

ORIGINAL

IN THE SUPREME COURT OF OHIO

BOARD OF HEALTH OF CUYAHOGA COUNTY,	:	Case No. 2014-0223
	:	
Appellant,	:	On Appeal from the
	:	Cuyahoga County
	:	Court of Appeals,
v.	:	Eighth Appellate District
	:	
LIPSON O'SHEA LEGAL GROUP,	:	Court of Appeals
	:	Case No. 99832
Appellee.	:	

MERIT BRIEF OF APPELLANT, BOARD OF HEALTH OF CUYAHOGA COUNTY

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INTRODUCTION

Am. H.B. 6, dubbed “the Bioterrorism Bill,” was signed into law by Governor Bob Taft on November 13, 2003 and “enhance[d] the Ohio Department of Health’s and local health boards’ ability to detect and respond to both intentional acts of bioterrorism and everyday public health situations.”¹ The Bill enacted R.C. 3701.17 that defines “protected health information” and prohibits release of such information by a public health agency except in a narrow set of carefully defined circumstances.

In what appears to be the first court decision construing and applying R.C. 3107.17, the Eighth Judicial District has significantly eroded the protections established by this law by ordering the County Board of Health to disclose records that will be used to reveal the identity of children reportedly having elevated blood lead levels. That is precisely the kind of information that R.C. 3701.17 was intended to shield from public release.

The Ohio General Assembly took great care in specifically defining public records law to comport with these important confidentiality considerations by enacting R.C. 3701.17. The decision of the Court of Appeals below failed to follow the statute’s plain language and discarded the legislature’s wishes to shield certain documents from public records requests.

STATEMENT OF THE CASE

On June 4, 2012, Appellant Board of Health of Cuyahoga County, Ohio (hereafter “the BOH”) filed a complaint for declaratory relief against Appellee Lipson O’Shea Legal Group (hereafter “Lipson”) in order to ascertain whether records containing protected health information (“PHI”) that would or could reveal the identity of children reportedly having

¹Available at: <http://tinyurl.com/pbtkzel> (Last accessed September 15, 2014).

elevated blood lead levels were exempt from release as public records pursuant to R.C. 149.43(A)(1)(v) and RC. 3701.17.

In accordance with the trial court's case management plan, the BOH filed under seal on October 10, 2012 a sampling consisting of twelve (12) files responsive to Lipson's public records request. On December 24, 2012, the BOH filed its motion for summary judgment. On February 26, 2013, Lipson opposed the BOH's motion summary judgment. On March 15, 2013, the BOH filed a reply brief in support of its motion for summary judgment.

On March 27, 2013, the trial court issued its opinion and journal entry, holding that records containing PHI describing a child's past, present, or future physical condition that would reveal or could be used to reveal the child's identity was confidential and exempt from release as a public record pursuant to R.C. 3701.17 and R.C. 149.43(A)(1)(v). *See* Appx. 21 to 32. On April 25, 2013, Lipson appealed to the Eighth District Court of Appeals. On December 26, 2013, the Court of Appeals, agreeing that records containing an individual's PHI were not subject to disclosure, nevertheless reversed the trial court's judgment. *Cuyahoga Cty. Bd. of Health v. Lipson O'Shea Legal Group*, 8th Dist No. 99832, 2013-Ohio-5736 (hereinafter "Ap. Op."). The Eighth District's opinion found that records not expressly identifying the child's family name were subject to release -- without regard to whether those very records could be used to identify the subject family and child. *See* Ap. Op. at ¶¶32-33. Such a finding is inappropriate where the appellate court failed to specify any ambiguity within the plain language of R.C. 3701.17. The BOH appealed to this Court in order to redress the appellate court's failure to interpret and apply R.C. 3701.17 as the Ohio legislature intended. After initially denying discretionary review by a vote of four to three, on July 9, 2014 this Court granted review on reconsideration over the BOH's first proposition of law.

STATEMENT OF FACTS

The issue in this case presents is whether records containing PHI that would or could reveal the identity of children reportedly having elevated blood lead levels were exempt from release as public records. After reviewing a representative sample of the records sought by Appellant, the trial court determined that the records at issue here contained PHI that was confidential and not subject to disclosure pursuant to R.C. 3701.17 and R.C. 149.43(A)(1)(v). Because the trial court correctly found that the records sought by Lipson are not public records subject to release, the Eighth District's opinion mandating disclosure of confidential BOH records pursuant to a public records request should be reversed.

To put the legal issue presented here in better context, it is necessary first to review the BOH's legal and statutory responsibilities.

A. THE BOH's RESPONSIBILITIES IN INVESTIGATING REPORTS OF LEAD POISONING IN CHILDREN.

Appellant is the Cuyahoga County District Board of Health ("the BOH") is a self-governing, political subdivision of the State of Ohio organized under Revised Code Chapters 3707 and 3709. See BOH's Mtn. for Sum. J. at Ex. A, ¶¶ 2-3 ("Allan Aff."). As a public entity, the BOH is required to organize and maintain a public records program under the Ohio Public Records Act, R.C. 149.43. R.C. Chapter 3742 mandates that, whenever a health care provider tests a child under the age of six, and determines that child has a blood lead level in excess of 10 micrograms per deciliter (mg/dl), the health care provider is required to refer the matter to the BOH for investigation. Allan Aff. at para. 1. The BOH is self-governing and authorized pursuant to R.C. 3709.21 to make, adopt, and promulgate all regulations necessary to protect the public health and to prevent or restrict disease and nuisance within Cuyahoga County. Allan Aff. at para. 3. The BOH is a separate political subdivision of the State of Ohio and is required by

R.C. 3709.21 and RC. 3701.56 to enforce the quarantine and sanitary rules and regulations adopted by the Ohio Department of Health. See Allan Aff. at para. 4.

In 1992, the United States Congress enacted the Residential Lead-Based Paint Reduction Pub. L. 102-550, 106 Stat. 3672, under Title X of the Housing and Community Development Act of 1992 (sometimes referred to as “Title X”). See Allan Aff. at para. 6. Title X created a national policy identifying lead-based paint as a hazard and imposed on the states the duty to establish laws to regulate and enforce the abatement of this hazard. See Allan Aff. at para. 7. Title X also established the authority for the U.S. Dept. of Housing and Urban Development (HUD) and the Centers for disease Control (CDC) to provide grants to state and local agencies for enforcement and abatement on the local level. *Id.*

In 1994, the Ohio legislature adopted Senate Bill 162, the Childhood Lead Poisoning Prevention Act, codified in Chapter 3742 of the Ohio Revised Code, which established that Ohio was eligible to receive Lead Hazard Abatement and Reduction grant funds from HUD. See Allan Aff. at para. 8. Pursuant to the authority granted under R.C. 3742.04(B)(3) and R.C. 3742.34, the BOH has entered into an agreement with the Ohio Director of Health to implement the provisions of the Ohio Revised Code under Chapter 3742: Lead Abatement and Testing. See Allan Aff. at para. 5.

In 1997, President Clinton issued Executive Order 13045 directing each federal agency to make it a high priority to identify, assess, and address the risks associated with America’s children suffering from environmental risks such as lead poisoning. See Allan Aff. at para. 9. The Executive Order resulted in the creation of a Task Force on Environmental Health Risks and Safety Risks to Children, co-chaired by then Health and Human Services Secretary Donna Shalala, with a goal to eliminate childhood lead poisoning in the United States as a major public

health problem by the year 2010. See Allan Aff. at para. 10. In 1997, Greater Cleveland had one of the highest rates of lead poisoning in the entire country, impacting the ability of young children to develop, learn, and reach their full potential. See Allan Aff. at para. 10.

Since 2000, the BOH has received in excess of \$24 million dollars in grants from HUD to fund its lead hazard control and healthy homes initiative in Cuyahoga County, which has resulted in a 53% decrease in childhood lead poisoning rates in Cuyahoga County to date. See Allan Aff. at para. 12. Indeed, HUD recently presented an award to the BOH for having one of the most successful lead hazard control programs in the country. See Allan Aff. at para. 13.

From 2000 to the present, children from ages 1 to 5 are routinely tested for lead poisoning. See Allan Aff. at para. 14. Although the incidence of Childhood lead poisoning continues to fall, it remains a major public health concern in Cuyahoga County, associated primarily with deteriorating lead-based paint in housing stock built before 1978. See Allan Aff. at para. 15. The BOH is currently operating its lead hazard control and healthy homes program under a \$3.4 million dollar grant from HUD and endeavors to pursue elimination of lead hazards each year. See Allan Aff. at para. 16.

With regard to Ohio law, Chapter 3742 of the Ohio Revised Code establishes a complete regulatory scheme covering all aspects of lead poisoning from testing, identification, and investigation to training and regulation of contractors. See Allan Aff. at para. 17. The regulatory scheme is designed to eliminate lead poisoning as a public health issue. See Allan Aff. at para. 18.

More specifically, R.C. 3742.30 requires blood lead screening tests for all at-risk children. See Allan Aff. at para. 19. Whenever a health care provider tests a child under the age

of six (6) and determines that the child has a blood lead level in excess of 10 micrograms per deciliter of blood (mg/Dl), the health care provider is required to refer the matter to the BOH for investigation. See Allan Aff. at para. 20. See also Ohio Adm. Code 3701-30-07.

In that regard, R.C. 3742.35 provides as follows:

When the director of health or a board of health authorized to enforce sections 3742.35 to 3742.40 of the Revised Code becomes aware that an individual under six years of age has lead poisoning, the director or board shall conduct an investigation to determine the source of the lead poisoning. The director or board may conduct such an investigation when the director or board becomes aware that an individual six years of age or older has lead poisoning. The director- or board shall conduct the investigation in accordance with rules adopted under section 3742.50 of the Revised Code.

In conducting the investigation, the director or board may request permission to enter the residential unit, child care facility, or school that the director or board reasonably suspects to be the source of the lead poisoning. If the property is occupied, the director or board shall ask the occupant for permission. If the property is not occupied, the director or board shall ask the property owner or manager for permission. If the occupant, owner, or manager fails or refuses to permit entry, the director or board may petition and obtain an order to enter the property from a court of competent jurisdiction in the county in which the property is located.

As part of the investigation, the director or board may review the records and reports, if any, maintained by a lead inspector, lead abatement contractor, lead risk assessor, lead abatement project designed, lead abatement worker, or clearance technician.

R.C. 3742.35.

R.C. 3742.36 reads as follows:

When the director of health or an authorized board of health determines pursuant to an investigation conducted under section 3742.35 of the Revised Code that a residential unit, child care facility, or school is a possible source of the child's lead poisoning, the director or board shall conduct a risk assessment of that property in accordance with rules adopted under section 3742.50 of the Revised Code.

R.C. 3742.36.

If the results of the risk assessment conduct under R.C. 3742.36 indicate that one or more lead hazards identified in a residential unit, child care facility, or school are contributing to a child's lead poisoning, R.C. 3742.37 requires the director of health or authorized board of health to immediately issue a written order to have each lead hazard in the property controlled. R.C. 3742.38 requires the owner and manager of a residential unit, child care facility, or school that is subject to a lead hazard control order to comply with the order. The lead hazard control order remains in force until the property passes a clearance examination. See R.C. 3742.39. If the owner and manager of a residential unit, child care facility, or school fails or refuses to comply with the lead hazard order, the director of health or board of health that issued the order shall issue an order prohibiting the property from being used until it passes a clearance examination. See R.C. 3742.40.

As a result of the above, the BOH operates an aggressive lead abatement and healthy homes program that has resulted in no less than 110 properties over the last several years being investigated and, when warranted, remediated. Those cases came about as a result of an investigation started mostly by an elevated blood level test in a minor child. With that background, it is now appropriate to review the facts pertinent to the case at bar.

B. LIPSON'S PUBLIC RECORDS REQUEST

On January 22, 2012, Appellee Lipson O'Shea Legal Group ("Lipson") sent the following public records request by e-mail:

This is request for public records to the Cuyahoga County Board of Health. Pursuant to RC 149.43 (Ohio Public Records Act), **I hereby request documentation or information of all homes in 2008, 2009, 2010 and 2011 in Cuyahoga County where a minor child was found to have elevated blood lead levels in excess of 10 mg/dl. *****

BOH's *Mtn. for Sum. J.* at Ex. C. (Emphasis supplied).

