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IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

BROOKE SCHREIER GANZ, both )  
individually and as an )  
authorized representative of )  
RECLAIM THE RECORDS, a )  
non-profit, unincorporated )  
association, )

) Case No. 16AC-CC00502

Plaintiffs, )

vs. )

MISSOURI DEPARTMENT OF HEALTH )  
AND SENIOR SERVICES, )  
Defendant. )

DEPOSITION OF KERRI TESREAU  
TAKEN ON BEHALF OF PLAINTIFFS  
July 27, 2018

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7 RECLAIM THE RECORDS, a )

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10 ) Case No. 16AC-CC00502

11 Plaintiffs, )

12 )

13 vs. )

14 )

15 MISSOURI DEPARTMENT OF HEALTH )

16 AND SENIOR SERVICES, )

17 )

18 Defendant. )

19

20 DEPOSITION OF WITNESS, KERRI TESREAU, produced,  
21 sworn, and examined on July 27, 2018, between the  
22 hours of 8:00 a.m. and 6:00 p.m. of that day at the  
23 offices of Lathrop Gage, Jefferson City, Missouri,  
24 before Tracy Thorpe Taylor, CCR No. 939, within the  
25 state of Missouri, in a certain cause now pending in  
the Circuit Court of the County of Cole, State of  
Missouri, wherein Brooke Schreier is plaintiff and  
Missouri Department of Health and Senior Services is  
defendant.

1 A P P E A R A N C E S

2 FOR THE PLAINTIFFS:

3 MR. BERNARD J. RHODES  
4 Lathrop Gage  
5 2345 Grand Boulevard, Suite 2200  
6 Kansas City, Missouri 64108-2618  
7 816.292.2000

8  
9 FOR THE DEFENDANT:

10 MS. SHAWNA BLIGH  
11 Office of Attorney General  
12 221 West High Street  
13 Jefferson City, Missouri 65201  
14 573.751.3321

15  
16 CERTIFIED COURT REPORTER:

17 Tracy Thorpe Taylor, CCR No. 939  
18  
19  
20  
21  
22  
23  
24  
25

1                   IT IS HEREBY STIPULATED AND AGREED by and  
2 between counsel for the plaintiffs and counsel for the  
3 defendant that this deposition may be taken by Tracy  
4 Thorpe Taylor, a Certified Court Reporter, CCR No.  
5 939, thereafter transcribed into typewriting, with the  
6 signature of the witness being expressly waived.

7                   (Exhibit 1 was marked for  
8 identification.)

9                   KERRI TESREAU,  
10 of lawful age, having been produced, sworn, and  
11 examined on the part of the plaintiffs, testified as  
12 follows:

13 DIRECT EXAMINATION BY MR. RHODES:

14           Q.       And tell me again -- I'm sorry -- how do  
15 you pronounce your last name?

16           A.       Tesreau.

17           Q.       Tesreau, not Tesareau?

18           A.       No.

19           Q.       I'm going to write this down, but that  
20 doesn't mean I'm going to remember it.

21           A.       That's all right.

22           Q.       Tesreau. Okay. Ms. Tesreau, I put  
23 Exhibit 1 in front of you. Are you familiar with  
24 Exhibit 1?

25           A.       Yes.

1 Q. And are you here today to be the  
2 authorized representative of the Department of Health  
3 and Senior Services to respond to questions about the  
4 topics on Exhibit 1?

5 A. Yes.

6 Q. Okay. And can you provide us the  
7 information responsive to question Number 1, please?

8 A. For -- so for Number 1 for the birth  
9 listings, I can give an estimated amount. We've  
10 provided somewhere between 50 to 100. It would have  
11 been at different dates throughout that time frame.

12 The costs charged routinely, our costs,  
13 we would charge 50 dollars per list with a \$2.50  
14 handling fee I believe we applied to it. Format would  
15 have been that we provided a paper listing.

16 I don't have -- I didn't go through and  
17 memorize all the names of the individuals. The  
18 majority of all of those requests would have been from  
19 a specific individual, different random individuals.

20 I don't know the intended use of all  
21 those listings other than it would have been for that  
22 particular day for them to be verifying either a death  
23 or a birth against that particular day. And the  
24 restrictions given out on a single day, we wouldn't  
25 have had restrictions.

1 Q. All right. So you're saying that between  
2 February 13, 2013 and the present that the department  
3 has responded by providing documents to approximately  
4 50 to 100 different requests for birth listings?

