

[Cite as *Knapp v. Ohio Dept. of Health*, 2021-Ohio-3130.]

LISA F. KNAPP

Requester

v.

OHIO DEPARTMENT OF HEALTH

Respondent

Case No. 2021-00191PQ

Special Master Jeff Clark

REPORT AND RECOMMENDATION

{¶1} The Ohio Public Records Act (PRA) requires copies of public records to be made available to any person upon request. The state policy underlying the PRA is that open government serves the public interest and our democratic system. To that end, the public records statute must be construed liberally in favor of broad access, with any doubt resolved in favor of disclosure of public records. *State ex rel. Rogers v. Dept. of Rehab. & Corr.*, 155 Ohio St.3d 545, 2018-Ohio-5111, 122 N.E.3d 1208, ¶ 6. This action is filed under R.C. 2743.75, which provides an expeditious and economical procedure to enforce the PRA in the Court of Claims.

{¶2} On March 25, 2021, requester Lisa Knapp made public records requests to respondent Ohio Department of Health (ODH) as follows:

Would you please run a report for all Cause of Deaths in Ohio coded as Covid-19 (U07.1), with the following search criteria per column:

1. First Name of deceased
2. Last Name of deceased
3. Age
3. Date of Death (YEARMODAY format)
4. County of Death
5. Autopsy (Y or N)
6. Place of Death (hospital, residence, etc)
7. Death Code U07.1 Covid-19

(Complaint at 27-28.) ODH responded: “I’m sorry Lisa but I don’t have a report with the data fields that you’re requesting.” (*Id.* at 28.) On April 7, 2021, Knapp filed a complaint

pursuant to R.C. 2743.75 alleging denial of access to public records in violation of R.C. 149.43(B). Following unsuccessful mediation, ODH filed a response to requester's complaint and motion to dismiss (Response) on June 14, 2021.

Motion to Dismiss

{¶3} To dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt that the claimant can prove no set of facts warranting relief after all factual allegations of the complaint are presumed true and all reasonable inferences are made in claimant's favor. *State ex rel. Findlay Publishing Co. v. Schroeder*, 76 Ohio St.3d 580, 581, 669 N.E.2d 835 (1996). As long as there is a set of facts consistent with the complaint that would allow the claimant to recover, dismissal for failure to state a claim is not proper. *State ex rel. V.K.B. v. Smith*, 138 Ohio St.3d 84, 2013-Ohio-5477, 3 N.E.3d 1184, ¶ 10.

{¶4} ODH argues the complaint fails to state a claim because the requested records do not exist. On review, non-existence of the requested data output is not conclusively shown on the face of the complaint and attachments. Moreover, as the matter is now fully briefed this argument is subsumed in ODH's defense on the merits. It is therefore recommended that that the motion to dismiss be denied.

Initial Burden of Proof

{¶5} A requester must establish a public records violation by clear and convincing evidence. *Hurt v. Liberty Twp.*, 2017-Ohio-7820, 97 N.E.3d 1153, ¶ 27-30 (5th Dist.). At the outset, a requester bears the burden to show that she seeks identifiable public records pursuant to R.C. 149.43(B)(1). *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office*, Slip Opinion No. 2020-Ohio-5371, ¶ 33. Knapp must show that the items sought meet the statutory definition of "records," and that the records were kept by ODH. ODH does not dispute that death certificates and their contents are records of ODH, but asserts that, 1) data from the death certificates does not exist in the format requested by

Knapp, and 2) the requested dataset is exempt from disclosure as “protected health information” under R.C. 3701.17.

Analysis

{¶6} The parties agree that Knapp’s request is identical to that made in *Miller v. Ohio Dept. of Health*, Ct. of Cl. 2020-00618PQ, 2021-Ohio-996, adopted by the court at 2021-Ohio-1901. (Complaint at 6; Response at 2.) ODH has filed the identical affidavit and attachments in this case that the special master and court relied on in *Miller*. (Response at 3-4, Affidavit of Karen Sorrell, Narrative Response to Jan. 22, 2021 *Miller* Order, Death Data File Layout, EDRS Menu Screen Shots.) To the extent ODH offers the same evidence and arguments against disclosure, this report hereby incorporates and relies on the analysis and recommendations contained in *Miller*. ODH’s additional admission and arguments in this case are addressed below.