After conducting a diligent search for records meeting the description of Lipson's public records request, the BOH identified approximately 110 files consisting of more than 5,000 pages of documents. See *Compl.* at ¶ 10. However, in order to attempt a public records response to this request, the BOH had to review its lead remediation records, including PHI, to determine which cases involved children with an elevated blood level. In responding to that single question, the BOH would have been producing records in violation of R.C. 3701.17(B).

Accordingly, the BOH sought a declaratory judgment on June 4, 2012, asking the Court of Common Pleas to determine whether or not the records sought by Lipson were exempt from release as public records under R.C. 149.43. On October 10, 2012, the BOH filed under seal for the trial court's in camera inspection a CD containing twelve (12) lead assessment investigation files as a representative sample of the records sought by Lipson. As described by the trial court, the records consisted of the following:

- Comprehensive Questionnaires of Parents/Guardians of Children with Elevated Blood Lead Levels and Complete Child Reports/Child Data that include the names, dates of birth, residence addresses, school attended, sibling information, and blood test results of children with elevated blood levels, and the names, addresses, phone numbers, and employment/work information of their parents or guardians;
- Lead Risk Assessment Reports that identify by name and address the owners of the property where the children with elevated blood levels reside and include the residential addresses of the children;

- Letters of Notice directed to the parents or guardians of the affected children at their residential address and to the property owners with the residence of the children identified;
- Lead Clearance Reports that identify the addresses of the affected properties or residences of the children;
- Documents that identify the owners of the residences of the children with elevated blood-lead levels (e.g. deed(s), Cuyahoga County Fiscal Officer Real Property information) and handwritten or typewritten documents titled “Chronology” that describe contacts and/or events surrounding the investigations that include the children’s residential addresses.

On March 27, 2013, the trial court granted summary judgment to the BOH, holding that records containing PHI describing a child’s past, present, or future physical condition that would reveal or could be used to reveal the child’s identity were confidential and exempt from release as a public record pursuant to R.C. 3701.17 and R.C. 149.43(A)(1)(v). See Appx. 31-32. The trial court also agreed with the BOH that, under Ohio law, “[t]his is an issue of first impression.” Appx. at 31.

On April 25, 2013, Lipson appealed to the Eighth District Court of Appeals. On December 26, 2013, the Court of Appeals, agreeing that records containing an individual’s PHI was not subject to disclosure, still reversed the trial court’s judgment. Ap. Op. at ¶ 30. The Eighth District’s opinion found that records not expressly identifying the child’s family name were subject to release – without regard to whether those very records could be used to identify the subject family and child. Ap. Op. at ¶ 32. Such a finding is inappropriate where the appellate court failed to specify any ambiguity within the plain language of R.C. 3701.17. The BOH

appealed in order to redress the appellate court's failure to interpret and apply R.C. 3701.17 as the Ohio legislature intended.

LAW AND ARGUMENT

Ohio's Public Records Act authorizes the public to have access to the public records of offices subject to that law. But not every record that comes under the jurisdiction of a public office is a "public record." The Ohio Revised Code declares that certain records are not public records and thus are exempt from disclosure pursuant to R.C. 149.43(A)(1) and/or other applicable laws. In this case, the records sought by Lipson were not public records pursuant to R.C. 149.43(A)(1)(v) since R.C. 3701.17 prohibited their release. Because the trial court correctly found that all these records were exempt under the plain language of R.C. 3701.17, the Eighth District's opinion should be overturned.

R.C. 149.43(B)(1) generally requires a public office to make its public records available for inspection. Pursuant to R.C. 149.43(A)(1)(v), however, records the release of which is prohibited by state or federal law, are exempt from and thus not subject to release as a public record. In this case, the issue is whether documents identifying homes in Cuyahoga County where a minor child was found to have an elevated blood lead level higher than 10 mg/dl in 2008 through 2011 are public records under R.C. 149.43.

The Board of Health's Proposition of Law: Information in the Custody of a Board of Health or the Ohio Department of Health that Either Identifies an Individual or Could Be Used to Ascertain that Individual's Identity is Exempt from Disclosure under the Public Records Act Absent the Individual's Consent.

R.C. 3701.17(A)(2) defines "protected health information," (PHI) as follows:

"Protected health information" means information, in any form, including oral, written, electronic, visual, pictorial, or physical that describes an individual's past, present, or future physical or mental health status or condition, receipt of

treatment or care, or purchase of health products, if either of the following applies:

- (a) The information reveals the identity of the individual who is the subject of the information.
- (b) The information could be used to reveal the identity of the individual who is the subject of the information, either by using the information alone or with other information that is available to predictable recipients of the information.

R.C. 3701.17(A)(2).

R.C. 3701.17 establishes that an individual's health information is confidential and does not lose that protection just because it is obtained by a county board of health in the scope of performing its legal duties. Declaring that PHI is confidential, R.C. 3701.17(B) states as follows:

Protected health information reported to or obtained by the director of health, the department of health, or a board of health of a city or general health district is confidential and shall not be released without the written consent of the individual who is the subject of the information unless the information is released pursuant to division (C) of this section or one of the following applies:

- (1) The release of the information is necessary to provide treatment to the individual and the information is released pursuant to a written agreement that requires the recipient of the information to comply with the confidentiality requirements established under this section.
- (2) The release of the information is necessary to ensure the accuracy of the information and the information is released pursuant to a written agreement that requires the recipient of the information to comply with the confidentiality requirements established under this section.
- (3) The information is released pursuant to a search warrant or subpoena issued by or at the request of a grand jury or prosecutor in connection with a criminal investigation or prosecution.
- (4) The director determines the release of the information is necessary, based on an evaluation of relevant information, to avert or mitigate a clear threat to an individual or to the public health. Information may be released

pursuant to this division only to those persons or entities necessary to control, prevent, or mitigate disease. (Emphasis added.)

R.C. 3701.17(B). (Emphasis supplied). See Appx. at 33.

A. The Plain Language of R.C. 3701.17(A)(2) and R.C. 3701.17(B) Exempts the BOH's Records containing PHI from Public Records Requests.

At each stage of the proceedings below, Lipson conceded – and both courts below found – that none of the four exceptions found in R.C. 3701.17(B)(1)-(4) applied to Lipson's request. Ap. Op. at ¶17, Tr. Ct. Op. at Appx. 31, ¶ 1. Thus, the only available statutory alternative allowing release is under R.C. 3701.17(C), which provides that “[i]nformation that does not identify an individual and is not protected health information may be released in summary, statistical, or aggregate form,” and that “[i]nformation that is in a summary, statistical, or aggregate form and that does not identify an individual is a public record under section 149.43 of the Revised code and, upon request, shall be released by the director.” But the trial court found this exemption was inapplicable as well noting, “the fact remains that the information is not in a summary, statistical, or aggregate form and therefore, under R.C. 3701.17(C) it may not be released.” See Tr. Ct. Op. at p. 12, ¶ 1.

Accordingly, the BOH's records demanded by Lipson may only be released if they do not contain PHI or are de-identified or in summary, statistical form. However, Lipson's public records request, by its very terms, specifically requests PHI. The records sought by Lipson were records whose very existence arose as a consequence of information describing a child's past, present, or future physical or mental health status or condition. Namely, reported elevated blood lead levels; receipt of treatment or care; or purchase of health products; that (a) would reveal the identity of the child who is the subject of the information or (b) could be used to reveal the child's identity, either by using the information alone or with other information that would be

available to predictable recipients of the information – in this case, Lipson. By any measure, this is PHI within the meaning of R.C. 3701.17(A)(2) that is strictly confidential and prohibited from release under R.C. 3701.17(B), absent proper written consent by the affected individual – or a parent or guardian.

Indeed, the trial court’s findings in this regard are unequivocal:

In the Court’s opinion, the records include descriptions of children’s physical condition, i.e., lead poisoning as diagnosed by test results included therein, and either reveal the identity of the individual child’s name, address, and date of birth or include information that could be used to reveal the identity of the child and therefore constitute “protected health information.”

Tr. Court Op. (Appx. at 31 at ¶ 3).

Lipson likewise does not dispute that it has no written consent from the children or their parents authorizing release of the elevated blood level information at issue in this case. Instead, Lipson convinced the Eighth District to disregard this broad statutory confidentiality and produce certain, albeit redacted documents, in the BOH’s files. Namely, BOH documents that reveal an individual’s past, present, or future physical or mental health status or condition, but do not specifically identify the person who is the subject of the information. But the Eighth District’s acceptance of Lipson’s argument is contrary to the plain text of R.C. 3701.17(A)(2).

1. “Could,” as used in R.C. 37.017(A)(2)(b), Means “Might” or “Possibly may.”

Contrary to the Eighth District’s decision at ¶ 33, even “Letters of Notice to the landlord property owner” are exempt because these documents “could be used to reveal the identity of the individual...” R.C. 3701.17(A)(2)(b). R.C. 3701.17(A)(2) makes it very clear that any and all responsive documents in the BOH’s possession are PHI and confidential. Residential information (even if no longer current) *could be used* to determine the identity of children with a “past, present, or future physical medical condition”- namely lead poisoning. “In some contexts,

the word ‘could’ expresses only a mere possibility.” *Quinones v. Pin*, 298 S.W.3d 806 (Tex.App., 2009) citing *The New Oxford American Dictionary* 389 (2001). See also, *Hoffman Homes, Inc. v. Administrator*, U.S. E.P.A., 999 F.2d 256, 261 (7th Cir. 1993). (“[U]se of the word ‘could’ indicates the regulation covers waters whose connection to interstate commerce may be potential rather than actual, minimal rather than substantial.”)

By determining “the landlord property owner’s name and address and the property’s address are subject to disclosure” the Eighth District’s ruling ignored the plain language of R.C. 3701.17(A)(2)(b). Ap. Op. at ¶ 35. This Court has rejected such judicial interpretations.

The appellate court improperly included words in the statute that were not there and ignored words that were there. *** We previously have cautioned against ‘judicial legislation’ by adding words to [the Revised Code], and we reiterate that caution again.

State ex rel. Carna v. Teays Valley Loc. School Dist. Bd. of Edn., 131 Ohio St.3d 478, 2012-Ohio-1484, at ¶ 24 (internal citations omitted).

“The preeminent canon of statutory interpretation requires us to ‘presume that [the] legislature says in a statute what it means and means in a statute what it says there.’” *Miller v. Miller*, 132 Ohio St.3d 424, 2012-Ohio-2928, 973 N.E.2d 228, ¶ 48. The Eighth District’s opinion below ignored the “could be used...” statutory text found in R.C. 3701.17(A)(2)(b) instructed the BOH to disclose residential addresses of lead poisoned children. Ap. Op. at ¶ 33. Once those addresses are disclosed, Lipson certainly understands it “could” enter that address on the County Fiscal Officer’s website to obtain their parent or guardian’s name if they own their home. There are countless online websites² where a person may type in an address and get the name of the resident at that address for free. If the lead poisoned parents rent, then Lipson can

² For instance, www.whitepages.com, www.addresses.com, not to mention those websites where this information may be obtained for a fee such as www.accurint.com, or other paid websites ran by various service providers.

go to these websites and get the lessee/parents' names. Alternatively, Lipson's agents may knock on the door to ascertain identities. If these renters have moved, then Lipson can ask their former neighbors "who lived next-door to you?" Contrary to the Eighth District's opinion, residential information of lead poisoned children, "could be used to reveal the identity of" these children. Thus, the plain language of this statutory exemption applies and the BOH has not legal duty to produce, redacted or not since they are not public records pursuant to R.C. 149.43(A)(1)(v).

Lipson did not dispute that there was no written consent by or on behalf of the affected individuals authorizing the release of the elevated blood lead level information at issue in this case. Lipson likewise did not dispute that none of the four (4) exceptions under R.C. 3701.17(B) are applicable to this case. Ap. Op. at ¶17. Instead, Lipson argued that documents that do not specifically identify the person who is the subject of the information are *not* protected by R.C. 3701.17. But as demonstrated above, Lipson's argument – and the Court of Appeals' acceptance of it – is contrary to the plain text and intent of R.C. 3701.17. The mere fact that the record does not specifically identify the person who is the subject of the information is immaterial if that information could still be used to reveal that individual's identity.

The scope of the statutory confidentiality of protected health information embodied in R.C. 3701.17 is quite broad. To encourage reporting of health problems to governmental agencies tasked with preventing outbreaks, the General Assembly explicitly protected certain BOH records from disclosure pursuant to public records requests. Information in the hands of the BOH is confidential and exempt from disclosure, absent consent of the afflicted, if "[it] reveals the identity of the individual who is the subject of the information. OR [it] *could be used* to reveal the identity of the individual who is the subject of the information, either by using the

information alone or with other information that is available to predictable recipients of the information.” R.C. 3701.17(A)(2)(a) and (b). (Italics added).

