Research Protocol for Public Records Laws: Food Protection Information Sharing

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I. Date of Protocol: January 2015 – December 2015

II. Scope: Collect and code state statutes relating to public access to government records and exemptions related to food protection information.

III. Primary Data Collection


c. Data Collection Methods: The research team identified search terms applicable to this project. Members of the Association of State and Territorial Health Officials’ (ASTHO) Public Health Law Workgroup were consulted regarding their applicable state laws in order to confirm the search term and identify others. Two legal researchers collected state laws relevant to the dataset using the search terms identified. After the state laws relevant to the dataset were collected, they were reviewed by a supervisor.

d. Databases used: Searches were conducted using Westlaw Next, Lexis Nexis, and state-specific websites.


f. Information about initial returns and additional inclusion or exclusion criteria: After conducting the initial search we were asked to add additional terms, which included: “fraud,” “intentional adulteration,” “disgruntled employee,” and “sabotage” to the search terms. However, those terms did not identify any relevant additional laws.
IV. Coding

a. Development of coding scheme: The Team, consisting of legal researchers and environmental health/food safety staff, worked in collaboration to determine the focus of the research and the key questions to be coded. The legal researchers reviewed the public records laws that had been collected, including the laws identified by members of ASTHO’s Public Health Law Workgroup, to conceptualize the coding questions. The draft coding questions were shared with staff on ASTHO’s environmental health team as well as the Public Health Law Workgroup. The coding questions were then revised based on the feedback received. When the questions and codes for responses were finalized, the Team entered the questions into the MonQcle.

b. Coding methods: The coding was done by two coders on an individual basis. The coders began coding independently and held discussions to identify divergences and revise questions to the dataset. As necessary, the coding scheme was altered to accommodate newly identified features of the law and reduce ambiguity. Completed states were recoded accordingly. Laws in effect at any time in 2015 were included, regardless of later moratoriums or repeals.

Areas of divergence and discussion involved the following questions:

Which type(s) of exemption(s) does the state law include that may be relevant to protecting non-public confidential commercial food safety information from disclosure?

Agreement was reached that intentional outbreaks would include exemptions related to terrorism, criminal intelligence, law enforcement, terrorist attacks, and food security. Exemptions related to unintentional outbreaks would include: agricultural or food system information, confidential public health data, data required to be kept confidential by law, protecting public health or safety, trade secrets, confidential commercial information, proprietary information, or records from the federal government.

Which state law(s) explicitly protect non-public confidential commercial food safety information from disclosure in an unintentional outbreak?

Which state law(s) explicitly protect non-public confidential commercial food safety information from disclosure in an intentional outbreak?

Which state law(s) explicitly protect proprietary food safety information from disclosure in an unintentional outbreak?

Which state law(s) explicitly protect proprietary food safety information from disclosure in an intentional outbreak?
Questions regarding the type of laws that protect non-public confidential commercial or proprietary food safety information in either intentional or unintentional outbreaks were initially difficult to answer. The questions were ultimately revised to include the word "explicitly" as in many instances the laws were difficult to interpret. However, it was found that very few laws explicitly dealt with protecting food safety information.

V. Quality Control

Consisted of two coders independently coding the laws for 10 states, recording the results, and then comparing the results to identify divergences and achieve consensus on the initial codes that varied. In some instances, changes were made to clarify questions in the codebook and in others; additional responses were added to ensure consistency in coding. Each coder coded the remaining states for one dataset. Each coder then reviewed the laws and the corresponding records for the dataset they did not code. Divergences were noted. Regular meetings were held to discuss any identified divergences and corrections were made to the record once consensus was reached.