



STATE OF INDIANA

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July 25, 2012

Greg Bowes
6311 E Westfield Blvd, Ste 205
Indianapolis, Indiana 46220-1791
Via e-mail: greg@gregbowes.pro

Re: *Informal Inquiry 12-INF-32*

Dear Mr. Bowes:

This is in response to your informal inquiry regarding your request for records that was submitted to the Indiana Department of Insurance ("Department"). Pursuant to I. C. § 5-14-3-9(e), I issue the following informal opinion in response to your inquiries. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA") I.C. § 5-14-3-1 *et seq.*

BACKGROUND

On June 6, 2012, you submitted a written public records request to the Department by email. The Department maintains a database containing information relating to the processing of medical malpractice claims. The data is available on the Department's web site at <http://173.240.107.245/>. Once you log in, you are given an opportunity to "Search For Claims" or "Search For Providers." If you choose "Search For Claims," you must then provide either a plaintiff's name or a claim number to progress any further. You can also use a date range to search. If you specify a claim, you can then hit a button to "view" the claim, and from there get to more detail. What the online database does not allow is to search for data from different starting points, such as queries to identify all of the plaintiffs or defendants an attorney might represent, although that information is maintained in the data.

You requested an electronic copy of the data underlying the online database. You specifically asked for "all computer data supporting the Indiana Patients Compensation Fund Database that can be found at <http://www.in.gov/idoi/pcf>." You suggested the easiest way to fulfill the request would be "for the Department to generate an electronic file with all of the fields for each record in the database. If there are multiple tables that relate to one another, I would like all of the records for each table. This file could be in any number of formats, such as ASCII, CSV (comma separated value), Microsoft Excel or Microsoft Access." It is your understanding that the data already exists in electronic

tables that contain multiple records of the data available on the Department's online tool. You believe the data can easily be converted to the format that has been requested.

On June 7, 2012, Bryan Shade responded to your request via e-mail. He stated that the information is maintained by a private vendor, Kemper Technology Consulting ("Kemper"), that there would be a fee to provide the entire database and that you should contact Dan Grieser, from Kemper, to discuss the specifics of the request and to learn what the fee would be. Later on June 7, you spoke to Mr. Grieser. He explained that Kemper maintains the data in an SQL database, and that it would take several steps to convert the data to one of the formats that you requested. He offered to run specific queries of the data to get the requested reports that you sought for five hundred dollars (\$500). You told him you just wanted the entire database so you would be able to run as many queries in as many different ways as you desire. He agreed to send a proposal of how much that would cost after he sent an email to confirm what you were requesting. After your response, Mr. Grieser wrote back to say the cost of providing the entire database would be two hundred dollars (\$200).

On June 8, 2012, you emailed both Mr. Shade and Mr. Grieser suggesting that the two hundred dollar (\$200) estimate was in excess of what the public records law allows. You cited I.C. § 5-14-3-8(g) and asked how the mere conversion of SQL tables to Access tables would result in an "actual cost" of two hundred dollars (\$200). Mr. Shade responded to that email the same day. He stated that the Department "does not maintain the information in the format you are seeking." He also said that "Mr. Grieser has already informed you of the actual costs of this effort, which is the typical cost charged for previous similar requests by other individuals." You believe there is some confusion between the "typical" costs they have been able to extract from others requesting data and the "actual" costs allowed under the law. Still later on June 8, you wrote to Mr. Shade and Mr. Grieser. You discussed the concept of actual costs further, and then proposed to avoid the conversion step by having them just provide me the tables in SQL format, and you would find a way to convert them. In the alternative, you asked them to "give me a little better idea of how the two hundred dollars (\$200) estimate is based on the "direct cost" for you to provide the data in Access format."

