



No Choice in the Matter – Recent Victory for Lathrop GPM Client to Have Significant Impact on Government Disclosure of Coronavirus-Related Data

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In March, Lathrop GPM published a Litigation Alert: *Tell Me More - Compliance with Open Records Laws Amidst the Coronavirus*, which discussed the impact of the coronavirus (COVID-19) outbreak on public records requests. That alert emphasized the public's heightened need for information during this time of crisis, but noted the government has been quick to deviate from the requirements of open records laws in the face of the COVID-19 pandemic.

Open records laws promote transparency and protect the public's right to receive information from its government. Lathrop GPM's Bernard Rhodes and Taryn Nash of Kansas City recently prevailed in protecting this right for Reclaim the Records, a nonprofit genealogy organization. *See Brooke Ganz, et al. v. Missouri Department of Health and Senior Services*, No. 16AC-CC00503, Memorandum and Judgment (Cir. Ct. Cole County, Missouri, April 15, 2020). In 2016, Reclaim the Records made a public records request to the state of Missouri for historical birth and death listings. The state first responded by agreeing to provide the listings at the cost of \$1.49 million. After negotiations with Lathrop GPM, the state agreed to provide the listings at the cost of \$5,000. Lathrop GPM contended that cost was still too high, but the state would negotiate no further, as it then denied the request altogether. Citing the law providing birth and death listings "may be disclosed," the state reasoned it had the discretion to deny this request.

A Missouri judge, however, found this to be a blatant violation of the state's Sunshine Law - which mandates all government records be open to the public unless another law specifically prohibits a record's disclosure. On April 15, 2020, over four years after the initial request was made, the judge issued a 50-plus page opinion explaining the law providing birth and death listings "**may be disclosed**" did not **specifically prohibit disclosure** of the requested records, and, thus, disclosure was compelled under the Sunshine Law. Accordingly, the judge ordered the state to provide the requested birth and death listings at a cost of \$2,500 (less than half the state's final offer). The judge further found the state's violation of the Sunshine Law to be both knowing and purposeful, and, as a result, fined the state the maximum statutory amount of \$12,000 and required payment of Reclaim the Record's attorneys' fees, which are estimated to be \$150,000.



The penalty assessed against the state emphasizes the importance of government compliance with open records laws, even under normal circumstances. The ongoing worldwide pandemic is, of course, anything but normal. And due to the public's need for information during this trying time, many public records requests seek (de-identified) data related to COVID-19, such as the age, race, gender, and zip code of persons who have tested positive for the virus. Government agencies, however, are refusing to provide such information, citing laws that provide the government may, but is not required to, release data regarding infectious diseases. The above decision now renders this position untenable. Rather, all public records (including those dealing with COVID-19 data) must be disclosed upon request unless disclosure is specifically prohibited by another law. The government has no choice in the matter - the information either **must** be disclosed pursuant to open records laws, unless disclosure is **specifically prohibited** pursuant to another law. To the extent a law purports to afford the government any discretion in this matter, it is of no import.

Open records laws ensure access to COVID-19-related data, which the media then uses to update the public on the spread of the virus on national, state, and local levels. Public access to accurate and timely information may help slow the spread of the virus and could ultimately save lives. Recognizing the public's right to an open and transparent government is more important now, than it has ever been, Lathrop GPM, with the support of the above decision, will continue its fight for government compliance with the open records laws that safeguard this right.

Lathrop GPM's victory in the above case is representative of the firm's experience in assisting with public records requests and challenging the denials of such requests. For more information, please contact Bernard J. Rhodes, Danielle N. Twait, Taryn Nash, Brooke Parsons, Litigation and Dispute Resolution Practice Group Chair Matthew Jacober, or your regular Lathrop GPM contact.