



MURIEL BOWSER
MAYOR

April 2, 2021

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council of the District of Columbia is a bill entitled the "Medical Examiner Records Privacy Act of 2021."

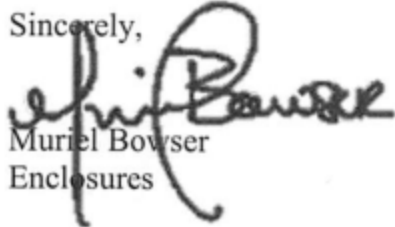
The bill will help to protect the privacy of families who suffer the loss of a loved one under the jurisdiction of the Office of the Chief Medical Examiner (OCME) while balancing the public interest in certain OCME records. The bill will clarify that OCME case files are confidential, in line with the privacy protections provided for death certificates and medical records. A judicial process is included in the bill to assure third-party access in the unusual circumstance of when public interest outweighs a family's privacy right.


These amendments to existing law are important to address the current vague language permitting access to OCME case files if one has a "legitimate interest." This phrase, dating back to a 1950s model act, is used nowhere else in District law and has led to confusion and conflict. The decision to give public access to the intimate details of a decedent should generally be in the hands of the decedent's family.

The bill also clarifies access to OCME case files by government entities that need the information to carry out their functions. I urge the Council's prompt and favorable consideration of this bill.

If you have any questions on this matter, please contact Francisco Diaz, MD, Acting Chief Medical Examiner, at (202) 698-9001.

Sincerely,


Muriel Bowser
Enclosures


Chairman Phil Mendelson
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Establishment of the Office of the Chief Medical Examiner Act of 2000 and the Freedom of Information Act of 1976 to protect the confidentiality of medical examiner case records.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Medical Examiner Records Privacy Amendment Act of 2021”.

Sec. 2. Section 2913 of the Establishment of the Office of the Chief Medical Examiner Act of 2000, effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 5-1412), is amended as follows:

(a) Subsections (b) and (c) are amended to read as follows:

“(b) The records and files maintained under the provisions of subsection (a) of this section shall be open, upon request, to inspection by any person designated by the Mayor, by the United States Attorney, by the Metropolitan Police Department or another law enforcement agency, by a government health or safety organization, or by a fatality review committee or board of the District government when such inspection is necessary for the discharge of their official duties. Upon request by such person, the CME shall promptly deliver to such person copies of records relating to the deaths as to which further investigation may be advisable.

“(c) CME records and files pertaining to a decedent shall be exempt from disclosure pursuant to section 204(a) of the Freedom of Information Act of 1976, effective March 29, 1977 (D.C. Law 1-96, D.C. Official Code § 2-534(a)).”

33 (b) New subsections (c-1), (c-2), and (c-3) are added to read as follows:

34 “(c-1) A CME external examination or autopsy report may be obtained by the following
35 persons after written request and payment of such fees as may be prescribed by regulation
36 pursuant to section 2918:

37 “(1) A person with the right to control the disposition of a decedent’s remains
38 pursuant to Funeral Services Regulatory Act of 1984, effective May 22, 1984 (D.C. Law 5-84;
39 D.C. Official Code § 3-413), may obtain a copy of the CME’s external examination or autopsy
40 report pertaining to the decedent.

41 “(2) A person without the right to control the disposition of a decedent’s remains
42 pursuant to Funeral Services Regulatory Act of 1984, effective May 22, 1984 (D.C. Law 5-84;
43 D.C. Official Code § 3-413), may obtain a copy of the CME’s external examination or autopsy
44 report pertaining to the decedent only if:

45 “(A) The person has the written consent of a person having the right to
46 control the disposition of the decedent’s remains pursuant to Funeral Services Regulatory Act of
47 1984, effective May 22, 1984 (D.C. Law 5-84; D.C. Code § 3-413);

48 “(B) The person has the authority to receive the external examination or
49 autopsy report under a properly issued subpoena in a matter pending before a court having
50 personal jurisdiction over the CME, if a copy of the subpoena has been properly served on the
51 person with the right to control the disposition of the decedent’s remains pursuant to Funeral
52 Services Regulatory Act of 1984, effective May 22, 1984 (D.C. Law 5-84; D.C. Official Code §
53 3-413). If a motion to quash the subpoena is filed, the court shall consider the factors listed in
54 subsection (d) of this section in determining whether the motion should be granted and if a
55 protective order should be entered;or

56 “(3) A healthcare provider, facility, or a medical peer review committee in

57 furtherance of a review of the decedent's care.

