



MIKE SCHMIDT, District Attorney for Multnomah County

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April 26, 2022

George DuBois
gfdubois@juno.com [via email only]

Re: Petition of George DuBois seeking records from OHSU

Dear Mr. DuBois:

You petitioned the district attorney requesting that we order Oregon Health & Science University (OHSU) to provide you with a copy of its policies setting out the reasons it denies requests to restrict the sharing of personal health information. This letter is my order resolving your petition. In response to your initial request for these records, OHSU identified its applicable policies and provided them to you. You indicate that these policies are general and do not address the specific factors used to evaluate a request to restrict sharing. You state that OHSU must have other policies, which it did not provide to you, or be in violation of federal law.

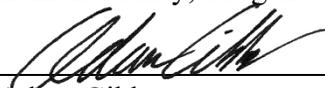
Under applicable laws and regulations OHSU is required to have policies to govern its process for handling requests to restrict the sharing of personal medical information. OHSU acknowledges this but disagrees with you as to the level of detail required for such policies. And, in any event, OHSU states that it has provided you all the relevant policy documents it possesses.

For purposes of this order, I need not determine which interpretation of HIPAA and implementing Department of Health and Human Services regulations is correct. The district attorney only has authority to require a public agency to produce a record it actually possesses. OHSU has clearly stated that it does not have more detailed policies on this topic. The district attorney is not empowered to determine whether an agency is required to create or retain a record. *Petition of Apanel*, MCDA PRO 17-57 (2017) (“We do not have the jurisdiction to determine if an agency is required by law to possess a particular record. [...] the city has not denied a public records request in this case because the public records law does not require agencies to produce records they do not possess.”)

I cannot order OHSU to produce records it does not have. As such, the petition is denied.

Regards,

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

By: 
Adam Gibbs
Sr. Deputy District Attorney

Cc: Raghav Shanmugasundaram, OHSU