5 A. Uh-huh. Yes. Sorry.

6 Q. I need a Kleenex. I thought there was  
7 one in here, but I don't see one.

8 (Off the record.)

9 BY MR. RHODES:

10 Q. And are each of these requests for a --  
11 just for one day?

12 A. By and large the majority would have been  
13 for one day. A few of them might have been for one or  
14 two days.

15 Q. And were there others for more than one  
16 or two days?

17 A. Not -- I don't -- I don't think. Not  
18 at -- not at the initial request. And I might need to  
19 make a distinction. We did have a request during --  
20 I'm not -- I'm not sure which year it was, but it was  
21 after 2015 in regards to the Homer G. Phillips issue  
22 in St. Louis where an entity had requested for  
23 multiple clients a single day associated with those.  
24 We viewed those as a request for a single day for an  
25 individual.



1 Q. Okay. So the requests for a specific  
2 day, for example, you're saying that John Doe may have  
3 requested a listing of all births on September 28th,  
4 1956?

5 A. Yes.

6 Q. And what information did you provide in  
7 response to that request?

8 A. We would have provided a listing for that  
9 day with first name, last name and the date.

10 Q. Of birth?

11 A. Yes. I'm sorry.

12 Q. And I picked that date because that's the  
13 date I was born.

14 A. Okay.

15 Q. But you would provide not just my name.  
16 You'd provide everybody's name in the state of  
17 Missouri that was born on that day?

18 A. Correct.

19 Q. Okay. And similarly, if they asked for  
20 one or two days, you provided all of the first, last  
21 and date of births for those people on those one or  
22 two days?

23 A. Correct.

24 Q. Did you match the first name to the last  
25 name?

1 A. I believe so, yes.

2 Q. And did you match the first and last name  
3 to the date of birth?

4 A. Yes.

5 Q. All these were the same date of birth --

6 A. Right.

7 Q. -- by definition?

8 A. Right. It was one day.

9 Q. What if they were for two days?

10 A. For two days, they would have -- the  
11 request would have been for -- I'm sorry, I don't  
12 remember what date you gave, but say it was September  
13 1st.

14 Q. Whatever.

15 A. If -- we would have given them -- the  
16 request would have been for September 1st.

17 Q. Okay.

18 A. And then a request for September 2nd. So  
19 we would have fulfilled the two requests.

20 Q. So the person making the request, when  
21 they received the documents, would know the names of  
22 people who were born on September 1st and would know  
23 the names of people who were born on September 2nd?

24 A. Correct.

25 Q. Okay. And the 50 dollars per list, is

1 that appropriate to characterize that as 50 dollars  
2 per day?

3 A. Correct.

4 Q. So if I ask for September 1st and 2nd,  
5 the charge would be 100 dollars?

6 A. Correct.

7 Q. Plus the \$2.50 handling fee?

8 A. Correct.

9 Q. And you say the paper so you -- somebody  
10 printed off the listing?

11 A. Uh-huh. Yes.

12 Q. And then that paper was mailed or faxed  
13 or e-mailed to the person making the request?

14 A. Correct.

15 Q. And I'm sorry. I don't know what the  
16 Homer G. Phillips situation is.

17 A. There was an issue in St. Louis City that  
18 came to light -- I apologize, I don't remember the  
19 year, relatively recently, just within this time  
20 frame -- where there was concerns that at the time  
21 that St. Louis city was operating a hospital back in  
22 the '50s, that there were instances of young women who  
23 gave birth at the facility and were told their child  
24 had died when -- and the allegation was that the child  
25 had not died and had been given up for a adoption.

1 Q. And the name of the hospital was?

2 A. Homer G. Phillips.

3 Q. And so explain more. You got requests  
4 for --

5 A. We had requests from -- I believe it was  
6 from an attorney was part of the initial request  
7 asking for dates of birth associated with the clients  
8 that he was representing for the date that they said  
9 they gave birth.

10 Q. Okay. And this attorney's request was  
11 for all records from the state of Missouri for a  
12 particular day or dates?

13 A. It was -- yes, for -- yes, I believe so.  
14 I think they asked for the same listing that we could  
15 provide under the statute --

16 Q. Okay.

17 A. -- for those particular dates.

18 Q. Even though this attorney may have been  
19 specifically looking for people born at Homer G.  
20 Phillips Hospital, the request was for the Missouri  
21 birth listings for those dates?