On June 11, Mr. Shade sent an email suggesting that I use the online tool, but also offered to run a query for me if I would name a specific attorney to base the query on. Thereafter, you spoke with Mr. Grieser. You talked about my suggestion of sending the tables in SQL format. He confirmed that the SQL database was in the structure of tables, records and fields that you anticipated. He stated that the tables contained the confidential usernames and passwords that allow people to access the data online, which you agreed would be confidential. He said redacting that information still takes some time. He said that information is in a separate table. You asked if he could send all the other tables. He suggested that would harm the functionality of the remaining tables. You do not agree that the remaining tables would be unusable for my purposes. In that conversation, you suggested that the conversion effort should only take about 20 minutes. Mr. Grieser agreed that 20 minutes might be correct if he did this kind of conversion all the time. You told him his two hundred dollars (\$200) estimate would

amount to a fee of six hundred dollars (\$600) per hour, and said that could not realistically be the actual cost. We ended the call without any agreement.

Since making the request, you have consulted with a computer programmer with substantial experience using SQL. He has assured you that you should be able to use the tables other than those containing the usernames and passwords. If that is true, then all the Department need do is send a file containing the remaining tables. This programmer also assured you that the effort to convert SQL tables to the formats suggested should be small, and that an estimate of 20 minutes is not implausible, but that it does depend on the effort needed to redact.

In response to your informal inquiry, Mr. Shade provided that the Department received your request on June 6, 2012. You sought ‘all the computer data supporting the Indiana Patient’s Compensation Fund Database that can be found at <http://www.indianapcf.com>.’ On June 7, 2012, the Department sent a response stating that the information was available on the Department’s website, which you were aware of. Further, the Department did not maintain the records in the format desired. Rather, the database is maintained by a contractor and there would be a fee for compiling the information in the specific format you were requesting. The Department directed you to speak with the contractor from Kemper in order to determine the precise parameters of the request and the costs associated with such a request.

Thereafter, you spoke with Mr. Grieser regarding the parameters of your request and the respective costs. Mr. Grieser informed you that his specific request would cost approximately two hundred dollars (\$200). You indicated at that time that the cost was excessive. The Department again provided that the information you sought was available for free, just not in the specific format you requested. Regardless, if you desired to have the data in a format of your choosing, you would have to pay the direct cost.

As the information is stored in an electronic database, the Department has made reasonable efforts to provide you with a copy of the information pursuant to I.C. § 5-14-3-3(d). The Department has informed you of the respective fees associated with compiling this information, in light of the database containing disclosable and non-disclosable information. *See* I.C. § 5-14-3-6(c). Additionally, individuals often request this type of information, but only want certain specific data. The Department, with the assistance of Kemper, must run or create queries, which take additional time and energy to create while ensuring that non-disclosable information is properly redacted.

After a discussion that occurred between you and Mr. Grieser, it was determined that you now sought the “entire” database. As this request requires less time and effort to reprogram the system than a more specific inquiry, the original cost of five hundred dollars (\$500) no longer applied. As stated in the Department’s contract with Kemper, Kemper charges seventy-five dollars (\$75) per hour for Mr. Grieser’s time and labor for additional work that is to be performed. Mr. Grieser estimated that it would take two hours to perform the necessary work in response to your request. Thus, the two hundred dollar (\$200) estimate represented the direct cost the Department would incur to

reprogram the system containing disclosable and non-disclosable information before its release. Generally, the Department receives five (5) requests of this nature per year. It was noted that this is the same rate that was charged in previous requests, and not a fabricated cost. Mr. Grieser indicated that if the Department had received such requests on a more frequent basis, then the work to reprogram the system could be done in less time. The data is constantly changing, and each request, as noted, is slightly different. Simply because you believe the work can be performed in a more efficient and less costly manner does not mean that the Department has violated the APRA and the estimate cost provided to you reflected the Department's direct cost for providing the records.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. See I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. See I.C. § 5-14-3-3(a).

I.C. § 5-14-3-8(g) states that:

(g) Except as provided by subsection (h), for providing a duplicate of a computer tape, computer disc, microfilm or similar or analogous record system containing information owned by the public agency or entrusted to it, a public agency may charge a fee, uniform to all purchases, that does not exceed the sum of the following:

- (1) The agency's direct cost of supplying the information in that form.
- (2) The standard cost of selling the same information to the public in the form of a publication if the agency has published the information and made the publication available for sale.

