

Peterson vs. UT Dept. Health

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Per [Signature]

State Records Committee

Nova Dubovik

346 S. Rio Grande

Salt Lake City, UT 84101

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Hello, my name is Eric S. Peterson, I would like you to consider this my notice of an appeal to a denial issued to me by Doctor Joseph Miner, Executive Director of the Utah Department of Health, on Sept. 23, 2016.

The timeline of my request was the filing of a GRAMA on July 27, 2016 for information on prescription drug overdoses, specifically the "Report on Prescriptions Found With Body" form, excluding the name of the deceased individual.

Representatives of the Utah Department of Health agreed to the request and quoted me a price of \$6,785. We followed up with an in person meeting on Aug. 15 with myself Doctor Christensen and Department PIO Tom Hudachko. In the meeting we decided to amend the request to also seek the "cause of death."

Thus between the "Report of Prescriptions Found With Body" and one field from one other page of a report, I was requesting one document and one page from a document for every RX overdose from Jan 1. 2010 to the present.

On Aug. 26 UDOH responded by denying the request. They argued that Utah Code 26-4-17 controls over GRAMA and that it "only" allows these records be released to law enforcement, attending physicians and next of kin of the decedents.

I appealed the denial on Sept. 14. The arguments I presented in my appeal (attached) I feel still stand. I contend their reading of 26-4-17 is not accurate. The code does not say that such records would "only" be provided to the individuals listed above.

Those provisions ensure that the named parties (law enforcement, physicians etc...) receive the records without having to make any arguments for disclosure, as I must, they do not limit all disclosure to those named parties only. That result would mean there would be no way to ensure rogue physicians are discovered.

The code is in fact vague about aggregate data, such as what I requested. I also contend that since 26-4-17 is vague about confidentiality and who can have access to certain documents, that GRAMA still may be controlling, in which case I also preserved the appeal that the balancing test of GRAMA would demand these records be made public. The staggering number of prescription drug overdoses in our state amounts to a public health crisis and records of what doctors might be over prescribing is something that all Utahns deserve to know.

In a September 23 denial of my appeal Doctor Miner repeated the arguments his agency made in its previous denial. He contended that 26-4-17 is controlling and that it is specific about confidentiality.

He referred to the language in 26-4-17 that states: "The medical examiner shall maintain the confidentiality of the records which shall be released as provided herein." However, this still does not address the vagaries of the code, the clear language of which focuses solely on comprehensive death reports on individuals.

The clear language of that code speaks of a comprehensive file for each individual deceased person covering everything from the cause of death, to the occupation of the individual, to detailed autopsy reports.

These complete files—that identify the decedent—are not what I am seeking. I continue to seek only two pages from each death investigation, with the full expectation of the names of the deceased being redacted to protect their privacy.

I do not believe the Medical Examiner Act is as prohibitive as the department's counsel contends when they say that "Nothing in the Medical Examiner Act provides that parts of its records are releasable to a public request by redaction."

Accordingly I maintain my appeal of the denial based on two prongs--First that the Medical Examiner Act, even if it is considered controlling, does not specifically prohibit the release of the records I'm looking after.

Second, it's not clear that the Medical Examiner Act is prohibitive because it does not specifically address release of portions of a record, redacted for research purposes. I believe GRAMA, therefore still controls, in which case these records, are either public under GRAMA as investigations that have been concluded and do not invade the privacy of overdose victims, or they should be released, again, redacted, under the balancing test of GRAMA.

Let me know if you have any questions or need anything else in furtherance of this appeal to the records committee.

Thanks

Eric S. Peterson

The Utah Investigative Journalism Project

244 E. Kelsey Avenue

SLC, UT 84111

epeterson@utahinvestigative.org

ericspencerpeterson@gmail.com

801.618.6676