



Building a Healthy Boston

May 14, 2019

Via E-Mail and Certified Mail: [REDACTED]

[REDACTED]

Re: Your Public Records Request of May 20, 2018

Dear [REDACTED]

The Boston Public Health Commission (the "Commission") has received and reviewed your April 30, 2019 request for copies of *“all Computer Aided Dispatch Transcripts (CADs), Calls For Service Reports, all incident reports, all bills, all police reports, all audio files for 911 calls, all log book entries, all documents and all 911 documents pertaining to 1055 Commonwealth Ave, Boston from April 1, 2018 to the present.”*

Boston Emergency Medical Services (“EMS”) responded to 1055 Commonwealth Avenue on and transported patient(s) from that address on the following dates:

- 05/19/18;
- 05/30/18;
- 07/05/18;
- 09/07/18;
- 09/11/18;
- 10/19/18;
- 11/28/18;
- 02/04/19;
- 04/20/19; and
- 4/23/19

As a result, a CAD sheet, a Patient Care Report (“PCR”), and 911 recordings were created for these calls by Boston EMS. The CAD sheet is created to track EMS responses. This includes the fields needed to coordinate and document dispatch operations including but not limited to, date, time added, time dispatched, time arrived, time closed, call taker ID, event ID, caller name, caller phone number, caller location, location information, and event type. The PCR is an electronic medical record to document the treatment EMS staff provides to the patient when it responds to calls. This contains several drop-down fields and narrative sections used to document patient care. Finally, EMS also has in its possession audio recording of the 911 calls made from 1055 Commonwealth Avenue. Like the CAD sheets and the PCRs, the calls include a description of the patient’s medical condition and date of birth. These reports and recordings are confidential because they contain medical records protected by law.

Both state and federal law prohibits the disclosure of confidential medical information without a valid patient authorization form or court order.

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 nearly any portion of a health record document could inadvertently violate Federal law. In effect, even a redaction of a health record to meet the de-identification standard could still compromise patient confidentiality where any portion of the record could be used, in connection with other publicly available information, to identify the patient. The Commission has reason to believe that, because of the particularly sensitive information and the amount of information about the incident(s) at this location made available on the Internet, disclosure of any portion 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, the requested documents are exempt from disclosure because such documents constitute "medical files or information" and "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).

Accordingly, the Commission will not release the records you have requested unless you can furnish a valid patient authorization form or a court order.

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 or concerns, you may contact me at 617-534-5609 or at braza@bphc.org.

Very Truly Yours,



Batool Raza
Assistant General Counsel

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