



Maine Freedom of Information Coalition

PO Box 1416, Westbrook, Maine 04092
mfoic@earthlink.net

April 27, 2020

VIA EMAIL ONLY

Governor Janet Mills
c/o Scott Ogden
State of Maine
Capitol Building
1 State House Station
Augusta, ME 04333

Dr. Nirav Shah, Director
Maine Center for Disease Control
c/o Robert Long
286 Water Street
11 State House Station
Augusta, ME 04333

RE: Public Access to Maine COVID-19 Data

Dear Gov. Mills and Dr. Shah:

With lengthy and informative daily press briefings, Maine has overall been very transparent during the COVID-19 crisis. It was therefore surprising to learn that the State has so far refused to make public certain detailed data on the COVID-19 outbreak in the State, as reported by the Bangor Daily News on April 23, 2020.¹ I am writing on behalf of the Maine Freedom of Information Coalition² to request that Maine reconsider its position and proactively release to the public additional current data on COVID-19.

In particular, Maine has not released data on the location of positive cases broken down by municipality or zip code, instead releasing data only at the county level.³ By not

¹ <https://bangordailynews.com/2020/04/23/news/state/as-more-states-release-covid-19-cases-by-town-maine-says-it-could-take-6-months/>

² The members of the Coalition are the Maine Press Association, Maine Association of Broadcasters, Society of Professional Journalists, League of Women Voters, Maine Library Association, Maine Real estate Managers Association, Maine Writers & Publishers Alliance, and New England First Amendment Coalition.

³ Maine also has not released data on the break-down of cases by race or on the number of tests by region.

making town-by-town (or zip code-by-zip code) information public, Maine is out of step with the more transparent approach taken by every other New England state. Information on the incidence of COVID-19 by municipality is made public in Connecticut,⁴ Massachusetts,⁵ New Hampshire,⁶ and Rhode Island,⁷ and Vermont.⁸ Other states also make data on Covid-19 information by town or zip code, including Alaska,⁹ Illinois,¹⁰ Maryland,¹¹ and South Carolina.¹² The growing consensus and best practice is to make information on the prevalence of COVID-19 available to the public by municipality or zip code, not just at the (less helpful and less informative) county level.

Access to more granular information about the prevalence of COVID-19 would be in the public interest and would advance Maine's public health mission. According to Massachusetts Health and Human Services Secretary Marylou Sudders:

Having the ability to look at this virus through the lens of its impact on specific cities and towns will help us identify potential hotspots, inform the public health response, assist cities and towns working to slow the spread and help the state appropriately deploy resources[.]¹³

A recent Boston Globe editorial addressing the same subject under the headline "More COVID-19 Data from the State Would Save Lives" quotes U.S. Rep. Ayanna Pressley:

Data informs our public health response & containment strategies, it helps us to identify trends, clusters, it holds us accountable to equitable access to testing & treatment. IT WILL SAVE LIVES. It is a matter of the PUBLIC HEALTH.¹⁴

The Globe editorialized:

⁴ <https://portal.ct.gov/-/media/Coronavirus/CTDPHCOVID19summary4092020.pdf?la=en>

⁵ <https://www.mass.gov/info-details/covid-19-response-reporting>

⁶ <https://www.nh.gov/covid19/>

⁷ <https://ri-department-of-health-covid-19-data-rihealth.hub.arcgis.com/> (data by municipality, race, and number of cases in long term care and assisted living facilities)

⁸ <https://www.healthvermont.gov/response/coronavirus-covid-19/current-activity-vermont#town>

⁹ <https://coronavirus-response-alaska-dhss.hub.arcgis.com/>

¹⁰ <https://www.dph.illinois.gov/covid19/covid19-statistics>

¹¹ <http://www.baltimoresun.com/coronavirus/bs-md-coronavirus-zip-code-data-20200412-zdjqav6oxzhafnybxbg2emwtby-story.html>