2. An Alternative Reading Renders R.C. 3701.17(A)(2)(b) Superfluous.

Moreover, to the extent Lipson urges an interpretation of R.C. 3701.17(A)(2)(b) that would permit production of current or former residential addresses of lead-poisoned children, that interpretation would effectively delete, or at least make utterly superfluous, “[t]he information could be used to reveal the identity of the individual who is the subject of the information...” from the text of R.C. 3701.17(A)(2)(b). By Lipson’s argument, and the Eighth District’s acceptance of it, R.C. 3701.17(A)(2)(b) has been effectively deleted from the Ohio Revised Code.

But it is a cardinal rule of statutory interpretation that a court may not interpret a statute in a manner that effectively deletes words from the statute. In *State ex rel. Citizens for Open, Responsive, & Accountable Government v. Register*, 116 Ohio St.3d 88, 2007-Ohio-5542, where the court recognized that a township fiscal officer’s duty under R.C. 507.07 to incorporate the annual township financial statement in the township board minutes and to post copies at polling places arose “only ‘after the township officers have made their annual settlement of accounts,’” this Court refused to read the statute so as “to delete the statutory prerequisite and impose an unconditional duty” on township fiscal officers because that would have required the court to delete words from the statute. *Id.* at ¶¶ 40-42. See also, *In re Foreclosure of Liens for Delinquent Land Taxes v. Parcels of Land Encumbered with Delinquent Tax Liens*, Slip Op. No. 2014-Ohio-3656, ¶ 14 (rejecting appellate court’s interpretation of R.C. 5721.25 that in effect deleted the term “any person” and inserted the phrase, “property owner”); *State ex rel. Asti v. Ohio Dept. of Youth Servs.*, 107 Ohio St.3d 262, 2005-Ohio-6432, ¶ 29 (rejecting appeals court’s

interpretation of R.C. 124.11(D) that would in effect delete statutory language that person appointed to unclassified service “shall retain the right to resume the position and status held by the person in the classified service immediately prior to the person’s appointment to the position in the unclassified service”); *State ex rel. Dispatch Printing v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, ¶ 29 (court could not delete statutory prerequisite that document must be a “record” under R.C. 149.011(G) before it can be subject to release as a public record); *State ex rel. Steele v. Morrissey*, 103 Ohio St.3d 355, 2004-Ohio-4960, ¶ 30 (refusing to interpret R.C. 731.32 so as to delete the word “attesting” from definition of “certified copy”); *Erb v. Erb*, 91 Ohio St.3d 503, 506-507, 2001-Ohio-104, (rejecting appellate court’s interpretation of R.C. 742.47 that in effect deleted the term “person” and inserted the phrase, “member of the fund”);

The General Assembly presumably enacted R.C. 3701.17(A)(2)(b) to accomplish some purpose. Moreover, when compared with how PHI is also defined in R.C. 3701.17(A)(2)(a), it is evident the General Assembly wanted this statutory confidentiality to be very broad. The legislature granted this special confidentiality to BOH records containing PHI and then broadly crafted the definition of PHI. The rules of statutory interpretation require that the statute be read as it is written. *State ex rel. Savarese v. Buckeye Local School Dist. Bd. Of Ed.*, 74 Ohio St. 3d 543, 545 (1996). In considering the statutory language, it is the duty of the court to give effect to the words used in a statute, not to delete words used or to insert words not used. *See Baily v. Republic Engineered Steels, Inc.*, 91 Ohio St. 3d 38, 40 (2001); *Cleveland Elec. Illum. Co. v. Cleveland*, 37 Ohio St. 3d 50 (1988). Pursuant to R.C. 1.42, addressing rules of statutory construction, “words and phrases shall be read in context and construed according to the rules of grammar and common usage.” This Court has continuously held that while the primary goal in statutory interpretation is to give effect to the intent of the legislature, the Court must look first to

the plain language of the statute. *Christe v. GMS Mgt. Co., Inc.*, 88 Ohio St. 3d 376, 377 (2000); *Provident Bank v. Wood*, 36 Ohio St. 2d 101, 105 (1973). If the statute conveys a clear, unequivocal, and definite meaning, interpretation comes to an end, and the statute must be applied according to its terms.” *Columbia Gas Transm. Corp v. Levin*, 117 Ohio St.3d 122, 2008-Ohio-511, ¶19. Reading R.C. 3701.17(A)(2)(b) as it is written, the trial court properly found non-disclosure of the BOH’s requested records appropriate under that provision. A law firm, or any person for that matter, has the ability to ascertain the identities of residents at a particular address. Thus, the requested BOH records are confidential PHI and exempt pursuant to Lipson’s public records request.

The Eighth District’s Opinion failed to honor the plain language of R.C. 3701.17(A)(2). The Court of Appeals improperly construed that statute without ever declaring it ambiguous. It acknowledged the above statutes but cast them aside as contrary to “uphold[ing] the intent of the Public Records Act.” Ap. Op. at ¶ 31. But it is black letter law that the Court of Appeals may not second guess the legislature’s broad grant of confidentiality in R.C. 3701.17 on a case-by-case basis as “contrary to the intent” of R.C. 149.43. That is prohibited as improper judicial activism. Recognizing this fundamental tenant, this Court has reasoned,

As we have previously recognized *** in enumerating very narrow, specific exceptions to the public records statute, the General Assembly has already weighed and balanced the competing public policy considerations between the public's right to know how its state agencies make decisions and the potential harm, inconvenience or burden imposed on the agency by disclosure.

State ex rel. Thomas v. Ohio State Univ., 71 Ohio St.3d 245, 249, 643 N.E.2d 126, 130 (1994).

(Internal citations omitted, Emphasis supplied).

At bottom, the Court of Appeals impermissibly substituted its judgment for that of the legislature, declaring that withholding BOH records “is not appropriate, nor does it uphold the

intent of the Public Records Act.” Ap. Op. at ¶ 31. Because the Eighth District failed to apply the statute as written, its judgment should be reversed.

B. The BOH’s Sensitive Records on Ohioans with a Particular Disease are NOT Public.

On May 2, 2014, a reporter from the *Plain Dealer* sent the following, nearly identical, public records request to the BOH:

This is a request for public records pursuant to Ohio Revised Code 149.43.
I hereby request any records, documentation or information on all homes in 2009, 2010, 2011, 2012 and 2013 in Cuyahoga County **where a minor child was found to have elevated blood lead levels in excess of 5 mb/D1.**

I am not requesting identifying or medical information about the subjects of the tests. If this information is kept in an electronic format, I request to receive it in an electronic format. (Emphasis added, not in original request).

If the decision below is allowed to stand, it seems entirely possible and even probable for a person to request all “non-PHI” records of any person who has been “diagnosed with - syphilis, or AIDS, or MERS, or cancer, or heart disease, or diabetes” - pick your disease. As long as the requestor does not ask for the actual medical record that shows the diagnosis, the BOH will be obligated to provide any other records pertinent to that request regardless of whether or not the record leads to the identity of the person and/or their address.

Whatever potentially noble pursuits Lipson may have in seeking these records, to presumably solicit potential clients, should not overtake the legislature’s explicit grant of confidentiality. Lead poisoned children or their parents do not need to receive knocks on their doors from reporters or lawyers who obtained their identifies from records acquired by the BOH in the normal course of conducting confidential public health related investigations. The names of these families and children do not need to be catalogued by unknown entities.

If the decision below is permitted to stand, it must be stressed that anyone can and will make the same requests for alleged public records in the possession of the BOH or the Department of Health. It is an utter shame because such a result is at complete odds with the statutory language and intent of the General Assembly in enacting R.C. 3701.17.

**C. The Decision Below Ignored this Court's holding in
State ex rel. McCleary v. Roberts, 88 Ohio St. 3d 365 (2000).**

This Court has not hesitated to construe public records seeking documents or information about children narrowly. In *State ex rel. McCleary v. Roberts*, 88 Ohio St. 3d 365, 725 N.E.2d 1144, (2000) the same exception was applied to clearly sensitive information, including names, photos, addresses, and **medical history** of children using public swimming pools. *Id.* at 365. (Emphasis supplied). *McCleary* held that “Personal information of private citizens, obtained by a ‘public office,’ reduced to writing and placed in record form and used by the public office in implementing some lawful regulatory policy, is not a ‘public record’ as contemplated by R.C. 149.43.” *Id.* at Syllabus. This decision was cited by the BOH at each stage of the proceedings below, but not even mentioned in the Court of Appeal’s decision. Notably, in *McCleary*, this Court concluded the request seeking information about children using a city pool did not even qualify as a public record, eliminating the need to even weigh the interest in disclosure against the children's privacy. *Id.*, 88 Ohio St. 3d at 369-70. “I fully agree with the majority opinion that the database at issue in this case is not a record, and that if it were a record it would not be public because of the children's right to privacy.” *Id.* (Pfeifer, J., concurring; Emphasis supplied). Residential addresses of lead-poisoned children deserve no less protection than addresses of child pool patrons.

D. Disclosure of the BOH's Records violates the Subject's Right to Privacy.

This Court was recently asked to recognize an inherent privacy right surrounding certain public records requests. See *State ex rel. Quolke v. Strongsville City School Dist.*, Sup. Ct. Case No. 2013-1809. In *Quolke*, 8th Dist. No. 99733, 2013-Ohio-4481, the Eighth District, hearing an original action, granted a writ of mandamus ordering the release of substitute teacher's names and addresses who served as replacement teachers during a labor strike. Despite the school board's extensive citation to *McCleary*, above, the Court of Appeals again refused to acknowledge this Court's decision, just like in the case below. Appellant's second proposition of law presently before this Court is: "Records are not public records when their release would violate the subject's constitutional right to privacy." If this Court overturns the Eighth District in *Quolke* and finds such documents are not public records, it logically follows that children also have a right to keep their medical histories private. Both the federal Sixth Circuit Court of Appeals and this Court have held that the Fourteenth Amendment to the United States Constitution guarantees a clearly established and fundamental right to personal security and bodily integrity. *Kallstrom v. Columbus*, 136 F.3d 1055, 1063 (6th Cir. 1998); *State ex rel. Cincinnati Enquirer v. Craig*, 132 Ohio St.3d 68, 2012-Ohio-1999, 969 N.E.2d 243, ¶ 13. Those cases concerned the disclosure of certain information contained within police officers' personnel and other files.

In fact, a person's fundamental right to personal security may be implicated if the BOH is forced to start fulfilling public records requests about Ohioans with controversial diseases such as H.I.V., A.I.D.S., and the like. It should be noted, however, a court should not reach constitutional arguments where legal arguments will dispose of the question. *In re Miller*, 63 Ohio St.3d 99, 585 N.E.2d 396 (1992). Here, the General Assembly has already recognized that

disclosure of the BOH's records pursuant to public records requests is inappropriate by broadly defining PHI in R.C. 3701.17(A)(2)(b). *State ex rel. Thomas v. Ohio State Univ.*, 71 Ohio St.3d 245, supra. Then, the legislature exempted those records from release by enacting R.C. 3701.17(B) except under four circumstances, none of which apply herein.

E. If this Court Uses the Tools of Statutory Construction, it is Clear the Legislature Anticipated the Words “Could Be Used...” to Indicate a Broad Scope of this Exemption from Public Record Requests.

If this Court were to find R.C. 3701.17(A)(2)(b) ambiguous, which it is not, upon construing the statute, it is evident that the BOH's advanced meaning is the one that prevails.

R.C. 1.49 provides:

If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:

- (A) The object sought to be attained;
- (B) The circumstances under which the statute was enacted;
- (C) The legislative history;
- (D) The common law or former statutory provisions, including laws upon the same or similar subjects;
- (D) The consequences of a particular construction;
- (F) The administrative construction of the statute.

