

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

October 23, 2014



Mississippi Ethics Commission
P.O. Box 22746
Jackson, Mississippi 39225-2746

RE: Public Records Opinion Request No. R-14-027;
Mississippi State Department of Health, Licensure & Regulation

Dear Commission Members,

On behalf of the Mississippi State Department of Health, Bureau of Licensure & Regulation, please find enclosed the Department's Response to the above-referenced Public Records Opinion Request, along with Exhibit A thereto.

Please do not hesitate to contact me or the Department if there is any further information or assistance we can provide.

Sincerely,

A handwritten signature in black ink that reads "Ellen O'Neal".

Ellen O'Neal
Special Assistant Attorney General
Legal Counsel, Mississippi State Department of Health

BEFORE THE MISSISSIPPI ETHICS COMMISSION

In the matter of:

Public Records Opinion Request No. R-14-027;

Mississippi State Department of Health, Licensure & Regulation, Respondent

RESPONSE OF MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

Comes now, the Mississippi State Department of Health, Bureau of Licensure and Regulation, respondent in the above-referenced matter now pending before the Mississippi Ethics Commission, and files this its response to the Complaint filed by Sarah Butrymowicz.

BACKGROUND

Bureau of Licensure and Regulation

The Mississippi State Department of Health is the statutorily created authority for the licensure and regulation of, *inter alia*, child care facilities in Mississippi, pursuant to the Mississippi Child Care Licensing Law. Miss. Code Sections 43-20-1 through 43-20-21. The Bureau of Licensure and Regulation licenses and oversees not only child care facilities, but also child residential homes, athletic trainers, hearing aid specialists, medical radiation technologists, occupational therapists, respiratory care practitioners, speech-language pathologists and audiologists, as well as several other health-related professions. All public records requests for documents in any licensure files must come through the Bureau of Licensure and Regulation of the Department of Health ("Department").

The State Department of Health of course operates in the entire state and has employees and offices throughout the state. Organizationally, the state is divided into 9 public health districts, each district being comprised of several counties. The licensed child care facilities are likewise grouped by district. District V, the district involved in this complaint, is composed of the 10 counties of Issaquena, Sharkey, Yazoo, Madison, Warren, Hinds, Rankin, Claiborne, Copiah and Simpson counties.

There are 1,573 licensed child care facilities in Mississippi, each of which must be inspected at least twice annually, and even more often when there are problems requiring follow-up visits. Every inspection and follow-up visit generates several documents. If there are violations, a follow-up letter may be sent imposing monetary penalties. The facility is then required to submit a Plan of Correction. Thus, it is an understatement to say that every child care facility file is quite voluminous.

The Department responds to dozens of public records requests and subpoenas each year for child care facility records. Since August 2013, the Department estimates that it has responded to 42 public records requests. All such requests are handled by the Central (Jackson) office. As for staffing, the Department currently has only five (5) licensing officials for the entire District V – to cover all 438 facilities in ten (10) counties.

For each public records request, it is necessary to copy each document and then to meticulously comb through the document to redact names of children. Mississippi Code Section 43-20-17 prohibits the Department from disclosing the names of children or their families in responding to public records requests.

Ms. Butrymowicz's Public Records Request

The requestor asked for all of the (1) inspection reports and (2) complaint investigation reports for the FY2014 for all child care facilities in District V, i.e., in the above-named ten (10) counties. There are 438 facilities in District V alone.¹

The instant complaint alleges that the estimate for the cost of reviewing, redacting and copying the requested records is too high. We refer the Commission to the specific analysis of the cost estimate which was prepared by the Director of the Bureau of Licensure and Regulation, which is attached hereto as Exhibit A. As explained in the Exhibit A, District V alone has 438 licensed child care facilities. Thus, it will be necessary to retrieve and review each of the 438 physical files – the Department's child care licensing files are paper files maintained in expandable file folders – they are not digital, because they involve a great deal of handwritten inspection and investigation notes. A staff member will then remove all of the responsive paperwork for the past year from the files of each of the 438 facilities. (We would point out that all of the files are 2-hole punched at the top with metal fasteners, so it is somewhat time-consuming to remove papers from the files.) The individual documents must first be copied, then reviewed to redact all children's and parents' names, which appear frequently in inspection and complaint reports. After redacting, the papers containing such names must be copied again.

