

* 2/16/22

GRAMA Notice of Appeal to State Records Committee
Utah State dept of Health #2 (out of order)

Requester's information:
Roger Bryner

RECEIVED
MAR 14 2016

Appeal to:

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Notice to the entity:

Utah Department of Health
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Explanation of Relief Sought, facts, reasons, and legal authority

I am appealing the decision attached as Exhibit A which is dated 2/24/2016. The original request of 2/9 is attached as Exhibit B, the original denial of 2/16 as Exhibit C. Other exhibits containing evidence are attached and set forth below, but are not part of the initiation of any notice of appeal.

I am requesting that this appeal be heard in the May 12 hearing, which is less than 73 days away from the date of this appeal. While the document being appealed is earlier than the document being appealed and heard on April 14, 2016 in appeal no. 2016-21 which only requests my digital records from 2015, there is a good reason for hearing these out of order. The Department of health has been caught in a lie, and production of the documents in 2016-21 is a certainty as they are mine. Making the department of health tell the truth in the limited case of my records about what digital copies they actually keep will be useful in preventing them from lying and saying that the records don't exist, as they will be shown to have attempted below in argument. All deadlines have been complied with.

I am asking for the following relief:

- 1) For a finding that all SST-2015*... directories in the disk structure of the 2015 blood alcohol testing data contain no patient data, only controls, thus must be disclosed;
- 2) For a finding that all Agilent .D files contain nothing but a sample number and run number with no other patient data, thus may be disclosed as a whole without any danger of linkage with individual people;
- 3) A finding that disclosure of all of the directories in 1 and 2 above is as simple as a file copy or archive of the data files taking negligible time and cost, which must be done for free as it is well under 15 minutes of effort;

- 4) A decision as a matter of fact that a relational database exists with blood alcohol testing level contained therein;
- 5) As a matter of fact that a query of the database to dump the data with all personal identifiers redacted is a trivial SQL query;
- 6) That a list generated by SQL of all 1500 tested and testified to blood alcohol levels is not associated with any personal identifiers and thus may be released;
- 7) That the likely time spent performing work (not computer time) for such a trivial effort is less than 15 minutes and thus the data must be provided free of charge;
- 8) That the Department of Health lied when they said that a compilation of all of the levels for 2015 did not exist, the relational database is just such a compilation of data;
- 9) For a finding that these records materially impact my rights, that I am indigent and qualify for a fee waiver;
- 10) For a finding that as a matter of law blood alcohol levels requested by the police are not medical records, because they are not for the diagnosis or treatment of any medical condition;

ARGUMENT

The US supreme court in *FEIST PUBLICATIONS, INC. v. RURAL TELEPHONE SERVICE CO., INC.* 499 U.S. 340(1991) held that databases are not protected by copyright. Neither are SQL queries or in other words the "customization" of individual consumers of database software. To top it all off all major database formats can be read by "freeware" and have patents that are expired. The argument is spurious and equivalent to the argument that a formatting template provided in word to generate a form letter from a government office is "proprietary" copyrighted software. It is an insult to software to call SQL or formatting scripts to generate what amount to templates for form letters proprietary copyrighted software, it is a few lines of trivial text added to actual database content by the State of Utah. The "programs" are actually just templates for form letters in a program other than a word processor, nothing more.

The response of the Department of Health is dishonest. The Department of health simply can't be believed when it uses effort as an excuse to not provide a record. The Department of Health in Exhibit A says that:

Your second ground for appeal is that the data you seek does not concern any individuals, but rather a list of all 2015 blood alcohol results reached by the Lab. As stated in the Lab's denial, the Lab only has Lab results of individual blood tests. The Lab does not keep any list or summary data of results. The only data the Lab possesses contains information that could identify those tested which are private records.

This is an outright lie, or the statement below is. The appeal response of 3/10/2016 to the 3rd GRAMA request attached as Exhibit D says:

To address the first part: "electronic source documents" for the Toxicology Final Report do not exist. The data fields used to create the Toxicology Final Report exist as discreet entries in a relational database. This database is managed by copyrighted software which the Lab is a licensed user. Entries in this database are retrieved and formatted into the Toxicology Final Report using a Laboratory Information Management System (also copyrighted and licensed software).