¹² <https://scdhec.gov/infectious-diseases/viruses/coronavirus-disease-2019-covid-19/sc-cases-county-zip-code-covid-19>

¹³ <https://www.wbur.org/commonhealth/2020/04/16/community-case-numbers-massachusetts-municipal-level>

¹⁴ <https://www.bostonglobe.com/2020/04/11/opinion/more-covid-19-data-state-would-save-lives/>

Releasing those town- or city-specific infection numbers across the board and in context — relative to the population and the number of tests, to determine potential clusters — could help create a real sense of urgency among local officials and residents when numbers start to climb in certain areas relative to others. That could save lives. The public shouldn't have revelations after the fact, like the disclosure this week that Chelsea, a Latino immigrant enclave, tops the state in infection rates.

A “Guidance on the Release of Information Concerning deaths, Epidemics or Emerging Diseases”¹⁵ issued by public health officials, health care journalists, and public health information officers contains the following overarching principle:

Openness is paramount. It is an essential component of protecting the public and communicating effectively. Public health officials should strive to release as much information as possible, within the limits of the law.

Withhold information *only* when there is a clearly justified reason to keep it confidential. Explain the rationale for any decision to withhold information.

If the reason for withholding is advice from local counsel, explain the basis for the advice to the extent possible. If state, local or federal law is the reason, provide the citation of the law in question.

MFOIC agrees. Access to more information on numbers of COVID-19 cases by specific location would have direct public health benefits, by allowing the public to better prepare and take precautions. It would also serve to enhance public confidence in Maine's response by replacing rumors and suspicion with solid data.

We are also concerned that Maine CDC is reported to have responded to a Bangor Daily News Freedom of Access Act request for town-by-town data by saying that it will take up to half a year to release that data. This suggests that Maine is not currently tracking the incidence of COVID-19 at a granular level, as it is hard to see why else it would take six months to provide the requested information. Although State resources are doubtless strained at this time, it seems that tracking data on the geographic contours of the outbreak should be a high priority, as should making that information available to the public on request.

We have also considered whether town-by-town COVID-19 data is required to be made public under Maine law. Under the Freedom of Access Act, de-identified epidemiological data is a matter of public record. *See* 22 M.R.S. § 42(5) (distinguishing between “records that contain personally identifying medical information” and records that contain “medical and epidemiologic information in such a manner that an individual can not [sic] be identified”). In addition, the Health Insurance Portability and Accountability Act (HIPAA) does not prohibit disclosure of de-identified or aggregate data. The Act applies only to disclosure by a covered entity of specific information about

¹⁵ <https://healthjournalism.org/secondarypage-details.php?id=965>

Governor Janet Mills
Dr. Nirav Shah, Director
April 27, 2020
Page 4

treatment of an identifiable patient, such as specific test results or details of a patient's illness—information we are not asking for. Put simply, health data that does not reveal the identity of an individual does not threaten privacy interests and is public under Maine law.

To the extent that the State's concern about reporting more detailed information on the location of COVID-19 cases arises from concern that in very small jurisdictions identifying case numbers may be a greater threat to privacy interests, the solution would be to limit reporting in those very small jurisdictions *only*. Other solutions would be to report case numbers in ranges (e.g., under 2 cases), or only if there is a cluster (i.e., 3 or more cases). If a small town has a cluster of cases, the public might well need to be informed about that, just as the State has reported clusters at certain nursing homes and long-term care facilities.

We urge Maine to reconsider its position and proactively make available current town-by-town or zip code-by-zip code data on the number of COVID-19 cases to the maximum extent reasonably possible. I can be reached at sschutz@preti.com or 207.232.3045 and would be pleased to discuss this issue with you. We request a response by May 1, 2020. Thank you for considering our request.

Very truly yours,



Sigmund D. Schutz

SDS/
cc: Lindsey Crete (*via email only*)
Linda Pistner (*via email only*)
MFOIC Board of Directors (*via email only*)