



Building a Healthy Boston

May 12, 2020

Via e-mail only: svass@stanford.edu

Shoshana (Susana) Vasserman
Postdoctoral Fellow, SIEPR, 2019-2020
Assistant Professor, Stanford GSB, 2020-
shoshanavasserman.com

Re: Public Records Request of April 27, 2020

Dear Ms. Vasserman:

The Boston Public Health Commission ("Commission") is in receipt of your April 27, 2020 request for:

"...a dataset that details the number of health-related 911 or EMS calls for each zip code of origin from January 1, 2018 until the latest available date."

On May 5, 2020 via email you clarified your request by requesting *"records that are accumulated per day-per zip code... Alternatively, incidence-level data (i.e. one row per call) would be fine as well..."*

Enclosed find the Commission's response to your request. We would encourage you to contact us once you have had a chance to review and analyze the data so we can work with you to ensure your conclusions accurately reflect the reality of the situation on the ground.

Please note the Commission's response includes monthly responses per zip code. Any further breakdown in EMS calls would most certainly violate federal and state laws on privacy.

Under Federal law, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") prohibits covered entities, of which the Commission is one, from disclosing protected health information ("PHI") without a valid patient authorization form or court order. Under HIPAA, the definition of PHI means individually identifiable health information transmitted or maintained in any form or medium. *See* 45 CFR 160.103. Individually identifiable health information includes demographic information that is created or received by a health care provider and that which relates to the individual's past, present, or future physical or mental health or condition, the provision of health care to the individual, or the past, present, or future payment for the provision of health care to the individual, and that identifies the individual *or for which there is a reasonable basis to believe the information can be used to identify the individual* (emphasis added). *Id.* PHI includes many common identifiers, including, but not limited to, an individual's name, address, birth date, Social Security Number and medical record number when combined with health information.

Since PHI is broadly defined as that which could potentially be used to identify a patient, the disclosure of EMS responses sorted by day per zip code or incidence-level data could potentially lead to the identification of the individual, which would violate HIPAA. Furthermore, because of the particularly sensitive information and the amount of information about the pandemic and neighborhoods made available on the Internet, disclosure of information that is anymore specific than what is being disclosed would almost certainly violate Federal law.

In addition, Massachusetts law, M.G.L. c. 4, §7(26)(a), protects from disclosure any information “specifically or by necessary implication exempted from disclosure by statute.” As noted above, the primary purpose of HIPAA’s Privacy Rule is to protect the confidentiality of health records and health information, so HIPAA clearly constitutes a statute that specifically exempts disclosure of health records, such as those requested here. The Privacy Rule also creates a necessary implication that records including PHI must only be disclosed under specific circumstances i.e. under a valid patient authorization or court order.

Furthermore, under Massachusetts law, breakdown of EMS responses that is any more specific is exempt from disclosure because this information constitutes "materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy." M.G.L. c. 4, §7(26)(c).

Under 950 CMR 37.09(1) of the Public Records Law, you may appeal the Commission’s response to the Supervisor of Records within 90 days, or you may seek judicial remedy in Superior Court or in the Supreme Judicial Court. All appeals to the Supervisor of Records must be submitted to:

Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108

Should you have any questions, I can be reached at (617) 534-4322 or braza@bphc.org.

Sincerely,



Batool Raza
Assistant General Counsel