The cost estimate contained in Exhibit A first analyzes the estimate for just inspection reports for all child care facilities statewide, then just complaint investigations statewide. After receiving this estimate, the requestor modified her request to just include inspection reports and complaint investigations for District V only, which cost is

¹The cost estimate prepared and attached hereto as Exhibit A indicates 496 facilities, but that number was in error. Thus, the Department has adjusted its cost estimate for copies to reflect this figure, from \$3324 to \$2847. 438 facilities x 2 inspections per year = 876 inspections x 10 documents per inspection = 8760 documents to copy and review. If 30% of the pages have children's names, then 2628 would need to be redacted and recopied, for a total of 11,388 pages to copy, x \$.25 per page = \$2847.

the subject of this complaint. (See Footnote 1 regarding the Department's modification of this estimate based upon the corrected number of facilities in District V.) .

Public Records Act

The Department is clearly a "public body" within the meaning of the Public Records Act and the licensure files of the child care facilities are clearly "public records." Miss. Code Section 25-61-3. The Department's duties and authority in licensing and regulating child care facilities is absolutely a function of protecting the public, specifically, children cared for in child care facilities. The results of inspections and complaint investigations of these facilities are quite understandably of particular interest to the public. It is for this reason that the Department takes seriously its obligation of transparency and its obligation to make available as expeditiously as possible all documents which the public may request for review. Typically, a parent requests records of potential child care facilities or wants to know the results of a complaint investigation. However, a request as broad as the instant one, involving almost 500 child care facilities is rare and will require an enormous amount of time and resources. The Department does not deny that all of the records are public and that the requestor is entitled to review them.

Because the requestor's complaint challenges the cost estimate, we look to the relevant provision of Section 25-61-7:

(1) Except as provided in subsection (2) of this section, each public body may establish and collect fees reasonably calculated to reimburse it for, and in no case to exceed, the actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records. Any staff time or contractual services included in actual cost shall be at the pay scale of the lowest level employee or contractor competent to respond to the request. Such fees shall be collected by the public body in advance of complying with the request.


The Department submits that \$.25 per page is a reasonable reflection of the paper and copier costs; that \$40/hour is an accurate rate of pay for the employee(s) who will be required to conduct the review, redacting and copying; and finally, that 100 hours of staff time is a reasonable estimate, given the breadth of the request. At this time, the Department has no clerical workers in the child care licensure division, thus one of the two directors would be required to prepare the documents. In addition, the Department does not have on staff persons dedicated solely to the preparation of responses to public records requests. Thus, the staff persons charged with reviewing, copying and redacting will spend approximately 100 man-hours away from their regular duties, which will severely impact the normal course of business and the timeliness of their normal duties.

CONCLUSION

The Board takes seriously its duty to protect the public as well as its obligation of transparency to the public, and strives to provide to the public as much information as possible regarding licensed child care facilities. There is no question that the requested records are the public domain and should be made readily available to the public upon request. The Department of Health has neither denied the requestor's right to the records requested nor its obligation to provide same, but has merely given an estimate of the cost to the Department to comply. The legislature clearly expressed an intent that, while government agencies must provide the public with access to public records, the agencies are entitled to recoup the reasonable costs to do so, particularly when, as here, the cost to the agency, primarily in man-hours, will be significant.

THEREFORE, the Department of Health requests the Commission to either find that the Department's estimate of costs is reasonable and dismiss the complaint, or, in the alternative, to direct the requestor to narrow her request to a more manageable level.

Submitted this the 23rd day of October, 2014.

