



Department of Health

KATHY M. HOCHUL
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

September 28, 2021

Tim Hoefler
Empire Center for Public Policy
30 South Pearl Street
Suite 1210
Albany, NY 12207

FOIL #: 21-06-462
Re: FOIL # 03

Dear Tim Hoefler:

This letter further responds to your Freedom of Information Law (FOIL) request of June 22, 2021, in which you requested “the number of COVID-19 fatalities, confirmed and presumed, for each date and each ZIP code of residence from March 1, 2020 forward.”

On August 23, 2021, Department of Health's (“DOH”) Records Access Office (“RAO”) responded to your request for records related to COVID-19 fatalities. Your appeal from that response was received by DOH on August 30, 2021.

Your appeal sought the requested information by zip code. In the September 14, 2021 DOH Appeal Determination, the Records Access Appeals Officer informed you that DOH does not compile the data by zip code. To provide the dataset by zip code would require DOH to create a new record and DOH is not required to do so under POL §89(3)(a). *Data Tree v. Romaine*, 9 N.Y. 3d 454 (2007). This element of your appeal was denied.

In any event, the DOH does not compile the data by zip code because doing so would produce data too granular for publication. In other words, compiling the dataset by zip code would produce numbers small enough to potentially identify individuals. Accordingly, disclosure of such data would constitute an unwarranted invasion of personal privacy, pursuant to New York Public Officers Law §87(2)(b). Moreover, the dataset is not maintained in a manner that permits practical retrieval with reasonable effort.

It is important to note, contrary to your claim in your appeal letter, compiling the data you have requested is not a simple matter of “retrieving records from [a] computerized database.” Retrieving statistical data requires a deliberate process. This process is utilized to prepare data filtered at the county level for publication.

Information responsive to your request may be available through the Statewide Planning and Research Cooperative System (SPARCS). Because SPARCS contains protected health information (PHI), SPARCS data is made available to approved recipients after all data security and data governance policies and procedures are followed. Release of Limited Identifiable and Identifiable data require data request forms and data use agreements to be in place, and data

fees will apply. Therefore, in order to receive the data you are seeking, you must submit a SPARCS Data Request Application, which is available at the following link:

<http://www.health.ny.gov/statistics/sparcs/forms>.

The above-referenced application process is in place to prevent the unwarranted release of PHI, to allow vetting of the request to ensure that the SPARCS data is used as a valid tool for the research; and to provide an opportunity for researcher and associates to enter into a "data use agreement" with the New York State Department of Health. Additional information about SPARCS can be found on the Department of Health's website at the following link:

http://www.health.ny.gov/statistics/sparcs/data_distribution.htm

Should you feel that you have been unlawfully denied access to records, you may appeal such denial in writing within 30 days to the Records Access Appeals Officer, Division of Legal Affairs, Empire State Plaza, 2438 Corning Tower, Albany, New York 12237-0026.

If you require additional information or wish to discuss this matter further, please do not hesitate to contact me at (518) 474-8734.

Sincerely,

Rosemarie Hewig

Rosemarie Hewig, Esq.
Records Access Officer

RH/bae