



January 25, 2021

Representative Valerie S. Gaydos
PA House of Representatives
428 Irvis Office Building
PO Box 202044
Harrisburg, PA 17120-2044

vgaydos@pahousegop.com

**RE: Right to Know Law Request
DOH-RTKL-MS-512-2020**

Dear Representative Gaydos:

This letter acknowledges receipt by the Pennsylvania Department of Health (Department) of your written request for records under the Pennsylvania Right-to-Know Law (RTKL), 65 P.S. §§ 67.101-67.3104. I received your request on December 17, 2020 when the Department was closed due to the COVID-19 pandemic. By letter, dated December 24, 2020, the Department acknowledged receipt of your request and secured an extension of time in which to respond. Although the Department remains closed to the public, the Department is responding to requests when able to access records remotely. You requested:

The scientific data on how many people have become ill or died from COVID in the 44th legislative district, which includes the townships of Aleppo, Crescent, Findlay, Moon, North Fayette and Ohio, and the boroughs of Bell Acres, Edgeworth, Glen Osborne, Glenfield, Haysville, Sewickley, Sewickley Heights and Sewickley Hills. This data will be utilized to determine a legislative approach to assisting families and small businesses in the 44th district. Requesting the numbers for the following: Restaurants: Indoor dining at 50% capacity, indoor dining at 25% capacity, indoor dining at full capacity. Outdoor dining at 50% capacity, outdoor dining at 25% capacity, and outdoor dining at full capacity. Gyms/Fitness Centers: Since the reopening in June how many cases and deaths occurred Hair Salons: How many in our district have had cases/deaths (what are the comparisons of cases/deaths across the Commonwealth of Pennsylvania. Retail Capacity: Number of cases/deaths, Large retail stores vs. small businesses

Your request is granted in part and denied in part. With regard to the first sentence of your request, the Department has released publicly available data related to COVID-19 and utilized in the formation of orders issued in furtherance of controlling and mitigating COVID-19 at the following link:

<https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>

The Wolf Administration's decisions surrounding the managing of the COVID-19 pandemic are data-driven, literature-based and follow established public health practices. We use statewide and national data as well as peer-reviewed literature, and guidance from the Centers for Disease Control and Prevention (CDC) and White House when making public health decisions. Decisions are based on science and facts.

Any information not released above in the Department's custody and control pertaining to reports of communicable and non-communicable diseases and the Department's epidemiological investigations is exempt from public access pursuant to the following provisions in the RTKL that preclude access to: (1) records connected with a noncriminal investigation, 65 P.S. § 67.708(b)(17); (2) records that would disclose individually identifiable health information, 65 P.S. § 67.708(b)(5); (3) records which would disclose personal identification information, 65 P.S. § 67.708(b)(6)(i)(A); and (4) records that are "exempt from being disclosed under any . . . Federal or State law or regulation . . ." 65 P.S. § 67.102 (paragraph (2) in the definition of a "public record.") *See also*, 65 P.S. § 67.305(a)(3). A more detailed discussion of the exceptions to disclosure under the RTKL follows.

A strict statutory confidentiality provision prohibits the release of the records you have requested. The Department's authority to conduct an epidemiological investigation is found in The Disease Prevention and Control Law (the Act) of 1955, 35 P.S. § 521.1, *et seq.*, and the Administrative Code of 1929, 71 P.S. § 532(a) and (b). Documentation received by and/or maintained by the Department pursuant to its authority under the Act is protected by the strict confidentiality provision contained therein. Section 15 of the Act provides, in relevant part, as follows:

...State and local health authorities may not disclose reports of diseases, any records maintained as a result of any action taken in consequence of such reports, or any other records maintained pursuant to this Act or any regulation, to any person who is not a member of the Department or of any local board or department of health except as follows:

- (1) Where necessary to carry out the purposes of this act.
- (2) Where necessary to inform the public of the risk of a communicable disease.

The Act, as amended by Act of Nov. 3, 2020, P.L., No. 112.

Pursuant to the authority given to it under the Act, the Department promulgated regulations, found at 28 Pa. Code, Chapter 27 (relating to communicable and non-communicable diseases).

The regulations underscore the confidentiality of reports of communicable and non-communicable diseases, and any information obtained by the Department pursuant to the Act.

The records you have requested are records which would be maintained as a result of an action taken by the Department in consequence of its receiving reports of a disease or condition reportable under the Communicable and Non-communicable Diseases Regulations promulgated pursuant to the Act. *See* 28 Pa. Code §27.3. The Department has disclosed all information that the Department deems necessary to carry out the purposes of the Act, which is to prevent and control the spread of disease.

The scope of records exempt under the DPCL is extremely broad and includes many records that do not specifically discuss any individual case... the Department alone has the discretion to release records subject to the DPCL for that purpose.

Aneri Pattani v. Dep't of Health (OOR Docket No. AP 2020-0995). Any information not released remains confidential based upon the statutory and regulatory prohibition on disclosure. 65 P.S. § 67.102.

Pennsylvania's Office of Open Records (OOR) has affirmed the Department's denial of access to records protected under the confidentiality provision of the Act. *See Aneri Pattani v. Pennsylvania Dep't of Health* (OOR Docket No. AP 2020-0995) and *Kevin Mertz v. Pennsylvania Dep't of Health* (OOR Docket No. AP 2020-1875). *See also MaryAnn Pruden v. Dep't of Health* (OOR Docket No. AP 2020-0869) ("As the RTKL yields to legislation that exempts a document from public access, under the DPCL, the records are protected from public access. *See* 65 P.S. § 67.306; 65 P.S. § 67.305(a)(3) (a record is not presumed to be public if the record is protected by any other law)").

Further, the Department's epidemiological investigations constitute an exercise of the Department's authority to conduct a noncriminal investigation. The RTKL exempts from access by a requester the following:

A record of an agency relating to a noncriminal investigation, including:

(i) Complaints submitted to an agency.

(ii) Investigative materials, notes, correspondence and reports.

65 P.S. § 67.708(b)(17). *See Aamodt v. Dep't of Health*, 502 A.2d 776 (Pa. Cmwlth. 1986) (Court affirmed Department's denial of access to records related to a study conducted by the Department following the March 28, 1979 accident at the Three Mile Island Nuclear Generating Station (TMI) to review the effects of the TMI accident on pregnancy outcomes in the vicinity of TMI on the basis that they related to an investigation conducted by the Department.)

The remainder of your request is denied as no responsive records exist under the custody or control of the Department. The Department tracks cases by residential address, not by addresses a person visited. To the extent that this portion of your request sets forth a question, it is denied as an improper request. Under the RTKL, questions are not considered proper requests. *See Gingrich*

v. Pennsylvania Game Com'n, 2012 WL 5286229 (noting that the portion of a request “set forth as a question” did not “trigger a response”).

If you choose to appeal this partial denial of your request under the RTKL, your appeal should be submitted in writing to: Executive Director, OOR, 333 Market Street, 16th Floor, Harrisburg, Pennsylvania 17101. If you choose to file an appeal you must do so within 15 business days of the mailing date of this response and send to the OOR:

- 1) This response;
- 2) Your request;
- 3) The reasons why you think the agency is wrong in denying access to the requested records.

Also, the OOR has an appeal form available on the OOR website at: <https://www.openrecords.pa.gov/Appeals/AppealForm.cfm>.

Sincerely,



Lisa M. Keefer
Agency Open Records Officer
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Date of Mailing: 01/25/2021