58 “(c-2)(1) Upon motion, a court having personal jurisdiction over the CME may enter an
59 order requiring disclosure of a CME external examination or autopsy report for a particular
60 decedent, after hearing from the movant and providing other parties in the matter under which
61 the motion was filed, the survivors of the decedent, the CME, and any other party the court
62 determines to have a proper interest in the matter an opportunity to be heard.

63 “(2) The court shall grant such a motion only if the court finds that a compelling
64 public interest outweighs the privacy right of the decedent's survivors. In determining whether a
65 compelling public interest outweighs the survivors' privacy right, the court shall consider:

66 “(A) That a CME external examination or autopsy report is not otherwise
67 subject to disclosure except in limited circumstances;

68 “(B) The degree to which the disclosure of the external examination or
69 autopsy report would embarrass, injure, or invade the privacy of the survivors of the decedent;

70 “(C) The effect of the disclosure on the wellbeing of the survivors of the
71 decedent;

72 “(D) The importance of the information to the public; and

73 “(E) Any other factor the court considers relevant.

74 “(3) The court, if granting a motion, may also issue a protective order limiting
75 access to and distribution of the CME's external examination or autopsy report.

76 “(c-3) A photograph, negative, video, print or other image in the CME's records and files
77 of a body of a deceased person, or any portion of the body of a deceased person, shall not be
78 disclosed by the CME except:

79 “(1) For use or potential use in a criminal action or proceeding that relates to the
80 death of that person;

81 “(2) For use or potential use in a civil action or proceeding that relates to the death
82 of that person pursuant to:

83 “(A) The written authorization of a person with the right to control the
84 disposition of the person’s remains pursuant to Funeral Services Regulatory Act of 1984,
85 effective May 22, 1984 (D.C. Law 5-84; D.C Official Code § 3-413); or

86 “(B) A valid subpoena;

87 “(3) For a purpose necessary to further an investigation by a person identified in
88 (b) of this section; or

89 “(4) For use in medical or scientific education or research where the identity of
90 the decedent is kept confidential.”

91 (c) A new subsection (e) is added to read as follows:

92 “(e) For the purposes of this section, the term:

93 “(1) “Government health or safety organization” means a state or federal agency
94 responsible for protecting health or safety, including the Centers for Disease Control and
95 Prevention, the Consumer Product Safety Commission, the Federal Aviation Administration, the
96 National Transportation Safety Board, and the Occupational Safety and Health Administration.

97 “(2) “Survivor” means a decedent’s spouse or domestic partner, children,
98 including biological, step, and adopted children, parents, stepparents, spouse’s or domestic
99 partner’s parents, siblings, half siblings, step-siblings, grandchildren, grandparents, uncles, aunts,
100 nieces, and nephews.

101 Sec. 3. Section 204(a) of the Freedom of Information Act of 1976, effective March 29,
102 1977 (D.C. Law 1-96; D.C. Official Code § 2-534(a)), is amended as follows:

103 (a) Paragraph (17) is amended by striking the word “and”.

104 (b) Paragraph (18) is amended by striking the period at the end and inserting the phrase “;

105 and” in its place.

106 (c) A new paragraph (19) is added to read as follows:

107 “(19) Information exempt from disclosure pursuant to section 2913(c) of the
108 Establishment of the Office of the Chief Medical Examiner Act of 2000, effective October 19,
109 2000 (D.C. Law 13-172; D.C. Official Code § 5-1412(c)).”

110 Sec. 3. Fiscal impact statement.

111 The Council adopts the fiscal impact statement in the committee report as the fiscal
112 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
113 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

114 Sec. 4. Effective date.

115 This act shall take effect following approval by the Mayor (or in the event of veto by the
116 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
117 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
118 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
119 Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

TO: Ronan Gulstone
Executive Director
Office of Policy and Legislative Affairs

FROM: Brian K. Flowers
Deputy Attorney General
Legal Counsel Division

DATE: January 12, 2021

SUBJECT: Legal Sufficiency Review of Legislation Entitled the “Medical Examiner
Records Privacy Act of 2021”
(AE-20-937)

This is to Certify that this Office has reviewed the above-referenced Legislation and found it to be legally unobjectionable. If you have any questions, please do not hesitate to call me at 724-5524.

Brian K. Flowers

Brian K. Flowers

BKF/cpe