Thus, the factors listed in R.C. 1.49 favor the BOH's submitted meaning. Indeed, R.C. 1.49(A) explicitly permits this Court to consider the object sought to be attained: keeping PHI in the BOH's records confidential. Next, the legislative history and circumstances surrounding the enactment of R.C. 3701.17(A)(2)(b) and R.C. 3701.17(B) favor a broad confidentiality cloaking the BOH's records from public record requests. This Court may consider relevant legislative history to determine the General Assembly's intent when a statute is ambiguous. *State v. Jordan*,

89 Ohio St. 3d 488, 492 (2000). Here, the legislative history proves that the General Assembly wanted only to permit only non-PHI documents kept in statistical form as potentially subject to public records requests. Under protected health information and confidentiality requirements, the Bill's legislative history states as follows:

The act specifies that information that does not identify an individual is not protected health information and may be released in summary, statistical, or aggregate form. Such information is a public document under the Ohio Open Records Law and must be released by the Director, upon request. The act also requires that, except for information released pursuant to (4) above, any disclosure must be in writing and accompanied by a written statement that includes the following or substantially similar language: "This information has been disclosed to you from confidential records protected from disclosure by state law. If this information has been released to you in other than a summary, statistical, or aggregate form, you shall make no further disclosure of this information without the specific, written, and informed release of the individual to whom it pertains, or as otherwise permitted by state law.

Leg. Budget Office Bill Analysis (Sub. H.B. 6) 125th Gen. Assemb. at Appx. 38-39.

CONCLUSION

As the General Assembly recognized when it enacted R.C. Chapter 3701, it is of vital interest that the public records law not swallow confidentiality considerations concerning records in the hands of the Ohio Department of Health and its local boards. The decision of the Court of Appeals below failed to follow the statute's plain language, discarded these General Assembly's valid concerns and provided a road map for release of other, non-public records concerning those afflicted with a disease. As a case of first impression wholly abandoning the statutory language and failing to acknowledge this Court's prior precedent in *State ex rel. McCleary v. Roberts*, 88 Ohio St. 3d 365, it Appellant the Board of Health of Cuyahoga County respectfully requests that the Eighth District's decision be reversed and the trial court's decision recognizing this statutory confidentiality reinstated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to S.Ct.Prac.R. 3.11 (B)(1) and 3.11(C)(1)(a), a copy of the foregoing Merit Brief of the State of Ohio was served via e-mail and Reg. U.S. Mail this 15th day of September, 2014 upon the following counsel:

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APPENDIX

ORIGINAL

IN THE SUPREME COURT OF OHIO

14-0223

BOARD OF HEALTH OF CUYAHOGA COUNTY,

Plaintiff-Appellant,

v.

LIPSON O'SHEA LEGAL GROUP,

Defendant-Appellee.

Case No. _____

On Appeal from the Cuyahoga County Court of Appeals, Eighth Appellate District

Court of Appeals Case No. 99832

NOTICE OF APPEAL OF PLAINTIFF-APPELLANT BOARD OF HEALTH OF CUYAHOGA COUNTY

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RECEIVED FEB 10 2014 CLERK OF COURT

FILED FEB 10 2014 CLERK OF COURT SUPREME COURT OF OHIO

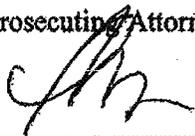
NOTICE OF APPEAL OF APPELLANT
BOARD OF HEALTH OF CUYAHOGA COUNTY

Plaintiff-Appellant, Board of Health of Cuyahoga County hereby gives notice of its appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate Judicial District entered in *Cuyahoga Cty. Bd. of Health v. Lipson O'Shea Legal Group*, 8th Dist. No. 99832, on December 26, 2012.

This case is one of public or great general interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Appeal was served by U.S. mail and via e-mail this 7th day of February 2014, upon the following counsel:

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Court of Appeals of Ohio

DEC 26 2013

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 99832

BOARD OF HEALTH OF CUYAHOGA COUNTY

PLAINTIFF-APPELLEE

vs.

LIPSON O'SHEA LEGAL GROUP

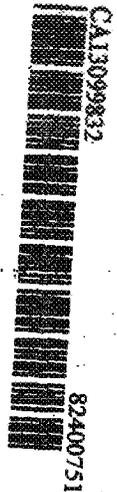
DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-784198

BEFORE: Jones, J., Celebrezze, P.J., and McCormack, J.

RELEASED AND JOURNALIZED: December 26, 2013



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FILED AND JOURNALIZED
PER APP.R. 22(C)

DEC 26 2013

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By [Signature] Deputy

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

LARRY A. JONES, SR., J.:

{¶1} Defendant-appellant, Lipson O'Shea Legal Group ("law firm"), appeals the trial court's granting of summary judgment in a declaratory judgment action in favor of the plaintiff-appellee, Board of Health of Cuyahoga County, Ohio ("BOH"). For the reasons that follow, we reverse.

I. Procedural History and Facts

{¶2} In January 2012, the law firm emailed the following public records request to the BOH:

This is a request for public records to the Cuyahoga County BOH. Pursuant to RC 149.43 (Ohio Public Records Act), I hereby request documentation or information of all homes in 2008, 2009, 2010 and 2011 in Cuyahoga County where a minor child was found to have elevated blood lead levels in excess of 10 mb/D1.

* * *

{¶3} Pursuant to the law firm's request, the BOH identified 110 files consisting of more than 5,000 pages of documents, but concluded that the documents contained "protected health information" that would identify, or could be used to identify, the individuals who were subject of that information. The BOH determined it was prohibited by law from producing any of the requested records.

{¶4} The BOH subsequently filed a complaint for declaratory judgment in Cuyahoga County Common Pleas Court, asking the court to determine whether the records were exempt from release as public records under R.C. 149.43. The

board filed 12 lead assessment investigation files as a representative sample for the court's in camera review. The records were filed under seal.

{¶5} The 12 sample files included: (1) Comprehensive Questionnaire of Parent/Guardian of Children With Elevated Blood Lead Levels, which included the child's name, date of birth, address, family and school information, blood test results, and the names, addresses, telephone numbers and employment information of the child's parent/guardian; (2) Lead Risk Assessment Report, which identified the property owner and address; (3) Letter of Notice to the child's parent/guardian; (4) Letter of Notice to the property owner; (5) Lead Clearance Report, which included the property owner's name and address and a corresponding letter to the child's parent/guardian; (6) Order to Control Lead Hazard sent to the property owner and listing the property address; and (7) other investigatory documents that identified the property owner and/or gave the property's address.

{¶6} It is undisputed that the information contained in the documents was not set forth in summary, statistical, or aggregate form.

{¶7} The BOH moved for summary judgment, which the law firm opposed. The trial court granted the BOH's motion, finding that the records contained protected health information that described a child's past, present, or future physical condition that would reveal or could be used to reveal the child's identity and, as such, were confidential and exempt from release as a public record

pursuant to R.C. 3701.17 and 149.43(A)(1)(v).

{¶8} The law firm filed a timely notice of appeal, and now raises one assignment of error for our review: “The trial court erred in granting appellee’s motion for summary judgment.”¹

II. Law and Analysis

{¶9} In its sole assignment of error, the law firm argues that the trial court erred in granting the BOH’s motion for summary judgment.

{¶10} We review an appeal from summary judgment under a de novo standard of review. *Baiko v. Mays*, 140 Ohio App.3d 1, 7, 746 N.E.2d 618 (8th Dist.2000), citing *Smiddy v. The Wedding Party, Inc.*, 30 Ohio St.3d 35, 506 N.E.2d 212 (1987); *N.E. Ohio Apt. Assn. v. Cuyahoga Cty. Bd. of Commrs.*, 121 Ohio App.3d 188, 699 N.E.2d 534 (8th Dist.1997). Accordingly, we afford no deference to the trial court’s decision and independently review the record to determine whether summary judgment is appropriate.

{¶11} Under Civ.R. 56, summary judgment is appropriate when, (1) no genuine issue as to any material fact exists, (2) the party moving for summary judgment is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach only

¹ On appeal, the parties do not address the arguments made in the trial court with regard to the law firm’s request being improper as vague and overbroad or that disclosure is only warranted if the law firm can show that the records would assist in monitoring the BOH’s compliance with its statutory duties. Therefore, we will not address these aspects of the trial court’s opinion in this appeal.

one conclusion that is adverse to the nonmoving party.

{¶12} The moving party carries an initial burden of setting forth specific facts that demonstrate his or her entitlement to summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 (1996). If the movant fails to meet this burden, summary judgment is not appropriate; if the movant does meet this burden, summary judgment will be appropriate only if the nonmovant fails to establish the existence of a genuine issue of material fact. *Id.* at 293.

Ohio Public Records Act

{¶13} The Ohio Public Records Act is codified at R.C. 149.43. Courts “construe the Public Records Act liberally in favor of broad access and resolve any doubt in favor of disclosure of public records.” *State ex rel. O’Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Hous. Auth.*, 131 Ohio St.3d 149, 2012-Ohio-115, 962 N.E.2d 297, ¶ 17, citing *State ex rel. Rocker v. Guernsey Cty. Sheriffs’ Office*, 126 Ohio St.3d 224, 2010-Ohio-3288, 932 N.E.2d 327, ¶ 6. Exceptions to disclosure under the Public Records Act are strictly construed against the public records custodian, and the custodian has the burden to establish the applicability of an exception. *State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 118 Ohio St.3d 81, 2008-Ohio-1770, 886 N.E.2d 206, ¶ 10, citing *State ex rel. Carr v. Akron*, 112 Ohio St.3d 351, 2006-Ohio-6714, 859 N.E.2d 948, ¶ 30. The records custodian does not meet this burden if it has not proven that the requested records “fall squarely within the exception.” *Jones-Kelley at id.*

{¶14} R.C. 149.43(A)(1)(v) provides that “[r]ecords the release of which is prohibited by state or federal law” are not “public records.” Thus, a record whose release is prohibited by a state or federal law, is not a public record and not subject to disclosure.

{¶15} The BOH argues that state law prohibits the disclosure of the requested records; specifically, R.C. 3701.17, which prohibits the BOH from releasing records that contain “protected health information.”

{¶16} R.C. 3701.17(A)(2) defines “protected health information” as:

information, in any form, including oral, written, electronic, visual, pictorial, or physical that describes an individual’s past, present, or future physical or mental health status or condition, receipt of treatment or care, or purchase of health products, if either of the following applies:

(a) The information reveals the identity of the individual who is the subject of the information.

(b) The information could be used to reveal the identity of the individual who is the subject of the information, either by using the information alone or with other information that is available to predictable recipients of the information.

{¶17} Protected health information “reported to or obtained by the director of health, the department of health, or a board of health of a city or general health district is confidential and shall not be released” unless written consent is obtained by the affected party or unless the information falls within four enumerated exceptions. R.C. 3701.17(B)(1)-(4). None of the exceptions apply to the case at bar.

{¶18} The law firm contends that many of the records it requested do not contain “protected health information” as defined by R.C. 3701.17(A)(2) or, once redacted, will not contain protected health information. Therefore, the law firm argues, many of the documents it seeks are not exempt from disclosure.

{¶19} The law firm relies on the Ohio Supreme Court’s decision in *State ex rel. Cincinnati Enquirer v. Daniels*, 108 Ohio St.3d 518, 2006-Ohio-1215, 844 N.E.2d 1181, to support its position. In *Daniels*, a local newspaper filed a mandamus action seeking release, pursuant to the Ohio Public Records Act, of the Cincinnati Health Department’s lead-contamination notices. The department had issued notices to property owners who owned homes and apartments that housed children whose blood tests revealed elevated lead levels. The health department refused the newspaper’s request, citing federal privacy laws (HIPAA).

{¶20} The Ohio Supreme Court found that the lead-citation notices and lead assessment reports did not contain protected health information under HIPAA because the notices and reports did not identify a particular child with any specific identifiable information. Thus, the notices did not contain “protected health information” under HIPAA.

{¶21} The court further found even if the lead-citation notices and lead-risk assessment reports contained “protected health information,” the reports would be subject to disclosure under the “required by law” exception to HIPAA because

the Ohio Public Records Law required disclosure of these reports, and HIPAA did not supersede state disclosure requirements. *Id.* at paragraph two of the syllabus.

{¶22} The BOH argues, and we agree, that *Daniels* is distinguishable from the instant case. Not only are we interpreting a state law in this case, but many of the records do contain at least some identifying information.

{¶23} We find the recent Ohio Supreme Court decision in *O'Shea*, 131 Ohio St.3d 149, 2012-Ohio-115, 962 N.E.2d 297, more instructive. In *O'Shea*, the law firm requested copies of documents that documented all instances of lead poisoning in the last 15 years in any CMHA dwelling. The requested records included:

resident information, including the name, address, and telephone number of the resident and any children's names and dates of birth * * * general information, including where the child was likely exposed to lead, when the family moved into the home, the addresses, ages, and conditions of the dwellings in which the child resided in the past 12 months, and the dates of residency, and similar information if the child is cared for away from home * * * queries designed to determine the child's exposure to lead, including lead-based paint and lead-contaminated dust hazards, lead-in-soil hazards, occupational and hobby-related hazards, child-behavior risk factors, and other household-risk factors. For the occupational hazards, the questionnaire requests the family or other occupants' names, places of employment, jobs, and probable lead exposure on the job.