An example of such a report is attached as Exhibit E. The number I am after for all of 2015 is shown in a line below, generated (if there is any actual truth from the department of health) from that relational database mentioned.

Ethanol Result: 0.09 grams per 100 milliliters of Blood

All modern databases use SQL. SQL allows pulling data entries and fields from a relational database with unlimited flexibility within the bounds of logic. It would be trivial exercise to pull all 1500 results from 2015 that were put into the database in seconds using SQL. Thus, in a very real sense, all of the numbers reported in the examples are maintained in a form that would be easily available, with less than 15 minutes of work. Simply doing a google search for "Wikipedia and sql" should enable a person with minimal computer skills to do the work in less than 1 hour. A skilled database administrator of which at least one must exist in the state of Utah, would take far less than that time.

The dishonesty between these two productions is evidence that the data are being intentionally withheld, as is the estimate of 20 hours of effort to retrieve data for one person. The Department of Health will waste over 20 hours of time for all the assembled committee and the attorneys for the state representing them just preparing for the administrative hearing, and many more hours in any followup lawsuit. Thus the State of Utah Department of Health is willing to not only lie about the effort, but waste time far in excess of their lie to shield the data. What are they hiding?

Attached as Exhibit F is a complete digital dump of ever hexadecimal and text equivalent digit in an agilent .D file. As you can imagine, there is not a spot for anything but chemistry data and no patient identifiers in the file format. If the Department of health is honest in any response to this appeal, it will admit that the agilent .D data format contains no personal identifiers and is in fact not associated with any person, but only a serial number on a vial of blood indirectly. Thus it is the perfect example of raw digital data. As you can see there is no personal data contained in the files.

The department of health makes an argument that the provision of blood alcohol levels to law enforcement is not an issue. I assert that the existence of a database targeted not to health care or medical issues, but rather to act as an expert witness for law enforcement in law enforcement cases, is not a medical activity and the records are not medical records. The argument is:

Your third ground for appeal is that blood alcohol levels are regularly made available for law enforcement and prosecutions which often become public such as in police reports. You consider this as precedent that the state of Utah should disclose blood alcohol test results to anyone.

In GRAMA is an exception that allows a state government agency to share private information requested by another governmental entity under certain circumstances. In this case, prosecutors and law enforcement can receive a private record if the record is necessary to enforce and prosecute criminal laws. See, Utah Code §§ 63G-2-206(1) & (9). As you are not a governmental entity making the request for purposes of law enforcement or prosecution, you do not fit that exception and the Lab is not able to provide private information in response to your request.

Once law enforcement or prosecutors receive blood alcohol results, that information becomes part of law enforcement or criminal files. How confidentiality and public access laws operate with law enforcement and prosecutors cannot alter how GRAMA provisions apply to the Lab concerning the treatment of private information.

I argue that the Department of Health blood alcohol lab can not become a "health" or "medical" establishment when it is in fact 100% an arm of law enforcement and the records from inception to the specific database that makes the expert reports, an example of which is found in Exhibit E. It is not a medical lab at all, it never was. Thus none of the records of the blood alcohol group were ever medical records.

I argue that UCA 26-3-4 requires:

The department shall:

- (1) *take such actions as may be necessary to assure that statistics developed under this chapter are of high quality, timely, and comprehensive, as well as specific, standardized, and adequately analyzed and indexed; and*
- (2) *publish, make available, and disseminate such statistics on as wide a basis as practicable.*

The agilent .d files and sections of the relational database without personal identifiers clearly fall into this subsection. The department of health will try and mislead you about the effort required as well as the application of the code. Remember Section 26-3 applies to them, not me. I have no obligation to even graph the data correctly, they have the obligations. I am asking that the Record's committee compel the Department of Health to publish all statistics widely under UCA 26-3-4. A statistic is an individual piece of data, and that basically means everything. As someone once said, sunlight is the best disinfectant, and the Department of Health should not be allowed to claim they are the great and powerful Oz as a defense. The invocation of the protection of human research subjects under federal statute is ludicrous. There is no human research being done here.

WHEREFORE I ask that the denials be overturned and all responsive documents be provided and a fee waive under the under 15 minute and/or indigent standards be granted.

Dated March 14, 2016



Roger Bryner