

Overdose Fatality Review Teams: FOIA Request for Information

Must an OFR team comply with a freedom of information act request?

Response

Maybe. The answer depends on the contents of the state law(s) that apply to disclosure of information held by an OFR team. States with OFR-specific statutes often address this issue by exempting an OFR team from state freedom of information act laws or declaring OFR information confidential. In the absence of such provisions, however, an OFR team should consult a local attorney to determine what, if any, OFR records must be produced under other protections/exceptions that exist in state disclosure laws (e.g., protections against disclosure of individuals' health information or confidentiality of ongoing death investigation and public health authority investigation data or information).

Additional Information

State law, as opposed to federal law, governs this issue. The federal Freedom of Information Act (FOIA) only applies to the public's right to request records from a federal agency.¹ As state/local OFR teams are not federal agencies, FOIA does not apply. Instead, OFR teams should look to their state freedom of information law for guidance. These laws are also known as "sunshine laws," "public records laws," or "right to know laws."

States with OFR-specific statutes often address this issue head-on. As of January 2022, 14 states create a statewide OFR team and/or authorize local OFR teams via state statute.² In five of those states, the law expressly exempts the OFR team(s) from the state freedom of information law.³ In the other nine states, OFR team information and records are classified as "confidential" or "privileged," although there is no express statutory provision addressing the applicability of the state freedom of information law.⁴ Note that certain state laws reference only a statewide OFR team, panel, or committee. As a result, exemption from freedom of information act laws expressly granted by the statute may apply only to the statewide team. This does not necessarily mean that local OFR teams in that state must respond to a freedom of information request; rather, the determination for local OFR teams may not be as straightforward as pointing to a statute.

In the absence of a specific exception in a state's OFR law, freedom of information law, or both, the OFR team should consult a local attorney to determine what, if any, records must be produced pursuant to a freedom of information law request.

¹ <https://www.foia.gov/faq.html>.

² These states are Arizona, Delaware, Indiana, Maine, Maryland, New Hampshire, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, Utah, Virginia, and West Virginia.

³ See Md. Code Ann., Health-Gen. § 5-906(a) (West 2021); N.H. Rev. Stat. Ann. § 126-DD:1(VIII) (West 2021); N.D. Cent. Code Ann. §§ 23-50-03 (West 2021); 71 Pa. Stat. and Cons. Stat. Ann. § 1691.8(d) (West 2021); VA Code Ann. § 32.1-283.7(E) (West 2021).

⁴ See Ariz. Rev. Stat. Ann. § 36-198.01(D) (West 2021); Ariz. Rev. Stat. Ann. § 36-198.01(G) (West 2021); Del. Code Ann. tit. 16 § 4799D(a) (West 2021); Ind. Code Ann. § 16-49.5-2-6(c) (West 2021); Me. Rev. Stat. Ann. tit. 5, § 200-M(6) (West 2021); Ohio Rev. Code Ann. § 307.639 (West 2021); Okla. Stat. Ann. tit. 63 § 2-1001(C) (West 2021); 23 R.I. Gen. Laws Ann. § 23-4-3(11) (West 2021); Utah Code Ann. § 26-7-13(5) (West 2021); W. Va. Code R. § 64-29-15 (2021).