



Department of
Community Health

COMMUNICABLE DISEASES, PUBLIC HEALTH DEPARTMENTS & INFORMATION SHARING

MICHIGAN STATE
UNIVERSITY

Public Health

The following presentation uses a hypothetical scenario to introduce the public health practitioner to data sharing issues that might arise during an outbreak from food pathogens.



The Fine Print

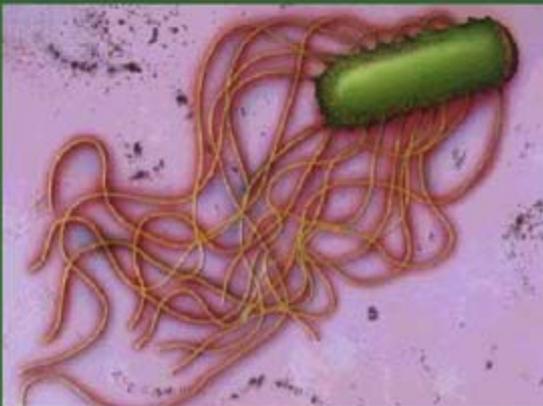
This presentation is for informational purposes and is not intended as a legal position or advice from the Michigan Department of Community Health or Michigan State University.

For legal advice, attendees should consult with their own counsel.

Hypothetical

On September 9, Carol Reeves visits her doctor after suddenly becoming violently ill. It started with stomach cramps and nausea. It was the chills, fever, diarrhea and vomiting that finally sent her to her doctor. The stomach cramps started 24 hours after Carol had dinner with her friends at a popular Italian restaurant in Jonestown (Allen County, Michigan).

Over the next few days, dozens of other Jonestown residents visit their physicians or present at the emergency room of the local hospital. All are either patrons or employees of the same Italian restaurant. Using stool samples, the hospital laboratory identified salmonella as the cause.



The hospital and physicians are required by both the HIPAA privacy regulations and state law to protect the confidentiality of patients' health information.

Question



Can the emergency room and physician offices contact the Allen County Health Department about patients who have presented for medical treatment over the last few days?



Legal Response: YES.

You are obligated to report.

- Reporting requirements set out in Communicable Diseases and Other Diseases Rules ([R 325.172](#), [R 325.173](#)).
- Physicians and laboratories required to report salmonella within 24 hours of diagnosis or discovery.
- Physicians and laboratories required to report immediately the unusual occurrence of any disease, infection, or condition that threatens the health of the public within 24 hours of diagnosis or discovery.
- Report to be filed with local health department of patient.



The health department goes to the identified restaurant to investigate possible foodborne illness. Food on the salad bar is identified as the source of salmonella.

Eight days later, the health department begins to receive additional notification of about 20 employees and customers from two additional restaurants becoming ill with similar symptoms. On September 21, the state public

health laboratory identifies the bacteria from specimens sent to it as *Salmonella Typhimurium*, a common strain that responds to antibiotics.

By the time the bacteria was pinpointed, new cases of the illness are tapering off. Then, abruptly, a second outbreak strikes in late September. Ten different restaurants were identified in the latest wave of sickness. The health department attempts to identify a common source of contamination. One common factor is that all the restaurants have salad bars. However, the implicated food items on the salad bars differ from one restaurant to another. Investigation does not identify any water supply, food item, supplier, or distributor common to all affected restaurants, nor were employees exposed to any single common source.



Investigators identify four restaurants with the greatest number of cases and decide to contact and interview as many of these restaurants' employees and customers as possible, including carry out customers and parties that booked restaurant banquet rooms. Investigators request reservation lists and credit card receipts in order to use information to potentially identify customers. Investigators also request names, addresses, and phone numbers of individuals who booked banquet rooms. The manager of one of the restaurants gets nervous about giving out personal information about individuals who are business patrons. She vaguely remembers a ruckus when a local video store gave police officers personal information about customers, including the names of videos that the customers had rented. She also worries that she might violate the Bullard Plaweki Act if she provides information about her employees. She calls her attorney for advice.



Question



Must the restaurant provide to the local health department the requested information about its employees and customers?



Legal Response: YES.

- The health department has legal authority to conduct investigations, and to obtain information that it needs to carry out its responsibilities. **MCL 333.2446, R 325.174.**
- The local health officer might issue an imminent danger order that requires the restaurant to provide the requested information. **MCL 333.2451.**

If the restaurant refuses ...

If the restaurant refuses to provide the requested information, it may be necessary for the health department to obtain a court order to compel disclosure. [MCL 333.2446](#), [MCL 333.2451](#), [MCL 333.2465](#).

Note: Bullard Plawecki Employee Right to Know Act grants rights to employees with regard to their personnel records and requires the employer to notify the employee if employee disciplinary information is provided to a third party. [MCL 423.501](#). It is not relevant to this question.