Id. at ¶ 10.

{¶24} The records also included a "CMHA authorization for the release of medical information used to obtain a child's medical records held by the

Cleveland Department of Public Health Lead Poisoning Prevention Program.”

Id. The release form included the “name of the parent or guardian of the minor child, the name, age, and address of the child, and the parent’s or guardian’s signature and Social Security number.” *Id.* CMHA refused to release any of the requested records, arguing that they were not public records. The Ohio Supreme Court determined that although CMHA’s lead-poisoning records contained identifying information that should not be disclosed, the records should not be completely excluded from release. The court noted that the lead-poisoning forms:

further CMHA’s statutory duty to “provide safe and sanitary housing accommodations to families of low income within that district.” Like the lead-citation notices and assessment reports in *Daniels*, the residence addresses and the substantive information concerning general, nonidentifying information, lead-based paint and lead-contaminated dust hazards, water-lead hazards, lead-in-soil hazards, occupational or hobby hazards, and child-behavior risk factors would all be pertinent to an analysis of whether CMHA took steps to provide safe housing in specific CMHA dwellings with possible lead hazards. Release of this information would help to hold CMHA accountable for its statutory duty of reducing or eliminating any lead-related hazard in its residences and would reveal the agency’s success or failure in doing so, without requiring release of much of the residents’ personal information.

Id. at ¶ 34.

{¶25} The court determined that release of any non-identifying information should be allowed and, further, that residence addresses were obtainable under R.C. 149.43 because “the addresses contained in the completed lead-poisoning questionnaires and releases here help the public monitor CMHA’s compliance with its statutory duty to provide safe housing.” *Id.* at ¶ 35. The court, however,

limited disclosure so that any personal identifying information would not be obtainable, including:

the names of parents and guardians, their Social Security and telephone numbers, their children's names and dates of birth, the names, addresses, and telephone numbers of other caregivers, and the names of and places of employment of occupants of the dwelling unit, including the questionnaire and authorization.

Id. at ¶ 36.

{¶26} In the instant case, the BOH argues that *O'Shea* may be distinguished from this case because the *O'Shea* court did not consider whether R.C. 3701.17 prohibited the release of documents pursuant to the "prohibited by state law exception" found in R.C. 149.43(A)(1)(v). According to the BOH, this case differs from *O'Shea* because state law specifically blocks boards of health from disclosing protected health information.

{¶27} While the law firm concedes that some of the records it requested may contain "protected health information," as defined in R.C. 3701.17, it argues that there are a number of documents within the subject records that do not contain any medical or health related information and do not identify anyone other than the landlord property owner. According to the law firm, those documents do not contain any "protected health information," as defined by the statute, and even if a particular document did contain such information, the BOH had a duty to redact the protected information and then release the redacted records pursuant to its public records request.

{¶28} In its opinion granting the BOH summary judgment, the trial court determined that all the requested documents, including those that contained only non-identifying information, were exempt from disclosure under R.C. 143.01(A)(1)(v) because their release was prohibited by R.C. 3701.17. The court opined:

the records include descriptions of children's physical condition, i.e. lead poisoning as diagnosed by test results included therein, and either reveal the identity of the individual child by name, address, and date of birth or include information that could be used to reveal the identity of the child and therefore constitute "protected health information."

The investigations that are the subject of the records are instituted for the very reason that the children have been diagnosed as having elevated blood lead levels. Even if the personal information concerning these children and their parents was redacted so that their names, addresses, dates of birth, telephone numbers, test results, schools attended, sibling and/or employment information would not be revealed, the non-personal identifying information that remains, communications to the property owners that include their names and addresses and information about the properties at issue could be used with other information that is available to predictable recipients of the information, to reveal the identity of the individual child.

Moreover, even if some portions of the information contained in the records do not constitute "Protected health information," the fact remains that the information is not in a summary, statistical, or aggregate form and therefore, under R.C. 3701.17(C)[,] it may not be released.

{¶29} As it pertains to this case, the health information the BOH is charged with protecting its information, in any form, that describes a child's past, present, or future physical or mental health status or condition, receipt of

treatment or care, if the information reveals the child's identity or could be used to reveal the child's identity, either by using the information alone or with other information that is available to predictable recipients of the information.

{¶30} Some of the information contained in the records constitutes "protected health information" as defined in R.C. 3701.17(A). Therefore, pursuant to R.C. 143.01(A)(1)(v) and R.C. 3701.17, that information is not subject to disclosure. We decline, however, to determine that all the information the law firm sought is protected health information, which would render it exempt from production.

{¶31} In other words, a blanket exemption, which is what the BOH seeks, is not appropriate, nor does it uphold the intent of the Public Records Act. Instead, the BOH must consider each document to determine if the record contains "protected health information," and redact the document accordingly. If a record contains some material that is excepted from disclosure, the governmental body is obligated to disclose the nonexcepted material, after redacting the excepted material. *State ex rel. Natl. Broadcasting Co. v. Cleveland*, 38 Ohio St.3d 79, 85, 526 N.E. 2d 786 (1988).

{¶32} Once the identifying personal information is redacted, if the information contained in the record is still "protected health information," i.e., it could still be used to identify the child, then that document is not subject to disclosure. But if the document contains only non-identifying information (of the

affected child, family member, or parent/guardian) either on its face or after redaction, it does not, by definition contain "protected health information" and is subject to disclosure.

{¶33} After a de novo review of the sample documents, we note that some of the documents, such as Letters of Notice to the landlord property owner, do not on their face contain "protected health information" because they do not describe a child's past, present, or future physical or mental health status or condition, receipt of treatment or care.

{¶34} We agree with the BOH that the child data forms that include a child's medical information are not subject to disclosure, even after redaction, because those forms, in and of themselves, are "protected health information." But we do not agree that the disclosure of (1) the property owner's name and address, if the property owner is not the parent/guardian of the affected child, and (2) the address of the property, are sufficient to trigger the provision in R.C. 3701.17(A)(2)(b) that prohibits disclosure if the information could be used to reveal the affected child's identity "if used with other information that is available to predictable recipients of the information."

{¶35} Therefore, the landlord property owner's name and address and the property's address are subject to disclosure. But any personal identifying information, including, but not limited to, the affected child's and parent/guardian's name, caregiver information, social security numbers,

addresses, dates of birth, telephone numbers, test results, schools attended, sibling, and/or parent/guardian employment information must be redacted.

{¶36} In *O'Shea*, 131 Ohio St.3d 149, 2012-Ohio-115, 962 N.E.2d 297, the Ohio Supreme Court specifically noted that release of the requested information "would help to hold CMHA accountable for its statutory duty of reducing or eliminating any lead-related hazard in its residences and would reveal the agency's success or failure in doing so, without requiring release of much of the residents' personal information." *Id.* at ¶ 34.

{¶37} In this case, the BOH is currently operating a lead hazard control and health homes program under a \$3.4 million federal grant and "endeavors to pursue elimination of lead hazards each year." Affidavit of BOH Commissioner Terry Allan, ¶ 16. Release of the requested information could likewise help to hold the BOH accountable for its duty and promise to reduce lead-related hazards in Ohio's largest county and reveal its successes or failures in doing so, also without requiring the release of prohibited information.

{¶38} In light of the above, the trial court erred in granting summary judgment to the BOH. The sole assignment of error is sustained.

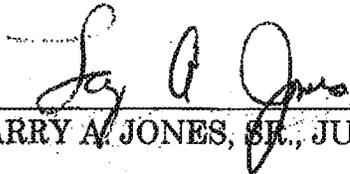
{¶39} Accordingly, judgment reversed and case remanded to the trial court for proceedings consistent with this opinion.

It is ordered that appellant recover from appellee his costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



LARRY A. JONES, SR., JUDGE

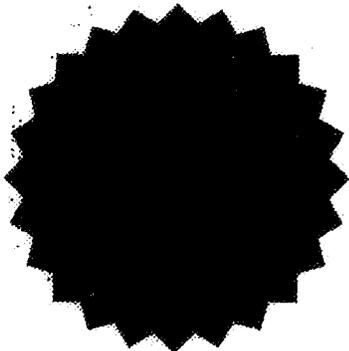
FRANK D. CELEBREZZE, JR., P.J., and
TIM McCORMACK, J., CONCUR

The State of Ohio, }
Cuyahoga County. } ss.

I, ANDREA F. ROCCO, Clerk of the Court of

Appeals within and for said County, and in whose custody the files, Journals and records of said Court are required by the laws of the State of Ohio, to be kept, hereby certify that the foregoing is taken and copied from the Journal entry dated on 12/26/13 CA 44932

of the proceedings of the Court of Appeals within and for said Cuyahoga County, and that the said foregoing copy has been compared by me with the original entry on said Journal entry dated on 12/26/13 CA 44932 and that the same is correct transcript thereof.



In Testimony Whereof, I do hereunto subscribe my name officially, and affix the seal of said court, at the Court House in the City of Cleveland, in said County, this 26 day of December A.D. 20 13

ANDREA F. ROCCO, Clerk of Courts

By _____ Deputy Clerk

of Health² it is an agent for the Director of Health under Revised Code Chapter 3742 and is obligated to confidentially maintain "Protected Health Information" as defined by R.C. 3701.17.³ Plaintiff further alleges and Defendant does not dispute that on or about January 22, 2012, Defendant issued a public records request to Plaintiff pursuant to O.R.C. 149.43 seeking or requesting "documentation or information of all homes in 2008, 2009, 2010 and 2011 in Cuyahoga County where a minor child was found to have elevated blood lead levels in excess of 10 mg/Dl."⁴ Plaintiff alleges in its Complaint that it has conducted a diligent search for records meeting the description of Defendant's public record request and has located approximately 110 files of documents relevant to the request constituting in excess of approximately 5,000 pages of documents.⁵ However, it is Plaintiff's position that these documents include lead assessment reports which involve investigations into the homes or residences of children, child histories or health questionnaires, and letters and other documents some of which clearly contain health information and which collectively or individually, will lead to the "identity" of the "child" for whom R.C. 3701.17 is intended to keep the identity confidential.⁶ Therefore, according to Plaintiff, R.C. 3701.17 prohibits it from producing any of the records it has created and maintained unless presented with a properly executed authorization form or a court

² The "PERSONAL SERVICE CONTRACT By and Between THE OHIO DEPARTMENT OF HEALTH and CUYAHOGA COUNTY DISTRICT BOARD OF HEALTH" or agreement is attached to Plaintiff's Motion as Exhibit "B".

³ *Id.* at paragraph 8, page 2.

⁴ *Id.* at paragraph 9, page 2 and Exhibit "A" attached thereto; Defendant's Answer, at paragraph 4.

⁵ *Id.* at paragraph 10, page 2. In the Affidavit of Thomas P. O'Donnell, Administrative counsel for the Cuyahoga County Board of Health, attached to the Notice Of Filing Records Under Seal, Mr. O'Donnell testified that the record request actually "encompasses almost 200 files" and "could result in approximately 6,000 pages of documents." Affidavit, at paragraph 4.

⁶ *Id.* at paragraph 12, page 3.

order.⁷ Absent from Plaintiff's Complaint is any allegation that Defendant's request is improper as vague or overly broad.

In its Answer to Plaintiff's Complaint, Defendant set forth five affirmative defenses to include the defenses that Plaintiff's claims are barred by the doctrine of waiver and that Plaintiff has a statutory obligation to comply with R.C. 149.43, *et seq.*

Pursuant to an agreement of the parties and this Court, Plaintiff submitted a CD containing twelve (12) files of records pertaining to lead assessment investigations or a representative sample of records maintained by Plaintiff, under seal, for an *in camera* inspection by the Court.⁸ The Court conducted an *in camera* review of the records submitted and they consist of the following: Comprehensive Questionnaires of Parents/Guardians of Children with Elevated Lead Levels and Complete Child Reports/Child Data that include the names, dates of birth, residence addresses, schools attended, sibling information, and blood test results of children with elevated blood lead levels, and the names, addresses, telephone numbers and employment/work information of their parents or guardians; Lead Risk Assessment Reports that identify by name and address the owners of the property where the children with elevated blood lead levels reside and include the resident addresses of the children; Letters of Notice directed to the parents or guardians of the affected children at their resident addresses and to the property owners with the residences of the children identified by addresses; Lead Clearance Reports that identify the addresses of the affected properties or residences of the children; documents that identify the owners of the residences of the children

⁷ *Id.* at paragraph 13, page 3.

