

Department of Public Health  
PRL Office  
250 Washington Street  
Boston, MA 02108

November 12, 2021

This is a follow up to request number BHPL 2021-603:

Dear Helen,

To preserve my appeal rights, I've submitted an appeal to the Supervisor of Records regarding this denial. However, I wanted to draw your attention to a crucial carveout from the PMP exemption you've cited, which is codified in M.G.L. 94C §24A(h): DPH may "provide de-identified information to a public or private entity for statistical research or educational purposes."

As I wrote to the Supervisor, my request for de-identified PMP statistical data about Vimpat clearly falls within this carveout from the PMP exemption. As I previously explained in our correspondence, I am researching Vimpat prescriptions in several states. My request furthers my purpose of educating the public and policymakers in Washington, DC, about the erroneous inclusion of Vimpat on the DEA's schedule of controlled substances. Given the statutory obligation for agencies to apply exemptions narrowly in favor of the presumption of access to records, I have satisfied any burden on me as the requester to indicate that I qualify under this carveout to the PMP exemption.

I am happy to withdraw my appeal to the Supervisor if you confirm that I qualify for the carveout under M.G.L. 94C §24A(h) and agree to provide the de-identified data I have requested.

Best,  
Shawn

Filed via MuckRock.com  
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For mailed responses, please address (see note):  
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PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

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On Nov. 12, 2021:  
Subject: RE: Massachusetts Public Records Law Request #BHPL 2021-603  
To Whom It May Concern:

I hereby the denial of this request for aggregate data from the Prescription Monitoring Program (PMP) regarding Vimpat (lacosamide), a Schedule V drug.

In denying my request, the Department of Public Health (DPH) interpreted both my request and the statutory exemptions to the public records law broadly rather than narrowly, as required under Massachusetts law. See, e.g., Attorney Gen. v. Assistant Comm'r of the Real Property Dep't of Boston, 380 Mass. 623, 625 (1980) (the statutory exemptions are to be strictly and narrowly construed).

As I clarified to DPH, my request seeks aggregate data regarding Vimpat. This request does not seek data that would identify individuals, prescribing doctors, or facilities, which is at the heart of the cited exceptions. The agency failed to construe all exemptions narrowly as required.

Further, DPH ignored a crucial carveout from the PMP exemption codified in M.G.L. 94C §24A(d): M.G.L. 94C §24A(h) specifically allows DPH to "provide de-identified information to a public or private entity for statistical research or educational purposes."

My request for de-identified PMP statistical data about Vimpat clearly falls within this carveout from the PMP exemption. As I explained to DPH, I am researching Vimpat prescriptions in several states. My request furthers my purpose of educating the public and policymakers in Washington, DC, about the erroneous inclusion on the DEA's schedule of controlled substances. DPH seemingly failed even to consider this carveout, and so failed again to abide by its obligations under the statute. And given the statutory obligation to apply exemptions narrowly in favor of the presumption of access to records, I have satisfied any burden on me as the requester to indicate that I qualify under this carveout to the PMP exemption.

As such, the Supervisor should remand this request to DPH and direct that the de-identified data be released.

Respectfully,  
Shawn