Upon reviewing information provided by the restaurant, the Allen County Health Department identifies several employees and customers who live in adjacent counties. It also identifies customers from out-of-state and from Ontario. The Allen County Health Department contacts each of the local health departments to advise them of the salmonella outbreak that seems to be linked to several restaurants in Jonestown. The Allen County



Health Department provides to each health department all information that it has obtained concerning individuals who reside in their respective jurisdictions, and asks the local health departments to contact these individuals concerning potential exposure. The Allen County Health Department also asks the local health departments to report back with information identifying individuals who may have been infected and other information that may assist the investigation.

Question



Are Allen and the other local health departments allowed to share identifying information with one another about individuals who may have been infected?



Legal Response: YES.

.. to the extent needed for each jurisdiction to carry out its responsibilities to investigate and control the outbreak.

- A local health department is required to communicate a report of an individual who has a serious communicable disease or infection to MDCH and any other Michigan jurisdiction if the individual resides in that other jurisdiction. [R 325.173\(16\)](#).
- The local health department is required to forward a report to MDCH that concerns an individual who resides outside Michigan. [R 325.173\(18\)](#).
- The local health department that has jurisdiction where an individual who has a reported condition resides or where an illness or infection is being or may be spread shall initiate an investigation as necessary. [R 325.174](#).
- MDCH and local health departments are partners in statewide disease surveillance and control activities and sharing of information for the purpose of carrying out respective duties would usually be appropriate. [R 325.181](#); [MCL 333.5111\(2\)](#).

The Bottom Line

Identifiable information may be disclosed if necessary to protect the public as determined by the local health officer.

"Medical and epidemiological information which identifies an individual and which is gathered in connection with an investigation is confidential and is not open to public inspection without the individual's consent or the consent of the individual's guardian, unless public inspection is necessary to protect the public health as determined by a local health officer or the director (of DCH)." Michigan Administrative Code, [R 325.181](#); [MCL 333.333.5111\(2\)](#).

Because of the magnitude of potential exposure, the Allen County Health Department sets up a dedicated phone line and issues a press release both urging residents with clinical symptoms to seek medical attention and testing and to contact the phone line to be interviewed by health department staff.

The *Allen County Press* prepares to run information regarding the rash of salmonella poisoning in Sunday's edition. The Editor realizes the potential for a great feature story, and assigns a reporter to locate and interview victims. The reporter sends an e-mail to the FOIA coordinator for Allen County Health Department demanding that it immediately provide "any and all information from the last 30 days relating to outbreak or potential outbreak of salmonella". The newspaper reporter includes a telephone number, asking that he be called when the material has been copied for him so that he can pick it up from the Health Department the next day.



Question



Must the Allen County Health Department provide the requested information to the newspaper?



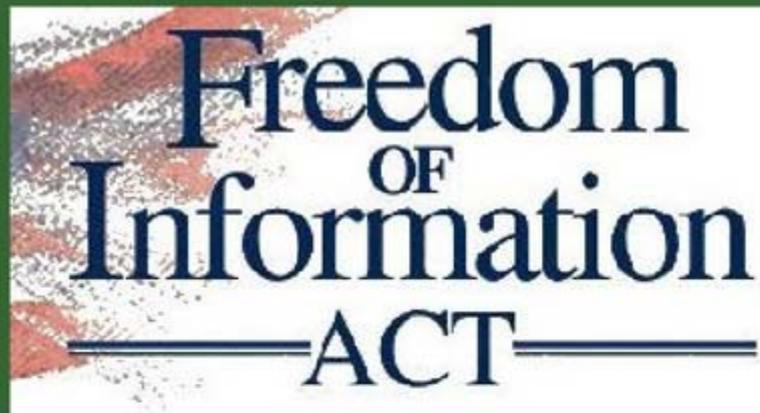
Legal Response: PROBABLY NOT.

FOIA exemption for investigation records if disclosure would interfere with legal proceedings. [MCL 15.243\(1\)\(b\)](#).

Question



Assume that the Allen County has completed its investigation. At this point, is the newspaper entitled to the information under FOIA?



Legal Response: YES in part and NO in part.

- Investigating records exemption only applies if open ongoing investigation.
- Other FOIA exemptions may apply:
 - Unwarranted invasion of an individual's privacy. **MCL 15.243(1)(a)**.
 - Medical facts or evaluations that would reveal an individual's identify. **MCL 15.243(1)(l)**.
 - Records exempted from disclosure by another statute. **MCL 15.243(1)(d)**.

Exempted from disclosure by another statute ...

"Medical and epidemiological information which identifies an individual and which is gathered in connection with an investigation is confidential and is not open to public inspection without the individual's consent or the consent of the individual's guardian, unless public inspection is necessary to protect the public health as determined by a local health officer or the director (of DCH)." Michigan Administrative Code, **R 325.181; MCL 333.5111(2)**.