⁸ See Notice Of Filing Records Under Seal, filed on October 19, 2012 and the Affidavit of Thomas P. O'Donnell, attached thereto.

with elevated blood lead levels (e.g., deed(s), Cuyahoga County Fiscal Officer Real Property Information) and handwritten or typewritten documents titled "Chronology" that describe contacts and/or events surrounding the investigations that include the children's resident addresses. Each and every one of these documents includes the address of the property where a child with an elevated lead blood level resided at the time the blood test was performed. The information contained in the documents is not set forth in summary, statistical or aggregate form.

Essentially, Plaintiff's Motion and Reply set forth three arguments in support of its position that the records sought should not be released: 1.) the request is improper as vague and overbroad because it seeks "information", as distinguished from records, as well as a complete duplication of Plaintiff's lead related documentation for all homes in Cuyahoga County in 2008, 2009, 2010 and 2011 where a minor child was found to have elevated blood levels;⁹ 2.) the records sought are not "public records" under R.C. 149.43 to the extent that they include specific identifiable personal information and disclosure is warranted only if Defendant can show that they assist in monitoring Plaintiff's compliance with its statutory duties and only if the information is not otherwise excepted¹⁰; and 3.) an exception, specifically R.C. 149.43(A)(1)(v)¹¹, applies to preclude release of the records¹².

According to Plaintiff, the release of the records is prohibited by state law, specifically R.C. 3701.17, which provides in relevant part as follows:

(A) As used in this section:

⁹ Plaintiff's Motion, at page 9, and Plaintiff's Reply, at pages 1-2.

¹⁰ Plaintiff's Motion, at page 10, and Plaintiff's Reply, at pages 2-3.

¹¹ "(A) As used in [149.43] *** 'Public record' does not mean any of the following: *** (v) Records the release of which is prohibited by state or federal law;"

¹² Plaintiff's Motion, at pages 10-13, and Plaintiff's Reply, at pages 3-5..

(2) "Protected health information" means information, in any form, including oral, written, electronic, visual, pictorial, or physical that describes an individual's past, present, or future physical or mental health status or condition, receipt of treatment or care, or purchase of health products, if either of the following applies:

(a) The information reveals the identity of the individual who is the subject of the information.

(b) The information could be used to reveal the identity of the individual who is the subject of the information, either by using the information alone or with other information that is available to predictable recipients of the information.

(B) Protected health information reported to or obtained by the director of health, the department of health, or a board of health of a city or general health district is confidential and shall not be released without the written consent of the individual who is the subject of the information unless the information is released pursuant to division (C) of this section or one of the following applies:

(1) The release of the information is necessary to provide treatment to the individual and the information is released pursuant to a written agreement that requires the recipient of the information to comply with the confidentiality requirements established under this section.

(2) The release of the information is necessary to ensure the accuracy of the information and the information is released pursuant to a written agreement that requires the recipient of the information to comply with the confidentiality requirements established under this section.

(3) The information is released pursuant to a search warrant or subpoena issued by or at the request of a grand jury or prosecutor in connection with a criminal investigation or prosecution.

(4) The director determines the release of the information is necessary, based on an evaluation of relevant information, to avert or mitigate a clear threat to an individual or to the public

health. Information may be released pursuant to this division only to those persons or entities necessary to control, prevent, or mitigate disease.

- (C) Information 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 section 149.43 of the Revised Code and, upon request, shall be released by the director.
- (D) Except for information released pursuant to division (B)(4) of this section, any disclosure pursuant to this section shall be in writing and accompanied by a written statement that includes the following or substantially similar language: "This information has been disclosed to you from confidential records protected from disclosure by state law. If this information has been released to you in other than a summary, statistical, or aggregate form, you shall make no further disclosure of this information without the specific, written, and informed release of the individual to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is not sufficient for the release of information pursuant to this section."

In Defendant's Brief, Defendant relies on *State ex rel. Morgan v. City of New Lexington*, 112 Ohio St.3d 33 (2006) to argue that its request is not improper as vague or overbroad and assuming *arguendo* that it is, since Plaintiff had a duty imposed by R.C. 149.43(B)(2) to inform it that the request was improper and advise Defendant of the manner in which records are maintained so the request could be revised, but failed to do so, Plaintiff has waived any objection that it is vague or overbroad.¹³

¹³ Defendant's Brief, at pages 4-7.

Further, Defendant argues that the records sought are "public records" as that term is defined by R.C. 149.43(A)(1) and R.C. 149.011(G)¹⁴ and interpreted by the Ohio Supreme Court¹⁵ inasmuch as R.C. 3742.35 charges Plaintiff with conducting an investigation to determine the source of lead poisoning in an individual under the age of six and therefore, the records requested document the organization, functions, policies, decisions, procedure, operations, or other activities of Plaintiff.¹⁶

And, finally, Defendant argues that the records requested, to include lead inspection reports, lead hazard violation notices, correspondence to a property owner, remediation notices, compliance notices, etc. do not contain "Protected health information" as that term is defined in R.C. 3701.17(A)(2) and even if they do, the "Protected health information" can and should be redacted and the redacted records must be released.¹⁷

¹⁴ R.C. 149.43(A)(1) provides: "'Public record' means records kept by any public office, including, but not limited to, *** county [offices]." R.C. 149.011(G) defines "records" for purposes of the Public Records Act to include "any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office." (Emphasis added.)

¹⁵ At page 8 of its Brief, Defendant correctly cites the Ohio Supreme Court's decision in *State ex rel. O'Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Haus. Auth.*, 131 Ohio St.3d 149, for its argument that "[i]n order to establish that documents are 'records' for purposes of R.C. 149.011(G) and 149.43, a party must establish that they are (1) documents, devices, or items; (2) created or received by or coming under the jurisdiction of the government agency; (3) which serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office." In that case, the Court held that because they helped the public monitor CMHA's compliance with its statutory duty to provide safe housing, the residence addresses contained in lead-poisoning documents, specifically questionnaires and medical-release authorizations, qualified as "public records" and were obtainable under R.C. 149.43. However, the Court also held that personal identifying information in CMHA lead-poisoning documents, such as the names of parents and guardians, their Social Security and telephone numbers, their children's names and dates of birth, the names, addresses, and telephone numbers of other caregivers, and the names of and places of employment of occupants of the dwelling unit, including the questionnaire and authorization, did not serve to document the organization, functions, policies, decisions, procedures, operations or other activities of the CMHA and were not obtainable under the Public Records Act.

¹⁶ Defendant's Brief, at pages 7-9.

¹⁷ Defendant's Brief, at pages 10-12.

For the reasons stated immediately below, and considering the propriety of Defendant's public-records request in the context of the circumstances surrounding it, this Court finds and declares that Defendant's request is not vague or overbroad, but is appropriate.

Plaintiff has not submitted any evidence to demonstrate that during either the approximate four and one-half months between the date of Defendant's request and the filing of its Complaint on June 4, 2012, or the eleven months between the date of Defendant's request and the filing of Plaintiff's Motion, it advised Defendant that its request was vague or overbroad, so as to provide Defendant with the opportunity to revise its request by informing Defendant of the manner in which the records are maintained and accessed in the ordinary course of Plaintiff's office, as required by R.C. 149.43(B)(2). By contrast, Defendant, through the Affidavit of one of its principals, Michael O'Shea, attached to Defendant's Brief, has submitted uncontroverted evidence that Plaintiff never so advised Defendant.

Thus, just as the Ohio Supreme Court in *State, ex rel. Dispatch Printing Co. et al., v. Wells*, (1985), 18 Ohio St.3d 382, 385, 481 N.E.2d 632, 634, considered the relators' contention that the request was vague and overbroad or that they did not understand exactly what information was sought to be "largely unpersuasive from a purely factual perspective," so, too, this Court finds Plaintiff's argument unpersuasive. And, although Plaintiff did not "sit on [its] hands and make a public records seeker file an action in mandamus but instead filed this lawsuit,"¹⁸ neither did it find it necessary to inquire or inquire of Defendant to help it understand the request, or allege that the request was vague or overbroad in its Complaint or at any time before it filed Plaintiff's Motion.¹⁹

¹⁸ Plaintiff's Reply, at page 2.

¹⁹ Compare *State ex rel. Davila v. City of Bellefontaine*, (Logan App. No. 8-11-01) 2011 Ohio 4890 (Sept. 26, 2011), discretionary appeal not allowed by 2012 Ohio 648, 2012 Ohio LEXIS 473 (Ohio, Feb. 22, 2012) (where the

Although the public records request at issue in *State ex rel. Morgan v. City of New Lexington, supra*, that requested “[a]ll records or documents” is distinguishable from that at issue in this case which requests “documentation or information”, the following remains. As was true of the request in *State ex rel. Morgan v. City of New Lexington, supra*, where the Court held that the request was sufficiently specific for purposes of invoking the Public Records Act, Defendant’s request is specific enough to have allowed Plaintiff to identify numerous responsive documents meeting the description of Defendant’s record request, specifically almost 200 files of documents consisting of approximately 6,000 pages; 2.) a review of the representative sampling of these documents, specifically 12 of the files, demonstrates to this Court that the documents included therein are responsive to the request; and 3.) Defendant’s request did not require Plaintiff to make a new record by compiling certain information from existing records. Each file represents a child or children in a single household found to have an elevated blood lead level and contained in each file are documents relative to the investigation associated with or specific to that child or children and the residence in which he and/or she live(s).

As the Ohio Supreme Court explained in *State ex rel. O’Shea & Assocs. Co., L.P.A. v. CMHA, supra*, 131 Ohio St.3d 149, p. 21, a court “must consider the propriety of a public-records request ‘in the context of the circumstances surrounding it,’” citing *State ex rel. Morgan v. New Lexington, supra*, paragraph 33. In the context of the circumstances surrounding

respondents responded to the relator’s letter/request within 8 days advising that they wanted to properly understand the letter/request and needed additional information, and noted what they understood the letter/request to mean and advised that they thought it was overly broad in a manner that left them unable to comply; when no response from the relator was forthcoming a second letter was mailed out 21 days later and contained basically the same information; and when the relator sent another letter respondents responded to that letter within 11 days).

Defendant's public records request, this Court declares and finds that Defendant's request is appropriate.

For the reasons stated immediately below, and with the exception of personal identifying information contained therein, this Court finds and declares that the records requested constitute "public records" and therefore, are obtainable under the Public Records Act unless an exception applies.

The Ohio Supreme Court's decision in *State ex rel. O'Shea & Assocs. v. Cuyahoga Metro. Hous. Auth., supra*, dictates the conclusion that, with the exception of personal identifying information, including the names, dates of birth, addresses, school information, sibling information and blood test results of any child or children and the names, addresses, telephone numbers and employment or work information of the parent(s) and guardian(s), the records requested by Defendant constitute "public records" subject to disclosure, unless an exception applies. Thus, the remaining and dispositive issue is whether or not the non-personal identifying information contained in the records is exempted or excepted from disclosure under R.C. 143.01(A)(1)(v). Stated differently, is the release of the records prohibited by "state law", i.e., R.C. 3701.17?

For the reasons stated immediately below, this Court finds and declares that the release of the records is exempted or excepted from disclosure, specifically, such disclosure or release is prohibited by state law, specifically R.C. 3701.17.

R.C. 3701.17(A)(2) defines "Protected health information" to mean "information in any form...that describes an individual's past, present, or future physical...condition...if either...it reveals the identity of the individual who is the subject of the information [or] could be used to reveal the identity of the individual who is the subject of the information, either by using the information alone or with other information that is available to predictable recipients of the information." R.C. 3701.17(B) provides that "Protected health information" is confidential and

shall not be released without the written consent of the individual who is the subject of the information unless: 1.) R.C. 3701.17(B)(1), (2), (3) or (4) applies - and none do in the instant matter; or 2.) it is released pursuant to R.C. 3701.17(C), which provides that "[i]nformation that does not identify an individual and is not protected health information may be released in summary, statistical, or aggregate form," and that "[i]nformation that is in a summary, statistical, or aggregate form and that does not identify an individual is a public record under section 149.43 of the Revised code and, upon request, shall be released by the director."