22 A. Correct.

23 Q. And you say the request may have been for  
24 more than one date, but a date -- specific date range  
25 or --

1 A. No.

2 Q. -- multiple individual dates?

3 A. Multiple individual dates associated with  
4 the individual client.

5 Q. Okay. And did you provide those under  
6 the same 50 dollar per day?

7 A. We were asked to waive that fee.

8 Q. And did you?

9 A. I believe the department covered that  
10 fee.

11 Q. Okay. Meaning the department waived the  
12 fee?

13 A. I don't believe they -- the entity that  
14 requested it was charged, but another section within  
15 the department paid the fee to Vital Records.

16 Q. Okay.

17 A. I believe. But I'll have to double check  
18 on that.

19 Q. The requester was not charged?

20 A. I believe that's correct.

21 Q. And I know we talked about this last  
22 time, but to be clear, the documents were produced by  
23 the Bureau of Vital Records?

24 A. Vital Statistics.

25 Q. Okay. See, because you said records.

1 That's why I asked.

2 A. I'm sorry.

3 Q. No, that's why I asked.

4 A. And they're so very closely linked.

5 Q. Tell me -- that's why I asked. So do you  
6 know -- so on none of these that you're aware of you  
7 were -- other than the Homer G. Phillips, you knew the  
8 intended use somewhat?

9 A. That's probably a correct assumption.

10 Q. Okay. The others you did not know nor  
11 ask what the intended use was?

12 A. That's probably correct on several of  
13 them.

14 Q. And similarly, you didn't put any  
15 restrictions on the use of the information?

16 A. Correct.

17 Q. Okay. All right. What is the  
18 information responsive to Request Number 2?

19 A. In response to Number 2, the only  
20 instance that we could recall of providing the death  
21 listing was again in regards to the Homer G. Phillips  
22 issue, but we didn't have records of general requests  
23 for death records with the exception of the one before  
24 this case.

25 Q. Okay. So you say death records. The

1 request -- Topic Number 2 specifically deals with  
2 death listings.

3 A. I'm sorry. Death listings.

4 Q. No, no. That's why I'm making this  
5 distinction. Obviously people request death  
6 certificates.

7 A. Correct.

8 Q. But you're making a distinction --

9 A. In regards to the death listing.

10 Q. -- as was I.

11 A. Specifically to the question of the  
12 listing, yes.

13 Q. Exactly. Exactly. Okay. And by the  
14 way, just so that we can close this loop, death  
15 certificates are maintained by whom?

16 A. The Department of Health and Senior  
17 Services.

18 Q. Okay. So it's the same department?

19 A. Yes.

20 Q. But it's a different document than what  
21 we're talking about?

22 A. Correct.

23 Q. Okay. And in the Homer G. Phillips, you  
24 believe there was a request for death listings?

25 A. Yes.

1 Q. Okay. Because tell me again what was  
2 the --

3 A. The allegation --

4 Q. -- the issue.

5 A. -- the allegation was that there were  
6 women who gave birth at that facility and were told  
7 their child had died.

8 Q. I see.

9 A. But then there were allegations the child  
10 had not died --

11 Q. Okay.

12 A. -- and had been adopted.

13 Q. So this lawyer presumably wanted to look  
14 at birth records to see who was born and death records  
15 to see who died?

16 A. Correct.

17 Q. Okay. And did the department provide the  
18 death listings?

19 A. Yes.

20 Q. Okay. And what was the charge for that?

21 A. It was the same as with the birth. It  
22 had asked for those fees to be waived.

23 Q. And similarly, they were provided in  
24 paper format?

25 A. Yes. It was ran a day at a time and then



1 provided.

2 Q. Okay. The same thing as the birth  
3 listings --

4 A. Yes.

5 Q. -- for the Homer G. Phillips?

6 And to your knowledge, that's the only  
7 time anyone, prior to this, has asked for death  
8 listings versus death certificates?

9 A. Correct.

10 Q. And just to further close the loop, I  
11 assume birth certificates are also maintained by your  
12 department?

13 A. Correct.

14 Q. Okay. But you're making a distinction,  
15 as am I, between birth certificates and birth  
16 listings?

17 A. Correct.

18 Q. All right. What's the answer to  
19 Number 3?

20 A. So we don't actually keep records of when  
21 we have declined. I am aware that we have declined  
22 some requests during that time frame, and towards the  
23 end of 2017 we stopped. We no longer issued any  
24 requests under the provisions of this Statute  
25 193.245.1.

