



**State of New York
Department of State
Committee on Open Government**

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The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the information presented in your correspondence.

Dear :

We are in receipt of your request for assistance in gaining access to records regarding burials at the Willard State Hospital Cemetery. In this regard, we offer the following comments.

First, as a general matter, the Freedom of Information Law is based upon a presumption of access. Stated differently, all records of an agency are available, except to the extent that records or portions thereof fall within one or more grounds for denial appearing in §87(2)(a) through (k) of the law. Although that statute provides broad rights of access, the initial ground for denial, §87(2)(a), pertains to records that "are specifically exempted from disclosure by state or federal statute."

One such statute, §4174(1)(a) of the Public Health Law, pertains to access to certified copies of certified transcripts of death records, states that such records are available:

"(1) when a documented medical need has been demonstrated, (2) when a documented need to establish a legal right or claim has been demonstrated, (3) when needed for medical or scientific research approved by the commissioner, (4) when needed for statistical or epidemiological purposes approved by the commissioner, (5) upon specific request by municipal, state or federal agencies for statistical or official purposes, (6) upon specific request of the spouse, children, or parents of the deceased or the lawful representative of such persons, or (7) pursuant to the order of a court of competent jurisdiction on a showing of necessity; except no certified copy or certified transcript of a death record shall be subject to disclosure under article six of the public officers law..."

Article six of the Public Officers Law is the Freedom of Information Law. As such, based upon the provision quoted above, death records are available only under the circumstances prescribed in the Public Health Law. Unless you are a lawful representative of a deceased person, we do not believe that you would have the right to obtain a death certificate.

Second, however, we know of no analogous provision that pertains to burial permits. Although §4147 is entitled "Deaths: confidentiality of records", the restriction on disclosure is limited. That provision states that:

"The death certificate, burial permit or any other record of death or interment, as defined by article forty-one of this chapter, including but not limited to the name, address or telephone number of the decedent, next of kin or surviving relatives of such decedent, shall not be sold or offered for sale for commercial, promotional or profit-making purposes, without the written consent of the next of kin or the legal representative of such decedent or next of kin. The provisions of this section shall not apply to newspapers or newsletters providing general information to the public. A violation of this section shall constitute a violation as defined in the penal law."

Assuming that you would not seek burial permits for "commercial, promotional or profit-making purposes", we believe that the permit, or that portion of the permit indicating the location of graves, must be made available.

Further, §87(2)(b) of the Freedom of Information Law authorizes an agency to withhold records when disclosure would constitute "an unwarranted invasion of personal privacy". In our view, it is unlikely that items considered to be intimate or personal appear in records about the fact or location of the burials.

Under §4145 of the Public Health Law, burial permits are required to be transmitted to the registrar. It is our understanding that the registrar is the town clerk in towns and the city clerk in cities. Accordingly, we recommend that you contact the clerk of the town in which the cemetery is located.

Based on our understanding that a portion of Willard State Hospital was taken over by the Department of Correctional Services, we recommend that you also contact the Records Access Officer at the Department of Correctional Services, Chad Powell, for information regarding where pertinent records may now be maintained.

His contact information is as follows:

Chad Powell, Records Access Officer
NYS Department of Correctional Services
State Office Building #2
1220 Washington Avenue
Albany NY 12226
(518) 457-9771

Lastly, we note that there appears to be helpful information on a website maintained by New York State Archives, the "Preliminary Guide to Mental Health Documentary Sources in New York State" at the following link:
http://www.archives.nysed.gov/a/research/res_topics_health_mh_recguide_omh.shtml

On behalf of the Committee on Open Government, we hope that this is helpful to you.

Sincerely,

Camille S. Jobin-Davis
Assistant Director

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