurer and credited to the account established pursuant to section 21a-408q.

(b) Information obtained under this section shall be confidential and shall not be subject to disclosure under the Freedom of Information Act, as defined in section 1-200, except that reasonable access to registry information obtained under this section and temporary registration information obtained under section 21a-408n shall be provided to: (1) State agencies, federal agencies and local law enforcement agencies for the purpose of investigating or prosecuting a violation of law; (2) physicians and pharmacists for the purpose of providing patient care and drug therapy management and monitoring controlled substances obtained by the qualifying patient; (3) public or private entities for research or educational purposes, provided no individually identifiable health information may be disclosed; (4) a licensed dispensary for the purpose of complying with sections 21a-408 to 21a-408n, inclusive; (5) a qualifying patient, but only with respect to information related to such qualifying patient or such qualifying patient's primary caregiver; or (6) a primary caregiver, but only with respect to information related to such primary caregiver's (b)(3)qualifying patient. [Emphasis added]

12. At the hearing on this matter, and in their brief, the respondents argued that this Commission lacks jurisdiction to hear the complainant's appeal because the requested records are both confidential and exempt from disclosure under the FOI Act pursuant §21a-408d(b), G.S. Accordingly, the respondents moved to dismiss the appeal. The respondents argued, in the alternative, that the complaint should be dismissed because the complainant failed to establish that he falls within any of the exceptions found in §21a-408d(b), G.S.

13. With respect to the respondents' jurisdictional argument, they contend that this Commission only has jurisdiction to order the disclosure of "public records" and argued in essence that because §21a-408d, G.S., states that the requested records are confidential and shall not be subject to disclosure under the FOI Act, such records are not "public records" and therefore any appeal from a denial for those records falls outside of this Commission's jurisdiction.

14. It is found that §21a-408d, G.S., only states that the records shall not be subject to disclosure under the FOI Act and does not state that such records are not public records within the meaning of §1-200(5), G.S. Consequently, as already found in paragraph 10, above, the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

15. Notwithstanding the finding in paragraph 14, above, the Connecticut Supreme Court has held that when the legislature provides that information contained in public records shall be both confidential and not subject to the disclosure requirements of the FOI Act, those provisions are not diminished simply because it has also provided for categories of exceptions. See *State v. Orr*, 291 Conn. 642, 654-57 (2009). (Analysis of social-worker's privileges contained in statute mandating confidentiality with exceptions). See also *Marlowe v. State of Connecticut, Freedom of Information Commission*, Superior Court, J.D. New Britain, Docket No. CV 99 0493141 (October 12, 1999, McWeeny, J.), (Court ruled that the FOI Commission lacks jurisdiction to determine the rights of access by a parent or guardian to DCF records pertaining to child protection activities).

16. It is concluded that this Commission must consider the complainant's access rights as a member of the public and not as a potential researcher under §21a-408d, G.S. See *Groton Police Dept. v. FOIC*, 104 Conn.App. 150, 165 (2007). (FOIC must consider rights of general public.)

17. It is found that the records at issue herein constitute information within the meaning of §21a-408d, G.S.

18. It is concluded that §21a-408d, G.S., is a state statute which provides that the records at issue herein shall not be subject to mandatory disclosure under §§1-210(a) and 1-212(a), G.S. Consequently, it is concluded that the respondents did not violate the FOI Act, as alleged in the complaint.

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

FIC2013-360/hor/tcb/20140424