The parties have not directed this Court to, and this Court has not been able to locate, any case law interpreting R.C. 3701.17. Indeed, in Plaintiff's Reply, Plaintiff correctly notes that "[t]his is an issue of first impression."²⁰ Thus, the Court is left with applying the rules of statutory construction outlined at pages 3-5 of Plaintiff's Reply that includes looking to the plain language of the statute and applying it according to its terms.

In the Court's opinion, the records include descriptions of children's physical condition, i.e., lead poisoning as diagnosed by test results included therein, and either reveal the identity of the individual child by name, address, and date of birth or include information that could be used to reveal the identity of the child and therefore constitute "protected health information". The investigations that are the subject of the records are instituted for the very reason that children have been diagnosed as having elevated blood lead levels. Even if the personal information concerning these children and their parents was redacted so that their names, addresses, dates of birth, telephone numbers, test results, schools attended, sibling and/or employment information would not be revealed, the non-personal identifying information that

²⁰ Plaintiff's Reply, at page 3.

remains, communications to the property owners that include their names and addresses and information about the properties at issue could be used with other information that is available to predictable recipients of the information, to reveal the identity of the individual child. Moreover, even if some portions of the information contained in the records do not constitute "Protected health information", the fact remains that the information is not in a summary, statistical, or aggregate form and therefore, under R.C. 3701.17(C) it may not be released.

Accordingly, and for the reasons set forth more fully above:

That portion of Plaintiff's Motion requesting this Court to declare that the request is improper because it is overly broad and/or vague is **DENIED**;

That portion of Plaintiff's Motion requesting this Court to declare that the records requested do not constitute "public records" is **GRANTED IN PART AND DENIED IN PART**, specifically the personal identifying information delineated above is not a "public record" but the non-personal identifying information is a "public record".

That portion of Plaintiff's Motion requesting this Court to declare that under R.C. 143.01(A)(1)(v) and R.C. 3701.17 the release of the requested records is prohibited is **GRANTED**.

Costs are assessed to Defendant.

IT IS SO ORDERED.

No Just Reason For Delay.

Pamela A. Barker 3-27-13
JUDGE PAMELA A. BARKER DATED

RECEIVED FOR FILING

MAR 27 2013

CUYAHOGA COUNTY
CLERK OF COURTS
By *[Signature]* Deputy

Appx. 032

3701.17 Protected health information.

(A) As used in this section:

(1) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(2) "Protected health information" means information, in any form, including oral, written, electronic, visual, pictorial, or physical that describes an individual's past, present, or future physical or mental health status or condition, receipt of treatment or care, or purchase of health products, if either of the following applies:

(a) The information reveals the identity of the individual who is the subject of the information.

(b) The information could be used to reveal the identity of the individual who is the subject of the information, either by using the information alone or with other information that is available to predictable recipients of the information.

(B) Protected health information reported to or obtained by the director of health, the department of health, or a board of health of a city or general health district is confidential and shall not be released without the written consent of the individual who is the subject of the information unless the information is released pursuant to division (C) of this section or one of the following applies:

(1) The release of the information is necessary to provide treatment to the individual and the information is released pursuant to a written agreement that requires the recipient of the information to comply with the confidentiality requirements established under this section.

(2) The release of the information is necessary to ensure the accuracy of the information and the information is released pursuant to a written agreement that requires the recipient of the information to comply with the confidentiality requirements established under this section.

(3) The information is released pursuant to a search warrant or subpoena issued by or at the request of a grand jury or prosecutor in connection with a criminal investigation or prosecution.

(4) The director determines the release of the information is necessary, based on an evaluation of relevant information, to avert or mitigate a clear threat to an individual or to the public health. Information may be released pursuant to this division only to those persons or entities necessary to control, prevent, or mitigate disease.

(C) Information 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 section 149.43 of the Revised Code and, upon request, shall be released by the director.

(D) Except for information released pursuant to division (B)(4) of this section, any disclosure pursuant to this section shall be in writing and accompanied by a written statement that includes the following or substantially similar language: "This information has been disclosed to you from confidential records protected from disclosure by state law. If this information has been released to you in other than a summary, statistical, or aggregate form, you shall make no further disclosure of this information without the specific, written, and informed release of the individual to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is not sufficient for the release of information pursuant to this section."

Cite as R.C. § 3701.17

History. Effective Date: 02-12-2004

PDF version of this analysis
Fiscal Note for this version of analysis
Text of latest version of this bill



Bill Analysis

Legislative Service Commission

Sub. H.B. 6

125th General Assembly
(As Passed by the General Assembly)

Reps. J. Stewart, Allen, Aslanides, Barrett, Beatty, Boccieri, Brown, Buehrer, Carano, Carmichael, Cates, Chandler, Cirelli, Clancy, Collier, Core, Daniels, DeBose, DePiero, Domenick, Driehaus, C. Evans, Faber, Flowers, Gibbs, Gilb, Hartnett, Harwood, Hollister, Husted, Jolivette, Key, Latta, Martin, Miller, Niehaus, Oelslager, Olman, S. Patton, T. Patton, Perry, Peterson, Price, Raussen, Schaffer, Schlichter, Schmidt, Schneider, Seaver, Seitz, Setzer, Sferra, G. Smith, D. Stewart, Strahorn, Sykes, Taylor, Ujvagi, Walcher, Webster, White, Widowfield, Williams, Wolpert, Woodard, Yates

Sens. Carnes, Harris, Stivers, Mumper

Effective date: February 12, 2004

ACT SUMMARY

- Modifies the powers and duties of the Director of Health, Department of Health, Public Health Council, and local boards of health relative to the Director's general powers, agreements to sell services or exchange information, investigations, quarantine and isolation, vaccinations and immunizations, the public health laboratory, enforcement of rules and orders, and other public health matters.
- Provides that, during an investigation that the Director is conducting and that is not yet complete, information obtained by the Director is confidential and cannot be released, except under specified conditions.
- Provides that "protected health information" (that is, information that identifies the individual or that could be used to identify the individual) reported to or obtained by the Director, Department, or a local board of health is confidential and cannot be released without the individual's written consent, except under specified circumstances.
- Expands requirements under which specified health care entities must report information to the Department, establishes a criminal penalty for

failure to comply with those requirements, and requires the Director to establish a graduated system of fines based on the scope and severity of violations.

- Requires the Public Health Council to adopt rules related to determining the capacity of trauma centers to respond to disasters, mass casualties, and bioterrorism.

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CONTENT AND OPERATION

Overview and definitions

The act modifies the powers and duties of the Director of Health, the Department of Health, the Public Health Council, and boards of health with specific emphasis on changes that relate to the ability to respond to bioterrorism. The act introduces definitions that are instrumental to these modifications, including the following:

--"**Bioterrorism**" means the intentional use of any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of a microorganism, virus, infectious substance, or biological product, to cause death, disease, or other biological malfunction in a human, animal, plant, or other living organism as a means of influencing the conduct of government or intimidating or coercing a population (R.C. 3701.232(A)(1)).

--"**Protected health information**" means information, in any form, including oral, written, electronic, visual, pictorial, or physical that describes an individual's past, present, or future physical or mental health status or condition, receipt of treatment or care, or purchase of health products, if either of the following applies:

- (1) The information reveals the identity of the individual who is the subject of the information.
- (2) The information could be used to reveal the identity of the individual who is the subject of the

information, either by using the information alone or with other information that is available to the predictable recipients of the information. (R.C. 3701.17(A)(2).)

--"**Surveillance**" in the public health service means the systematic collection, analysis, interpretation, and dissemination of health data on an ongoing basis, to gain knowledge of the pattern of disease occurrence and potential in a community in order to control and prevent disease in the community (R.C. 3701.072(A)(2)).

General powers of the Director of Health

(R.C. 3701.03)

Under continuing law, the Director of Health, as chief executive officer of the Department of Health, is charged with administering health and sanitation laws and Department rules. Under the act, the Director may designate employees of the Department and, during a public health emergency, other persons to administer the laws and rules on the Director's behalf.

The act limits the actions the Director may take by specifying that this authority does not permit any action that prevents the fulfillment of duties or impairs the exercise of authority established by law for any other person or entity.

Agreements to sell services or exchange information

(R.C. 3701.04(B))

Continuing law authorizes the Director of Health to enter into agreements to sell Department of Health services to other departments, agencies, and institutions of the state. The act specifies that under this authority the Director may enter into agreements to sell services to boards of health of city and general health districts. In addition, the act expands the Director's authority by permitting the Director to enter into agreements to sell Department services to other states and the United States.

Investigations; confidentiality of information

(R.C. 3701.14)

Continuing law requires the Director of Health to inquire into the cause of disease, especially when contagious, infectious, epidemic, or endemic, and take prompt action to control and suppress the disease. The act expands the provision by requiring the Director to make inquiry "or investigate" the cause of disease "or illness," including pandemic conditions. The act stipulates that information obtained during any investigation or inquiry that is not yet complete is confidential during the course of that investigation or inquiry and cannot be released *except* under one of the following conditions:

- (1) The confidential information is released pursuant to a search warrant or subpoena issued by or at the request of a grand jury or prosecutor.
- (2) The Director enters into a written agreement to share or exchange the information with a person or government entity and that agreement requires the person or entity to comply with the act's confidentiality requirements.
- (3) The information is contained in a preliminary report released by the Director pursuant to the act (see below).

Information disclosed under (1) or (2), above, must be in writing and accompanied by a written statement that includes the following or substantially similar language: "This information has been disclosed to you from confidential records protected from disclosure by state law. If this information has been released to you in other than a summary, statistical, or aggregate form, you shall make no further disclosure of this information without the specific, written, and informed release of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is not sufficient for the release of information pursuant to this section."

As suggested by this mandatory statement, the act's confidentiality requirements do not bar the release of information that is in summary, statistical, or aggregate form and that does not identify a person: such information is a public document under the Ohio Open Records Law. Additionally, the act *requires* the Director to release information obtained during an investigation or inquiry that is not yet complete *if* the Director determines the release of the information is necessary, based on an evaluation of relevant information, to avert or mitigate a clear threat to an individual or to the public health. Release of that information is limited to those persons necessary to control, prevent, or mitigate disease or illness.

With the exception of "protected health information," which is governed by the provision of the act that specifically addresses that type of information, these confidentiality requirements apply during *any* investigation or inquiry the Director makes with respect to disease, illness, or health conditions, notwithstanding any other provision of the Revised Code that establishes the manner of maintaining confidentiality or the release of information.

If an investigation or inquiry is not completed within six months after the date of commencement, the Director is required by the act to prepare and release a report containing preliminary findings. A supplementary preliminary report must be prepared every six months thereafter. Upon completion of any investigation or inquiry, the Director is to prepare and release a final report. None of the reports, however, can contain protected health information. The act requires the Director to adopt, in accordance with the Administrative Procedure Act, rules establishing the manner in which these reports are to be released.

The act states that the Director's authority to investigate disease, illness, and health conditions does not authorize the Director to conduct an independent criminal investigation without the consent of each local law enforcement agency with jurisdiction to conduct the criminal investigation.

Quarantine and isolation; emergency actions by a health commissioner

(R.C. 3701.13 and 3707.34)

Prior law granted the Department of Health "supreme authority" in matters of quarantine, which it could declare, modify, or abolish. Under the act, this authority is changed to "ultimate" authority and is also granted in matters of "isolation," which the Department likewise may declare, modify, or abolish. The act requires that, whenever possible, the Department work in cooperation with the health commissioner of a general or city health district.

In enforcing the law on quarantine and isolation, the act authorizes the health commissioner appointed by a board of health of a general or city health district to act on behalf of the board if (1) circumstances make a meeting of the board impractical or impossible or (2) delaying action until a meeting of the board compromises the public health. The act directs each board of health to adopt a policy, subject to the approval of the district advisory council (or the city council for city health districts not governed by an advisory council), specifying the actions that a health commissioner may take on behalf of the board. Any action a health commissioner takes in accordance with the board's policy is considered an action taken by the board unless the board votes to nullify the commissioner's action.

Vaccinations and immunizations; other pharmaceutical agents

(R.C. 3701.13 and 3701.16)

Under continuing law, the Department of Health may approve means of immunization against diphtheria, rubella, tetanus, hepatitis B, and other specified diseases. The act adds "mumps" to the list of specified diseases, and allows the Department also to take actions necessary to encourage vaccination against any of the diseases.

The act authorizes the Director of Health to purchase, store, and distribute antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies the Director deems advisable in the interest of preparing for or responding to a public health emergency. The act stipulates that this *discretion* related to antibiotics and other agents and supplies does not relieve the Director of the *duty* under continuing law to make necessary arrangements for the production and distribution of diphtheria antitoxin.