By: 

Ellen O'Neal
Special Assistant Attorney General
Legal Counsel for the Mississippi State Department of Health

Elizabeth,

Here are my estimates for one (1) year (July 1, 2013 – June 30, 2014). These are bare minimum estimates. I believe the actual cost will be higher. Also, anything of this type of request will take more than two (2) weeks lead time to coordinate and complete.

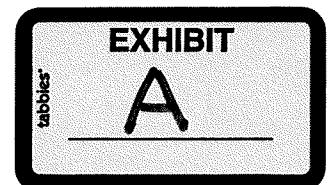
STATEWIDE (ALL NINE DISTRICTS)

1. There are $\approx 1,757$ licensed child care programs statewide that were inspected during FY2014.
2. At a minimum there were $\approx 3,399$ inspection reports generated in FY2014.
3. The average inspection generates about ≈ 10 pages of documentation. Therefore, at a minimum there would be $\approx 33,990$ pages copied.
4. We have to redact children's names and SS # etc., so about 30% of the pages would have to be recopied for a total of $\approx 11,217$ pages.
5. Total pages copies would be at a minimum $\approx 45,207$ pages.
6. Copying is at .25 per page which equals $\approx \$11,302$ for copying.
7. Staff time is billed at \$40 per hour. I would expect in excess of 258 hours of staff time which equals $> \$10,320$.
8. Therefore, the minimum estimate for public records request would be **\$21,622**.

NOTE: The figures do not include complaint investigations. There were 586 complaint investigations done in FY2014. If the above calculations used for inspections are used for complaints the following would be the estimated cost.

COMPLAINTS STATEWIDE

1. There were 586 licensed child care complaint investigations statewide that were conducted during FY2014.
2. The average complaint investigation generates about ≈ 10 pages of documentation. Therefore, at a minimum there would be $\approx 5,860$ pages copied.



3. We have to redact children's names and SS # etc., so about 30% of the pages would have to be recopied for a total of $\approx 1,758$ pages.
4. Total pages copies would be at a minimum $\approx 7,618$ pages.
5. Copying is at .25 per page which equals \$1,905 for copying.
6. Staff time is billed at \$40 per hour. I would expect in excess of 75 hours of staff time which equals $> \$3,000$.
7. Therefore, the minimum estimate for public records request would be **\$4,905**.

DISTRICT V

1. There are ≈ 496 licensed child care programs in District V that were inspected during FY2014.
2. At a minimum there were ≈ 992 inspection reports generated in FY2014.
3. The average inspection generates about ≈ 10 pages of documentation. Therefore, at a minimum there would be $\approx 9,920$ pages copied.
4. We have to redact children's names and SS # etc., so about 30% of the pages would have to be recopied for a total of $\approx 2,976$ pages.
5. Total pages copies would be at a minimum $\approx 12,896$ pages.
6. Copying is at .25 per page which equals \$3,324 for copying.
7. Staff time is billed at \$40 per hour. I would expect in excess of 100 hours of staff time which equals $> \$4,000$.
8. Therefore, the minimum estimate for public records request would be **\$7,324**.

NOTE: The figures above do not include complaint investigations. There were ≈ 150 complaint investigations done in District V in FY2014. If the above calculations used for inspections are used for complaints the following would be the estimated cost.

COMPLAINTS DISTRICT V

1. There were ≈ 150 child care complaint investigations in District V that were conducted during FY2014.
2. The average complaint investigation generates about ≈ 10 pages of documentation. Therefore, at a minimum there would be $\approx 1,500$ pages copied.
3. We have to redact children's names and SS # etc., so about 30% of the pages would have to be recopied for a total of ≈ 450 pages.
4. Total pages copies would be at a minimum 1,950 pages.
5. Copying is at .25 per page which equals \$488 for copying.

6. Staff time is billed at \$40 per hour. I would expect in excess of 25 hours of staff time which equals >\$1,000.
7. Therefore, the minimum estimate for public records request would be **\$1,488**.