I.C. § 5-14-3-2(c) provides:

"Direct cost" means one hundred and five percent (105%) of the sum of the cost of:

- (1) the initial development of a program, if any;
 - (2) the labor required to retrieve electronically stored data; and
 - (3) any medium used for electronic output;
- for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) of this chapter, or for reprogramming a computer system under section 6(c) of this chapter.

The issue that has arisen is that the data that is to be provided to Mr. Bowes in the requested format contains usernames and passwords that allow users to access the data online. Prior to disclosure to Mr. Bowes, the Department would be required to remove that information from the data and provide the remaining parts. Pursuant to I.C. § 5-14-3-6(c), a public agency may charge a person who makes a request for disclosable information the agency's direct cost of reprogramming a computer system if the disclosable information is stored on a computer tape, computer disc, or a similar or analogous records system and the public agency is required to reprogram the computer system to separate the disclosable information from nondisclosable information.

Pursuant to the last communication between the parties, the Department estimated that the cost of providing the records in the format requested by Mr. Bowes would be \$200. The Department based this estimate on the contract price for services provided to the Department by Kemper, seventy-five dollars (\$75) per hour, and Mr. Grieser's estimate that the conversion would take two hours. Mr. Grieser informed Mr. Bowes that if the conversion that has been requested was routinely been performed, the time of conversion would only take 20 minutes. It goes without saying that when the actual work is performed by Mr. Grieser if the time involved equates to twenty minutes, the cost to be charged to Mr. Bowes will be considerable less than \$200. Both parties dispute how long the process of converting and separating the information will take. I can in no way qualify as an expert in this field of technology, so I am unable to determine how long a conversion of this type would take a qualified Information Technology Professional. Mr. Bowes is correct in noting that the Department would need to charge the "direct cost" to perform the conversion not a general charge; which the Department has acknowledged in its response. Assuming that the predominate factor attributing to the cost of the conversion is the hourly rate of Mr. Grieser (Mr. Bowes has stated he will provide the appropriate medium), which is seventy-five dollars \$75 per hour, the Department would be able to charge up to 105% of the sum of the time required by Mr. Grieser to convert and separate the nondisclosable information from the program. I would note again that we are currently only dealing with estimates. It is quite possible that the conversion would take Mr. Grieser only an hour to perform, at which time the cost imposed on Mr. Bowes would be less than the \$200 estimate. However, as Mr. Grieser, the person responsible for performing the conversion, has advised that it is his best estimate that the process will take two hours, it is my opinion that the Department is complying with the requirements of the APRA as it relates to fees for the conversion.

Alternatively discussed by the parties was the issue of providing all of the SQL tables to Mr. Bowes, the data's original format, minus those that contain username and passwords. This process would not require a conversion and separation to be conducted by Mr. Grieser. Mr. Bowes has provided that in conversations with others in the technology field, that if the data was provided in this manner, the data would be fully functional. Contrary to Mr. Bowes assertions, Mr. Grieser, who has direct knowledge of the specific data being requested, has advised that providing the data in this manner would harm the functionality of the remaining tables. When Mr. Grieser states that "providing the data in this manner would harm the functionality of the remaining tables", I am assuming the issue with functionality would only apply to the remaining SQL tables

provided to Mr. Bowes, not the Department's database. If the Department is able to provide all the tables in their current SQL format, minus those tables containing the user name and password, I would encourage the Department to initially provide the data in this manner. If Mr. Grieser is correct, in that the functionality of the tables is not maintained, then Mr. Bowes would be required to pay the respective fees to the Department to have the data converted as outlined above. Initially progressing in this manner though would alleviate the cost of the conversion to Mr. Bowes and work involved by Mr. Grieser in converting the data.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is fluid and cursive, with the first letter of the first name being a large, stylized 'J'.

Joseph B. Hoage
Public Access Counselor

cc: Bryan Shade