



Appeal Number: PHS14-0243A
CDC Number: 14-00135

JUL 15 2014

Kelly Terry
1637 Funderne Street
Oakhurst, NJ 07755

Dear Ms. Terry:

This is in response to your March 7, 2014, letter in which you appealed the Centers for Disease Control and Prevention's (CDC) response to your November 19, 2013, Freedom of Information Act (FOIA) request for all cases of pediatric cancer in the state of New Jersey, in Monmouth County for the period 1990-2010. On March 5, 2014, CDC withheld the responsive records, in their entirety, under FOIA Exemption 3 and Section 308(d) of the Public Health Service Act, (42 USC §242m(d)), as amended. CDC explained that the Act precludes the agency from disclosing any data that could lead to direct or indirect identification of cancer patients. County level information is specifically cited as information that can lead to indirect identification of patients.

In the appeal, you state that the "requested records should be provided to you because your request does not seek, nor is it able to infer nor expressly identify Personally Identifiable Information (PII)."

The office with the records, the Division of Cancer Prevention and Control (DCPC) is located in the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) within CDC. DCPC stated that the approved Assurance of Confidentiality agreement prohibited the release of this data. DCPC obtains the information under a 308(d) Assurance of Confidentiality for the National Program of Cancer Registries Cancer Surveillance System. The Assurance specifies that data collected as part of the surveillance system will be held in strict confidence and will only be used for the purposes stated in the Assurance. Your FOIA request does not fall within any of the stated purposes set forth in the Assurance. Although you ask for aggregate data by county, pediatric cancer related deaths are so small in number that it could be possible to identify individuals and facilities due to the small cell data. The Assurance of Confidentiality protects the information if individuals might be directly or indirectly identifiable because of geography or low case counts.

The system and datasets are protected under FOIA Exemption 3, Section 308(d) of the Public Health Service Act, (42 U.S.C. §242m(d)), as amended. Exemption 3 allows for

the withholding of information prohibited from disclosure by another statute. Section 308(d) of the Public Health Service Act mandates confidentiality of such data unless the data supplier consents to disclosure of the data; further the data can only be used for the purpose for which it was obtained. CDC obtained Assurances of Confidentiality to protect this data under Section 308(d) of the Public Health Service Act. In short, Section 308(d) asserts the importance of protecting confidentiality. Additionally, the statute meets the general requirement for Exemption 3 by "establish[ing] particular criteria for withholding" the information,¹ namely, consent from the establishment or individual supplying the information. Finally, the Department of Health and Human Services routinely uses Section 308(d) as a basis for withholding statistical and epidemiological data under Exemption 3.² Therefore, disclosure under FOIA would violate the 308(d) prohibition to disclose this information.

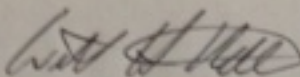
My review indicates that CDC properly withheld the information under FOIA Exemption (b)(3) and Section 308(d) of the Public Health Service Act, (42 USC §242m), as amended.

This letter constitutes the final decision of the Department in this matter. If you wish, you may seek judicial review in the district court of the United States in the district in which you reside, or your principal place of business, or in which the agency records are located, or the District of Columbia.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways: Telephone: (202) 741-5770; Facsimile: (202) 741-5769; E-mail: ogis@nara.gov; or, via U.S. Mail at:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740

Sincerely,



William H. Hall
Director, News Division
Office of the Assistant Secretary
for Public Affairs

¹ U.S. DEPT. OF JUSTICE, GUIDE TO THE FREEDOM OF INFORMATION ACT 207 (2009), available at http://www.justice.gov/oip/foia_guide09/exemption3.pdf.

² See data reports on HHS' use of 42 U.S.C. § 242m(d) as a basis for FOIA Exemption (b)(3), available at <http://www.foia.gov/data.html> (citing between 1 and 6 uses each year from 2008 through 2012).