1 Q. I'm sorry. You stopped making denials or  
2 you stopped --

3 A. Issuing. We denied all requests.

4 Q. Oh. You didn't stop making denials. You  
5 stopped providing listings?

6 A. Correct.

7 Q. Okay.

8 A. I'm sorry.

9 Q. No, I'm -- that may be what you said,  
10 but -- okay. So let's start at the beginning.

11 A. Okay.

12 Q. So you say that was late 2017?

13 A. Yes.

14 Q. Okay. So between -- let's break this up  
15 then. Between February of 2013 and before this change  
16 in late 2017, do you believe there were requests for  
17 birth listings that were denied?

18 A. Yes.

19 Q. Okay. But you don't have a -- the  
20 department doesn't maintain a list of what those were?

21 A. Correct.

22 Q. Okay. Do you have any idea how many?

23 A. No. I'm -- I'm aware of because I just  
24 recall at least, you know, a couple.

25 Q. Okay.

1 A. But I don't have numbers.

2 Q. Do you recall what the requests were for?

3 A. One of them in particular that I do  
4 recall, it came from an adoption placement type agency  
5 or charity. And we redirected them, because the  
6 Adoptee Rights law had passed, that there were now  
7 provisions in place to allow people to request records  
8 that would be more helpful than probably this -- this  
9 process.

10 Q. Okay. Do you recall the reason for  
11 denying any of these requests?

12 A. In that instance for the example that I  
13 just gave, there's another process --

14 Q. Sure.

15 A. -- that would be more helpful. There was  
16 others where they would request it under this statute,  
17 but they would ask for more information to be included  
18 in it than what is provided under the statute so we  
19 would say we can't do that, we can't provide it under  
20 that regard.

21 And then at the time the determination  
22 was made we would no longer provide listings under  
23 this, it was because we were requesting to remove this  
24 statute. So when the determination was made to make a  
25 request to repeal the statute, the decision was made

1 not to issue under it anymore and then also because of  
2 the Adoptee Rights passage.

3 MS. BLIGH: I just wanted to clarify that  
4 when you're answering with regard to Number 1 or  
5 Number 2 -- and, Bernie, I want to make sure that  
6 you're comfortable with this too, that again, she's  
7 not making -- she hasn't made specific reference to  
8 the request made by your client, Reclaim The Records.

9 MR. RHODES: Sure. I know that.

10 MS. BLIGH: You're just trying to get  
11 general information.

12 MR. RHODES: Exactly, exactly, exactly.  
13 Absolutely, absolutely, absolutely. Yeah.

14 BY MR. RHODES:

15 Q. Okay. So if a -- you said a lot in that  
16 last answer so let's just break it up into bite size.  
17 You said a request may ask for more than what's  
18 allowed under the statute?

19 A. Correct.

20 Q. And I know we have a disagreement on  
21 whether the statute requires or permits disclosure.

22 A. Yes.

23 Q. But do we have an agreement that what is  
24 allowed, either mandatory or permissive, is the name  
25 and date only?

1 A. Correct.

2 Q. Okay. And that's true for both the birth  
3 and the death records?

4 A. Correct.

5 Q. So someone might ask for name, date and  
6 say county?

7 A. Correct.

8 Q. That you would -- would you deny the  
9 request outright or would you say, We could only  
10 provide the name and date?

11 A. I'm not sure if we were consistent. We  
12 would have said no.

13 Q. Sure.

14 A. I'm sure there were occasions we would  
15 have said, We can only provide X under the statute  
16 or -- and I'm sure there were times that we said, We  
17 can't provide that under this statute.

18 Q. Okay. All right. So then in late 2017,  
19 you said the department changed its policy and began  
20 complete denials of all requests for birth listings?

21 A. Correct.

22 Q. Okay. Were there any exceptions to that?

23 A. Not to my knowledge.

24 Q. And why was that change made?

25 A. Because we were -- also at that time made

1 the determination that we would be putting forward a  
2 request to remove this provision from statute.