Public health laboratory

(R.C. 3701.15 and 3701.22)

The Department of Health formerly was required to maintain a "chemical and bacteriological" laboratory for the examination of public water supplies, diagnosis of diseases, and analysis of patient specimens and food samples. The act modifies this requirement to:

- (1) Refer to the laboratory as a "public health" laboratory rather than a "chemical and bacteriological" laboratory;
- (2) Expand the duties of the laboratory to include the diagnosis of, screening for, or confirmation of diseases or pathogens and the performance of biological, chemical, or radiological analyses or

examinations as the Department deems necessary.

Duties of the Public Health Council

(R.C. 3701.06, 3701.34, 3701.35, and 3701.56)

Under prior law, the Public Health Council was required to take evidence in appeals from the Director of Health's decisions in a matter that related to the approval or disapproval of plans, locations, estimates of cost, or other matters coming before the Director for official action. The act removes this requirement. Prior law also required the Public Health Council to adopt sanitary rules for general application throughout Ohio, to be known as the "Sanitary Code." The act removes references to the Sanitary Code and instead refers generally to "rules."

Enforcement of rules and orders: violations

(R.C. 3701.352, 3701.56, and 3701.99)

Prior law delegated the enforcement of the Department's "quarantine and sanitary rules" to boards of health of a general or city health district, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and other officers and employees of the state or any county, city, or township. Under the act, these entities and individuals must enforce any of the Department's rules and also any quarantine and isolation orders.

Ongoing law prohibits the violation of any rule of the Public Health Council or any order the Director of Health issues under Department of Health Law (R.C. Chapter 3701.). The act expands the prohibition to include violations of: (1) rules the Director or Department adopts and (2) orders the Director or Department issues under the Department of Health Law "to prevent a threat to the public caused by a pandemic, epidemic, or bioterrorism event."

Formerly, a violation of Public Health Council rules or the Director's orders was a minor misdemeanor on a first offense and a misdemeanor of the fourth degree on each subsequent offense. Under the act, a violation of the modified prohibition is a misdemeanor of the second degree.

Protected health information and confidentiality requirements

(R.C. 3701.17)

Under the act, "protected health information" reported to or obtained by the Director of Health, the Department of Health, or a board of health of a city or general health district is confidential and cannot be released without the written consent of the individual who is the subject of the information, unless one of the following applies:

- (1) The release of the information is necessary to provide treatment to the individual and the information is released pursuant to a written agreement that requires the recipient of the information to comply with the act's confidentiality requirements.
- (2) The release of the information is necessary to ensure the accuracy of the information and the information is released pursuant to a written agreement that requires the recipient of the information to comply with the act's confidentiality requirements.
- (3) The information is released pursuant to a search warrant or subpoena issued by or at the request of a grand jury or prosecutor in connection with a criminal investigation or prosecution.
- (4) The Director determines the release of the information is necessary, based on an evaluation of relevant information, to avert or mitigate a clear threat to an individual or to the public health.

Information may be released pursuant to this provision only to those persons or entities necessary to control, prevent, or mitigate disease.

The act specifies that information that does not identify an individual is not protected health information and may be released in summary, statistical, or aggregate form. Such information is a public document under the Ohio Open Records Law and must be released by the Director, upon request.

The act also requires that, except for information released pursuant to (4) above, any disclosure must be in writing and accompanied by a written statement that includes the following or substantially similar language: "This information has been disclosed to you from confidential records protected from disclosure by state law. If this information has been released to you in other than a summary, statistical, or aggregate form, you shall make no further disclosure of this information without the specific, written, and informed release of the individual to whom it pertains, or as otherwise permitted by state law. A

general authorization for the release of medical or other information is not sufficient for the release of information pursuant to this section."

In addition to providing these general requirements regarding confidentiality of protected health information, the act specifically applies them to information that is released by a hospital or dispensary (R.C. 3701.07(A)), when specified diseases are reported by boards of health, health authorities or officials, health care providers in localities in which there are no health authorities or officials, and coroners or medical examiners (R.C. 3701.23(E)), when pharmacies and pharmacists report information (R.C. 3701.232(D)), when physicians report occupational illnesses (R.C. 3701.25(E)), and when physicians, building owners, and heads of families report specified illnesses (R.C. 3707.06(C)).

Reporting requirements

Trauma centers

(R.C. 149.43 and 3701.072)

The act requires the Public Health Council to adopt rules, in accordance with the Administrative Procedure Act, that require a trauma center to report information to the Director of Health describing the trauma center's preparedness and capacity to respond to disasters, mass casualties, and bioterrorism. The rules may require the reporting of any information the Council considers necessary for an accurate description of a trauma center's preparedness and capacity to respond to disasters, mass casualties, and bioterrorism. Information that a trauma center reports is not a public record under the Ohio Public Records Law.

Following a required review of the information that trauma centers provide, the Director may conduct an evaluation of a trauma center's preparedness and capacity to respond to disasters, mass casualties, and bioterrorism. The evaluation is not a public record under the Ohio Public Records Law. The act also requires that, upon request, the Department of Health provide a summary report of the Council's rules related to trauma centers.

"Trauma center" has the same meaning as in the Division of Emergency Medical Services Law (R.C. Chapter 4765.).

Health care providers

(R.C. 3701.23 and 3701.24(B))

Under continuing law, boards of health, health authorities or officials, and physicians in localities in which there are no health authorities or officials, must promptly report to the Department of Health the existence of specified contagious or infectious diseases. The act expands the application of this requirement to "health care providers" (rather than physicians) in localities in which there are no health authorities or officials and to coroners and medical examiners. In addition, it requires the reporting of other illnesses, health conditions, or unusual infectious agents or biological toxins posing a risk of human fatality or disability, as specified by the Public Health Council. These reports are to be submitted on forms, as required by statute or rule, and in the manner the Director prescribes.

For purposes of the act, "health care provider" is defined as any person or government entity that provides health care services to individuals.

Out-of-state medical laboratories

(R.C. 3701.231)

Under the act, if a medical laboratory outside Ohio performs a test or other diagnostic or investigative analysis that results in information pertaining to an Ohio resident that must be reported by a health care provider, building owner, or head of family under Ohio law, the entity using the laboratory must ensure that the laboratory complies with the applicable reporting and confidentiality requirements and verify its compliance to the Director pursuant to procedures the Director establishes.

Pharmacies and pharmacists

(R.C. 3701.232)

The act authorizes the Public Health Council to adopt rules, in accordance with the Administrative Procedure Act, that require a pharmacy or pharmacist to report significant changes in medication usage that may be caused by bioterrorism, epidemic or pandemic disease, or established or novel infectious agents or biological toxins posing a risk of human fatality or disability. Events that may have to be

reported include the following:

- (1) An unexpected increase in the number of prescriptions for antibiotics;
- (2) An unexpected increase in the number of prescriptions for medication to treat fever or respiratory or gastrointestinal complaints;
- (3) An unexpected increase in sales of, or the number of requests for information on, over-the-counter medication to treat fever or respiratory or gastrointestinal complaints;
- (4) Any prescription for medication used to treat a disease that is relatively uncommon and may have been caused by bioterrorism.

Poison prevention and treatment centers; other health-related entities

(R.C. 3701.19 and 3701.201)

The act requires the Public Health Council to adopt rules, in accordance with the Administrative Procedure Act, under which a poison prevention and treatment center or other health-related entity is required to report events that may be caused by bioterrorism, epidemic or pandemic disease, or established or novel infectious agents or biological or chemical toxins posing a risk of human fatality or disability. Events that rules may have to be reported include the following:

- (1) An unexpected pattern or increase in the number of telephone inquiries or requests to provide information about poison prevention and treatment and available services;
- (2) An unexpected pattern or increase in the number of requests to provide specialized treatment, consultation, information, and educational programs to health care professionals and the public;
- (3) An unexpected pattern or increase in the number of requests for information on established or novel infectious agents or biological or chemical toxins posing a risk of human fatality or disability that is relatively uncommon and may have been caused by bioterrorism.

The act requires each poison prevention and treatment center and other health-related entity to comply with any reporting requirement established in rules adopted under this provision.

Failure to comply with reporting requirements: penalties and fines

(R.C. 3701.23(C), 3701.232(C), 3701.24(C), 3701.25(B), 3701.571, 3701.99(A), 3707.06(B), and 3707.99)

The act prohibits any person from failing to comply with the reporting requirements applicable to boards of health, health authorities or officials, health care providers in localities in which there are no health authorities or officials, coroners and medical examiners, pharmacies and pharmacists, persons designated by Public Health Council rules to report certain AIDS related information, and physicians attending a patient suffering from specified occupational diseases. A violation of this prohibition is a minor misdemeanor on a first offense and a misdemeanor of the fourth degree on each subsequent offense.

The act also prohibits any physician or other person attending persons suffering from cholera, plague, yellow fever, typhus fever, diphtheria, typhoid fever, or any other disease dangerous to the public health, from failing to comply with a requirement of continuing law to report certain information to the health commissioner in the jurisdiction where the sick person is found. This reporting requirement, and the act's prohibition against failure to comply with the requirement, also apply to the owner of the building in which the sick person resides and the head of the sick person's family. A violation of this prohibition is a minor misdemeanor on a first offense and a misdemeanor of the fourth degree on each subsequent offense.

The act requires the Director of Health to adopt rules pursuant to the Administrative Procedure Act that establish a graduated system of fines based on the scope and severity of violations and the history of compliance, not to exceed \$750 per incident, and permits the Director, in an adjudication under the Administrative Procedure Act, to impose a fine against any person who fails to comply with the act's reporting requirements. The Director also may impose a fine against any poison prevention and treatment center or other health-related entity that fails to comply with the act's reporting requirement for those entities. On request of the Director, the Attorney General must bring and prosecute to judgment a civil action to collect any fine imposed under this provision that remains unpaid. All fines collected are to be deposited into the state treasury to the credit of the Department's General Operations

Fund. (Other fines the Department of Health collects for specified violations, including violations of any orders or rules of the Department, will continue to be paid into the General Revenue Fund (R.C. 3701.57).)

Other provisions: renumbering and conforming changes

(R.C. 339.89, 3701.04(A)(5), 3701.14(B), 3701.146, 3701.161, 3701.162, 3701.221, 3701.241, 3701.501, 3701.99(E), 3707.38, 3715.02, 3901.46, and 4736.01)

The act relocates (from R.C. 3701.14(B) to 3701.146) the ongoing provisions regarding actions the Director of Health and Public Health Council take with respect to tuberculosis. In addition, the act renumbers several sections, makes corrections, and makes other conforming changes necessitated by its provisions.

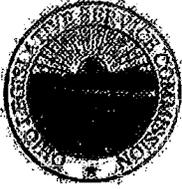
HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced Reported, H. Homeland Security, Engineering, & Architectural Design	01-23-03	p. 73
Passed House (98-1)	06-25-03	p. 963
Reported, S. Finance & Financial Institutions	06-25-03	pp. 974-975
Passed Senate (33-0)	10-15-03	p. 1098
House concurred in Senate amendments (89-2)	10-15-03	pp. 1107-1109
		pp. 1125-1127

03-HB6-125.doc/jc

PDF version of this synopsis

Text of latest version of this bill



Synopsis of Committee Amendments

Legislative Service Commission

Sub. H.B. 6
125th General Assembly
(S. Finance & Financial Institutions)

Requires the Director of Health to release information obtained during an investigation as to the cause of disease or illness that the Director currently is conducting and that is not yet complete, if the Director determines the release of the information is necessary to avert or mitigate a clear threat to an individual or to the public health (*in addition to* excepting the release of this information from the bill's confidentiality requirements).

Requires the Director, if an investigation as to the cause of disease or illness is not completed within six months after the date of commencement, to prepare and release a report containing preliminary findings at that time and every six months thereafter until the investigation is completed.

Requires the Director, upon completion of an investigation, to prepare and release a final report containing the Director's findings.

Clarifies that information obtained by the Department of Health that does not identify an "individual" (rather than a "person," as in the House-passed version) is not protected health information and may be released in summary, statistical, or aggregate form; and states that information that is in a summary, statistical, or aggregate form and that does not identify an individual is a public record.

Provides a criminal penalty for a violation of the bill's prohibition against a physician's, building owner's, or head of household's failure to report certain information relative to persons suffering from a disease dangerous to the public health.

* This synopsis does not address amendments that may have been adopted on the Senate floor.