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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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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)

February 28, 2014

### 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, March 26, 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 March 14, 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 March 14, 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 March 14, 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

2/28/14/FIC# 2013-360/Trans/wrbp/TCB//KKR

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

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

February 25, 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 that complainant that his request was denied stating that the names and addressed 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 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. The type of copy provided shall be within the discretion of the public agency, except (1) the agency shall provide a certified copy whenever requested, and (2) if the applicant does not have access to a computer or facsimile machine, the public agency shall not send the applicant an electronic or facsimile copy."

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.

12. At the hearing on this matter, and in their brief, the respondents argued this Commission lacks jurisdiction to hear the complainant's appeal and it should be dismissed because the requested information is both confidential and exempt from disclosure under the FOI Act pursuant §21a-408d(b), G.S. The respondents also argued 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, the records are not "public records" and that any appeal from a denial for those records fall 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.

15. It is found that the requested records clearly constitute "any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency..." and as already found in paragraph 10, above, are public records within the meaning of §1-200(5), G.S.

16. Consequently, it is concluded that the subject of this appeal is one over which this Commission has jurisdiction.

17. With respect to the exception to the confidentiality and non-disclosure provision found in §21a-408d(b)(3), G.S., at the hearing on this matter, the complainant contended that pursuant to §21a-408d(b)(3), G.S., he should have been provided with the requested records because he is in fact a private entity and that he requested the records for research and educational purposes.

18. When asked by the hearing officer at the hearing about his research, the complainant testified that the research he conducted "was in making the request." When asked to explain the educational purpose, the complainant testified that he was going to contact the doctors, determine if they were interested in forming an association and that if they were, that association would develop educational seminars, similar to the continuing legal education classes that lawyers take, in which doctors can be educated with the anecdotal information (because there are no formal studies on the subject since the use of marijuana remains illegal under federal law) on the effects of medicinal marijuana gathered by doctors from other states.

19. The American Heritage Dictionary Second College Edition (1982) defines research as “scholarly or scientific investigation or inquiry...Close and careful study.” Furthermore, research is that which comprises “creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications.” It is used to establish or confirm facts, reaffirm the results of previous work, solve new or existing problems, support theorems, or develop new theories. A research project may also be an expansion on past work in the field; to test the validity of instruments, procedures, or experiments, research may replicate elements of prior projects, or the project as a whole.<sup>1</sup>

20. It is found that there is nothing scholarly or scientific in the act of making a request for a public record. It is found that the simple act of making a request for a public record is not an investigation or inquiry within the meaning of the term “research” as used in §21a-408d(b)(3), G.S.

21. It is found, therefore, that the complainant’s request was not research within the meaning of §21a-408d(b)(3), G.S., and with the request being the only evidence in support of any research performed by the complainant, it is found that the request was not for research or research purposes, within the meaning of that exception.

22. With respect to the exception for “educational purposes,” the American Heritage Dictionary Second College Edition (1982) defines educational as “of or relating to education...Serving to educate; instructive.”

23. It is found that the complainant’s primary purpose for obtaining the registry information is to make contact with physicians either by telephone or by mailing which is not of or relating to education and it does not serve to educate nor is it instructive. It is found that while the complainant claims that eventually the information will lead to educational classes to be offered to physicians, it is found that such claims are far too tenuous at best, and pretextual at worst. It is found that the educational purpose has to be far more contemporaneous with the request and far more certain than that which the complainant claims.

24. It is found that the complainant’s request for the information is not for educational purposes within the meaning of §21a-408d(b)(3), G.S.

25. It is found that the complainant failed to prove that his request falls within the exception found in §21a-408d(b)(3), G.S.

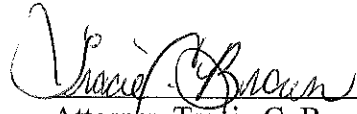
26. It is concluded, therefore, that the respondents were not required to provide the complainant with the requested records pursuant to §21a-408d, G.S., and it is concluded that the respondents did not violate the FOI Act as alleged by the complainant.

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<sup>1</sup> From Wikipedia the Free Encyclopedia at <http://en.wikipedia.org/wiki/Research>

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

1. The complainant is hereby dismissed.

A handwritten signature in black ink, appearing to read "Tracie C. Brown", written over a horizontal line.

Attorney Tracie C. Brown  
as Hearing Officer

FIC2013-360/hor/tcb/20140814