

Date: 14 January 2026

Subject: FOIL Administrative Appeal - Denial of Access to Date-of-Death Data for 2020 Probable COVID-19 Deaths. Determination sent from NYCDOH on 12 January 2026

Control # 2025FR01026

Dear Ms. Anhouse,

I hereby appeal, pursuant to Public Officers Law § 89(4)(a), the determination of the New York City Department of Health and Mental Hygiene (DOHMH) denying access to records responsive to part of my FOIL request seeking dates of death for deaths originally classified as “probable COVID-19 deaths” in 2020, as referenced on page 66 of the *Summary of Vital Statistics 2020*.

The exact language of my original request follows:

- Dates of death for deaths originally counted as “probable COVID deaths” in 2020. See page 66 of vital statistics report: <https://www.nyc.gov/assets/doh/downloads/pdf/vs/2020sum.pdf> - i.e., the 5,405 deaths, 2,017 of which appear to have been counted in the finalized numbers as COVID-19 deaths under ICD-10 guidelines and the remaining 3,338 Other deaths.

1. The requested information is statistical, de-identified data, not vital records.

My request does **not** seek death certificates, individual vital records, or any personally identifying information. I requested only **dates of death associated with an already-published statistical cohort**, namely the 5,405 deaths originally classified as “probable COVID-19 deaths” in 2020, of which DOHMH reports that 2,017 were later reclassified as COVID-19 deaths under ICD-10 guidelines and 3,388 as other causes.

The requested information is therefore aggregable, non-identifying statistical data, derived from vital records but distinct from the vital records themselves. Courts have long recognized that de-identified statistical abstractions are not synonymous with the underlying protected records, particularly where the agency has *already published* cohort counts and summaries derived from those records.

2. NYC Health Code § 207.11 does not categorically exempt the requested data.

DOHMH relies on NYC Health Code § 207.11(a), asserting that disclosure requires a determination that the request is “necessary for a proper purpose,” and that the Commissioner did not so determine. However:

- a) Section 207.11 governs access to vital records, not all statistical data derived from them.
- b) The provision cannot be read so broadly as to exempt any factual data point (e.g., date of death) once it has been abstracted, aggregated, and published in statistical form.

- c) DOHMH has routinely released date-of-death–based datasets (including COVID-19 line-level and aggregate date-of-death tables), demonstrating that dates of death are not per se treated as confidential vital records when identifiers are removed.

The denial letter does not contend that release of dates of death would identify individuals, nor that re-identification is likely, nor that the data cannot be provided in aggregate or tabular form.

3. The requested data serves a clear and proper public purpose.

The requested information is necessary to evaluate the internal consistency and methodological basis of DOHMH’s own published statistics, specifically:

- the reclassification of 2,017 deaths from “probable COVID-19” to confirmed COVID-19 deaths under ICD-10 guidance;
- the reassignment of the remaining deaths to non-COVID causes; and
- the temporal distribution of those classifications.

This is not a request for private facts, but for auditability of official public-health statistics, a purpose aligned with FOIL’s mandate to promote transparency and accountability in decision-making.

4. FOIL § 87(2)(a) does not justify blanket withholding.

While Public Officers Law § 87(2)(a) permits withholding where records are “specifically exempted from disclosure by statute,” exemptions must be narrowly construed. Where, as here, the requested information can be disclosed in a manner that avoids release of protected vital records, such as by providing counts by date of death or an anonymized date-of-death table, a categorical denial is unwarranted.

I respectfully request that DOHMH:

1. Reverse the denial and produce the requested dates of death in de-identified or aggregate form, or
2. Identify a specific format in which the information can be disclosed consistent with privacy protections, or
3. Provide a more detailed explanation of why dates of death for an already-published statistical cohort cannot be released in any non-identifying form.

Please advise of the determination on this appeal within the time required by Public Officers Law § 89(4)(a).

Respectfully submitted,

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