



The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
250 Washington Street, Boston, MA 02108-4619

CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lieutenant Governor

MARYLOU SUDDERS  
Secretary

MARGRET R. COOKE  
Commissioner

Tel: 617-624-6000  
[www.mass.gov/dph](http://www.mass.gov/dph)

February 10, 2022

Via Electronic Mail

Shawn Musgrave  
MuckRock News  
[119161-15647553@requests.muckrock.com](mailto:119161-15647553@requests.muckrock.com)

**Re:** Public Records Request BHPL 2021.603  
SPR22.59

Dear Mr. Musgrave:

This letter is in regard to the above referenced public records request received by the Department of Public Health (DPH), Bureau of Health Professions Licensure (BHPL) on September 13, 2021, assigned tracking number BHPL-2021-603 and your appeal of that request made to the Supervisor of Records (SOR) on December 9, 2021, assigned tracking number SPR21-3209. You made the following request to DPH:

*All prescription and dispensation data submitted to the Prescription Monitoring Program (PMP) for Vimpat (lacosamide), a Schedule V drug.*

On September 27, 2021, DPH responded stating that the records you had requested are exempt from disclosure as public records pursuant to G.L. c. 4, § 7, Cl. 26(a). Exemption (a) applies to records which are exempt from disclosure by statute. The Prescription Monitoring Program (PMP) data is exempt from public records requests under statute M.G.L. 94C §24A(d), which states that “[p]rescription information submitted to the department under this section shall be confidential and exempt from disclosure under the [Public Records Law].” On December 9, 2021 you filed an appeal. On December 23, 2021, the SOR requested DPH to provide a subsequent response. The Department responded on January 10, 2022.

Even in aggregate form, the data you seek is exempt under public records law. The PMP statute, M.G.L. 94C §24A(d), explicitly exempts “[p]rescription information submitted to the department” from the public records law. Exemption (a) of the public records law applies to records which are exempt from disclosure by statute, including PMP data.

On January 11, 2022, unsatisfied with the response from the Department, you petitioned the SOR and this appeal, SPR22.59, was opened as a result. On January 12, 2022, in response to the SPR22.059 Appeal Acknowledgement email you replied,

“Since DPH has declined again to explain to me how the carveout I cited (M.G.L. 94C §24A(h)) does not apply, I ask that I be provided an opportunity to respond if the department asserts to the Supervisor that my request falls outside this statutory carveout.

I asked the Department's position on this carveout at numerous points, but so far they have not provided any explanation or legal authority. If they do produce such authority now, it seems appropriate that I have the chance to review it and respond. Otherwise, DPH will have yet another "bite at the apple" to deny me these records without supplying me their legal justifications.”

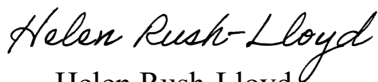
The Commissioner or designee may provide de-identified data to a public or private entity for statistical research or educational purposes. M.G.L. c. 94C, §24A . A link to the Prescription Monitoring Program (PMP) Deidentified Data Request Form Submission Guidelines can be found here:

[Prescription Monitoring Program reports and data | Mass.gov](#)

DPH now considers this PRR closed. If you wish to challenge this response, and your request was received in writing, you may appeal to the Supervisor of Records following the procedure set forth in 950 CMR 32.08, a copy of which is attached. Pursuant to G.L. c. 66, § 10A, you may also seek judicial review by commencing a civil action in Suffolk Superior Court.

Please contact me with any questions. In any communication regarding this request, please reference the assigned tracking number BHPL-2021-603, SPR 22.59.

Sincerely,



Helen Rush-Lloyd  
Records Access Officer

cc: Rebecca Murray, Supervisor of Records  
Ann Scales, Director of Media Relations