The Request Identifies Existing Records

{¶7} ODH maintains Ohio death certificate contents using multiple databases that access the Electronic Death Records System (EDRS). EDRS death data fields are “records,” and there is no limitation on public access to individual death certificates for any purpose. R.C. 3705.23.¹ ODH admits that its database software can produce the requested arrangement of EDRS data without reprogramming:

The EnterpriseDataWarehouseSecure, as a data warehouse, has a capability to accept instructions to extract certain information and download that information into another format and organize that information into a report. The Department can extract the information requested by Knapp and put it into a report.

(Response at 6.)

{¶8} A computer system that can produce requested data based on “instructions” is “already programmed to produce the desired printout” and the requested report is deemed to already “exist” for the purpose of an R.C. 149.43 request. *State ex rel.*

¹ With limitations not relevant to this request on social security numbers. R.C. 3705.23(A)(5).

Scanlon v. Deters, 45 Ohio St.3d 376, 379, 544 N.E.2d 680 (1989). Instructing database software to compile and produce such output is the electronic equivalent of directing an employee to locate existing records in labeled manilla folders, or use the index of a records binder, or follow computer directory paths to text files – which is to say retrieval according to the manner in which requested records are organized and maintained. Database records are organized and maintained through database software.

{¶9} Database access law is grounded in both the public nature of the data, and the enormous value added through database functionality. “The law does not require members of the public to exhaust their energy and ingenuity to gather information which is already compiled and organized in a document created by public officials at public expense.” *State ex rel. Cincinnati Post v. Schweikert*, 38 Ohio St.3d 170, 173-174, 527 N.E.2d 1230 (1988). “Similarly, a public agency should not be permitted to require the public to exhaust massive amounts of time and resources in order to replicate the value added to the public records through * * * a data base containing such records.” *State ex rel. Margolius v. Cleveland*, 62 Ohio St.3d 456, 460, 584 N.E.2d 665 (1992). See also *State ex rel. Athens Cty. Property Owners Assn. v. Athens*, 85 Ohio App.3d 129, 131, 619 N.E.2d 437 (4th Dist.1992).

{¶10} The very design, purpose, and office use of databases is to repeatedly “extract a unique subset of data from a database and organize that data into a report that has heretofore not existed.” (Response at 6.) ODH’s claim that any “uniqueness” of output sought by a public records request justifies its denial ignores clear case law requiring production of database-capable records regardless of whether the agency has previously instructed production of similar output. The “database rule” mandates public access to the *functionality* of public databases, not just repetition of past agency use. “If a computer is already programmed to produce requested output, the output is deemed to already exist for the purposes of a R.C. 149.43 request.” (Citations omitted.) *Naymik*

v. N.E. Ohio Areawide Coordinating Agency, Ct. of Cl. No. 2017-00919, 2018-Ohio 1718, ¶¶ 31-33. See *Miller* at ¶¶ 10-20.

{¶11} ODH thus keeps death certificate data as public record, maintains office software that can produce the requested dataset, and has experience in performing such downloads. The special master finds clear and convincing evidence that Knapp requested an existing ODH record.

R.C. 3701.17 Does Not Apply to Death Certificate Data Made Expressly Public by R.C. 3705.23(A)

{¶12} See *Miller* at ¶¶ 24-30. Under the facts and circumstances of this case, the special master concludes that ODH has not met its burden to prove that the withheld death data falls squarely within the exception contained in R.C. 3701.17.

Conclusion

{¶13} The special master recommends the court order respondent to provide requester with the requested records. It is further recommended the court order that requester is entitled to recover from respondent the amount of the filing fee of twenty-five dollars and any other costs associated with the action that he has incurred. It is recommended costs be assessed to respondent.

{¶14} *Pursuant to R.C. 2743.75(F)(2), either party may file a written objection with the clerk of the Court of Claims of Ohio within seven (7) business days after receiving this report and recommendation. Any objection shall be specific and state with particularity all grounds for the objection. A party shall not assign as error on appeal the court's adoption of any factual findings or legal conclusions in this report and recommendation unless a timely objection was filed thereto. R.C. 2743.75(G)(1).*

JEFF CLARK
Special Master