Back to the Allen County Health Department's investigation. Public Health investigators go to the emergency room to review medical information of patients who have presented over the past two weeks with clinical symptoms consistent with salmonella. Medical records staff have completed their HIPAA Privacy Training, and are reluctant to provide the investigators access to patient medical records.



The hospital's privacy officer apologizes to investigators, saying "I would like to help. The law requires that we report salmonella to you, which we did within 24 hours for each case. However, HIPAA prevents us from letting you examine our patients' medical records unless you provide us with an authorization signed by each patient."

Question



Is the hospital's
HIPAA Privacy
Officer correct that
HIPAA prevents
hospital from letting
health department
examine patient
records?



Legal Response: NO.

The HIPAA Privacy Rule allows a covered entity to disclose, without individual authorization, protected health information to a public health authority for public health purposes (including disease prevention and control activities). A release signed by a patient is not necessary.

45 CFR § 164.512(b).

Refer to Director Olszewski's letter (which has been distributed).

Public health investigators are stumped as to the source of the bacteria. The investigators begin to speculate about intentional contamination of salad bars. Two unions have been distributing cards to restaurant staff throughout Jonestown, and tension has been escalating between employees, owners, and the competing unions. Allen County's local health officer contacts the sheriff about his concerns.

Local resources are now stretched to their limit as nearly 1000 people have now sought treatment. If contamination is intentional, the Health Officer fears there may be more strikes. Allen County Sheriff contacts the FBI. Both the Allen County Sheriff and the FBI request all of the materials from Allen County's investigation, including names, addresses and phone numbers of all individuals with confirmed or suspected salmonella beginning September 1. Allen County Health Department is not certain whether it is allowed to provide the requested information to either the sheriff or FBI, and so contacts its corporate counsel for legal advice.



Question



May the health department provide individually identifiable information to local law enforcement or the FBI absent a search warrant?



Legal Response: NOT CLEAR.

- Probably a judgment call by local health officer based on determination that providing identifiable information to law enforcement is necessary to protect the public health.
- Providing access to all information, including detailed medical information, may be beyond the scope of what is necessary to protect the public health.
- Law enforcement risks exclusion of evidence it obtains without a search warrant; search warrant is safest course for both public health and law enforcement.

Later that week the *Allen County Press* runs a front-page story, with a banner headline: "Salmonella Caused by Intentional Contamination of Restaurant Salad Bars". The article went on to state that information from a "confidential source" indicates that disgruntled residents poured salmonella on restaurant salad bars to disrupt an upcoming county election. The local health department contacts the newspaper editor, demanding the name of the "confidential source". The newspaper refuses, and the health department files a petition with the district court under section 2446 of the Public Health Code, seeking an administrative investigative warrant. [MCL 333.2446](#)



"Salmonella Caused by Intentional Contamination of Restaurant Salad Bars"

Question



Is the local health department entitled to information identifying the newspaper's confidential source?



Legal Response: IT DEPENDS.

- Michigan has a press shield law protecting the press from compelled disclosure of the identify of informants, any unpublished information obtained from an informant or related to a communication with an informant in CRIMINAL inquiries. [MCL 767.5a](#).
- Michigan has no press shield law for civil matters.
- Any protection from disclosure arises from the First Amendment freedom of the press.
- First Amendment does not protect against disclosure of nonconfidential information. *Marketos v American Employers Ins Co*, 185 Mich App 179 1990.
- First Amendment provides a qualified (not an absolute) privilege regarding confidential information.

Balancing test applies with regard to whether press can be compelled to disclose confidential information for noncriminal purposes. Health departments must establish that:

- Information is highly material;
- Information is critical;
- Information is not otherwise available



The outbreak ends with no deaths and 751 confirmed cases of salmonella.

This hypothetical is based on a large community outbreak of salmonella in Dalles, Oregon in September and October 1984.

A subsequent criminal investigation revealed that members of a religious commune (Rajneesh) had

deliberately contaminated the salad bars and containers of coffee creamer of local restaurants. An *S Typhimurium* strain found in a laboratory at the commune was indistinguishable from the outbreak strain.





This is considered to be the first recognized, thoroughly investigated and documented, and reported instance of domestic bioterrorism in the United States.

Laws that are cited in this presentation can be located on the following websites.

For Michigan Compiled Laws (MCL), go to <http://michiganlegislature.org>.

For administrative rules, go to <http://michigan.gov/soahr>, select MI Admin Code and locate by department (Michigan Dept Community Health) or numeric range.

For information on the HIPAA Privacy Rule, go to <http://www.hhs.gov/ocr/privacy/>.

Thank you for your attention.

Denise Chrysler, J.D.
Public Health Legal Director
Public Health Administration
Michigan Department of Community Health
(517) 373-2109
chryslerd@michigan.gov