

[Cite as *Knapp v. Ohio Dept. of Health*, 2021-Ohio-3244.]

LISA F. KNAPP

Requester

v.

OHIO DEPARTMENT OF HEALTH

Respondent

Case No. 2021-00191PQ

Judge Patrick E. Sheeran

DECISION AND ENTRY

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{¶1} Pursuant to R.C. 2743.75(F)(2), Respondent Ohio Department of Health (ODH) objects to a Special Master’s Report and Recommendation in this public-records case. The Court overrules ODH’s objections for reasons set forth below.

### **I. Background**

{¶2} On April 7, 2021, pursuant to R.C. 2743. 75(D), Requester Lisa F. Knapp brought a complaint against ODH wherein Knapp alleged that she had been denied access to public records in violation of R.C. 149.43(B). The Clerk of this Court appointed a special master who referred the case to mediation. After mediation failed to successfully resolve all disputed issues between the parties, the case was returned to the Special Master’s docket. In a combined filing, ODH responded to Knapp’s complaint and moved to dismiss the complaint.

{¶3} On July 2, 2021, the Special Master issued a Report and Recommendation. The Special Master recommends denying ODH’s motion to dismiss. (R&R, 2.) The Special Master also recommends that the Court (1) order ODH to provide Knapp with the requested records, (2) order that Knapp is entitled to recover from ODH the amount of the filing fee of twenty-five dollars and any other costs associated with the action that Knapp has incurred, and (3) assess costs to ODH. (R&R, 5.)

{¶4} On July 15, 2021, ODH filed written objections to the R&R. Knapp has not filed a timely objection to the R&R. Neither has Knapp filed a timely response to ODH's written objections.

## **II. Law and Analysis**

{¶5} R.C. 2743.75(F)(2) governs objections to a special master's report and recommendation. Under R.C. 2743.75(F)(2), either party "may object to the report and recommendation within seven business days after receiving the report and recommendation by filing a written objection with the clerk and sending a copy to the other party by certified mail, return receipt requested. \* \* \* If either party timely objects, the other party may file with the clerk a response within seven business days after receiving the objection and send a copy of the response to the objecting party by certified mail, return receipt requested. The court, within seven business days after the response to the objection is filed, shall issue a final order that adopts, modifies, or rejects the report and recommendation."

{¶6} Pursuant to R.C. 2743.75(F), any objection to a report and recommendation "shall be specific and state with particularity all grounds for the objection." In an Introduction to the objections, ODH states,

On July 2, 2021, the Special Master issued a Report and Recommendation which recommended that the Court order the Ohio Department of Health (the "Department") to provide Lisa Knapp ("Ms. Knapp") with information that she requested in the format that she specified. The legal analysis and conclusion in this Report and Recommendation is identical to that of the Report and Recommendation issued in *Rosanna Miller v. Ohio Department of Health, Vital Statistics*, Court of Claims Case No. 2020-00618PQ, and the Report and Recommendation has incorporated the *Miller* Report and Recommendation. The Department's objection to the Report and

Recommendation in *Miller* was overruled. The Department has appealed the *Miller* decision to the Tenth District Court of Appeals. The Department files this objection to the Special Master's July 2, 2021 Report and Recommendation in order to preserve the Department's claims, defenses, and legal rights pending the *Miller* appeal.

{¶7} ODH has not arranged its objections in a serial format. However, ODH asserts in its objections that it "is not required to conduct a unique database query in order to compile a 'customized dataset' in response to Ms. Knapp's public records request;" that ODH's previous production of "customized datasets" "is not justification for future disclosure as the principle of estoppel does not apply against the state," and that, even if ODH "is required to compile 'customized datasets' of death data in response to a public record's request, the specific information requested by Ms. Knapp is protected health information under R.C. 3701.17 and cannot be disclosed."

{¶8} Notwithstanding ODH's objections, the Court finds that the Special Master identified the pertinent issues and reached the correct legal determination based on the ordinary application of statutory law and case law, as they existed at the time of the filing of the complaint. While it is true that estoppel "generally does not apply against the state, its agencies, arms, and agents," *Mateer v. Dir., Ohio Dept. of Job & Family Servs.*, 10th Dist. Franklin No. 07AP-966, 2008-Ohio-1426, ¶ 6, in this instance the principal issue concerns whether a request for reconfigured data using existing software constitutes an improper request for research. The Ohio Supreme Court has explained that "to constitute improper research, a record request must require the government agency to either search through voluminous documents for those that contain certain information or to create a new document by searching for and compiling information from existing records." *State ex rel. Carr v. London Corr. Inst.*, 144 Ohio St.3d 211, 2015-Ohio-2363, 41 N.E.3d 1203, ¶ 22. In the Court's view, in this case ODH was not required to search through voluminous documents or create a new document by

searching for and compiling information from existing records to fulfill Knapp's public-records request. Rather, ODH was required to use its existing software, input search criteria, and produce a report with information that was readily available. See *State ex rel. Scanlon*, 45 Ohio St.3d 376, 379, 544 N.E.2d 680 (1989) (holding that "the clerk could not be required to create a new 'document' by compiling material to facilitate review of the public records. Conversely, if the clerk's computer were already programmed to produce the desired printout, the 'document' would already exist for the purpose of an R.C. 149.43 request"), overruled on other grounds, *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 639 N.E.2d 83 (1994), paragraph one of the syllabus.

{¶9} ODH asserts that, if it is required to compile customized datasets of death data in response to a public-records request, then R.C. 3701.17 is the mechanism through which ODH does not disclose protected health information. See R.C. 3701.17(A)(2) (defining the term "protected health information," as used in R.C. 3701.17). Pursuant to R.C. 3701.17(C), "[i]nformation that does not identify an individual is not protected health information and may be released in summary, statistical, or aggregate form. Information that is in a summary, statistical, or aggregate form and that does not identify an individual is a public record under [R.C. 149.43] and, upon request, shall be released by the director." See R.C. 3701.17(D) (generally requiring a disclaimer to accompany release of information). Thus, under R.C. 3701.17(C) a report that provides information in summary, statistical, or aggregate form and that does not identify an individual does not run afoul of R.C. 3701.17. Moreover, based on the Court's review of R.C. 3701.17, the statute does not provide that R.C. 3701.17 is sole the mechanism through which ODH does not disclose protected health information. Indeed, construing the Ohio Public Records Act, the Ohio Supreme Court has stated, "R.C. 149.43(A) envisions an opportunity on the part of the public office to examine records prior to inspection in order to make appropriate redactions of exempt

materials.” *State ex rel. Office of Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio-662, 842 N.E.2d 508, ¶ 17, quoting *State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St.3d 619, 623, 640 N.E.2d 174 (1994).

### III. Conclusion

{¶10} The Court overrules ODH’s objections. The Court adopts the Special Master’s Report and Recommendation. The Court ORDERS ODH to forthwith provide Knapp with the requested records in accordance with the Special Master’s recommendation. Knapp is entitled recover from ODH the amount of the filing fee of twenty-five dollars and any other costs associated with the action that are incurred by Knapp, but Knapp is not entitled to recover attorney fees. Court costs are assessed to ODH. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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PATRICK E. SHEERAN  
Judge