3 Q. Okay. And was that request made?

4 A. Yes.

5 Q. And who was that made to?

6 A. It would have gone through the  
7 legislative process through the Governor's Office and  
8 that entire process.

9 Q. Okay. And what happened to that request?

10 A. I believe we were given permission to  
11 proceed with trying to have that removed. I -- it did  
12 not pass.

13 Q. Okay.

14 A. The provision has not -- I mean our  
15 proposal did not pass during that session.

16 Q. And do you remember which session that  
17 was?

18 A. So if we did it in 2017, it -- it would  
19 have had to have been for this -- this current  
20 session.

21 Q. Okay. Which is now --

22 A. In 2018.

23 Q. -- over?

24 A. Which is now over.

25 Q. And it did not pass?

1           A.     It did not pass.

2           Q.     But is it still the policy of the  
3 department to deny all such requests?

4           A.     Yes.  And it will most -- can we do  
5 something off the record for a second?

6                   MS. BLIGH:  Are you fine with that if we  
7 take a moment?

8                   MR. RHODES:  Yes.  Yes.

9                   (Off the record.)

10                  THE WITNESS:  Can you restate your  
11 question?

12 BY MR. RHODES:

13           Q.     Sure.  The General Assembly session at  
14 which the request was made has now expired.  So my  
15 question is, does the department continue its policy  
16 of denying all birth listing requests?

17           A.     At this time, yes, we do.

18           Q.     And why?

19           A.     Because we've had informal discussions  
20 that we will ask again, we will proceed again, but  
21 that has not been formalized.  We're in the middle of  
22 that process right now with the Governor's Office.  
23 And I can't really come out and state that the  
24 department will pursue a course of action yet.

25           Q.     Okay.  And what's the answer to Question

1 Number 4?

2 A. I don't believe we had any in regards to  
3 Number 4 that we declined. Because as I had stated  
4 earlier with the exception of Homer G. Phillips, we  
5 had not had requests.

6 Q. And what's the answer to Question Number  
7 5?

8 A. It's primarily an informal process. When  
9 the listing comes in for a single day, it would be  
10 evaluated, if it met the requirements of the statute,  
11 a listing for a single day with the specified data  
12 elements, and then it would have been approved.

13 Q. And who would have done this review?

14 A. More than likely it would have been our  
15 state registrar.

16 Q. Okay. And then I believe during the  
17 relevant time both of them were a he?

18 A. Yes.

19 Q. Okay. Then when he approved it, how was  
20 it then processed?

21 A. It would have been processed in the  
22 manner we said. A single day would have been run; the  
23 document, you know, produced; and then either scanned  
24 in or made a PDF; and either mailed or e-mailed or  
25 faxed to the requester.



1 Q. And is there, for lack of a better word,  
2 a form that the registrar approves this request on and  
3 forwards to somebody in -- I'm going to call them data  
4 processing?

5 A. Right. I don't -- I don't know. I'll  
6 have to double check on that.

7 Q. Okay. Okay. And Number 6, the answer  
8 there is the same?

9 A. It would be the same, yes.

10 Q. Okay. And again, the only one that  
11 you're aware of is the Homer G. Phillips on the death  
12 listings?

13 A. Yes.

14 Q. And just because I don't know anything  
15 about the Homer G. Phillips, is that still ongoing?

16 A. I think by and large it's been settled  
17 and sorted out.

18 Q. Okay.

19 A. But I don't know if there's --

20 Q. I'm now fascinated by it. I'm going to  
21 look--

22 A. I think there was found to be confusion  
23 in some of the initial --

24 Q. Yeah.

25 A. -- allegations, but I don't know. I mean

1 it wasn't a lawsuit with the department, so --

2 Q. Gotcha.

3 A. -- I don't know if that's been settled  
4 out.

5 Q. And like I say, I never even heard about  
6 it.

7 Okay. Then Number 7, prior to the change  
8 in policy, the procedure was the same, the registrar  
9 would review these?

10 A. It would be an informal review. And in  
11 something that they suspected or thought fell outside  
12 the parameters of the statute would have been  
13 questioned.

14 Q. Okay. And then who would have answered  
15 the question?

16 A. It would have been discussed more than  
17 likely with section administrators and division  
18 administration and the Office of General Counsel.

19 Q. Okay. And then what about from late  
20 November 2017 forward? Who would have made that  
21 decision to deny all requests?

22 A. That decision was made and finalized  
23 within the Department Director's Office, so the  
24 department director, Office of General Counsel.

25 Q. And when you said the department

1 director, who was that in late 2017?

2 A. I believe Peter Lyskowski.

3 Q. And he's now gone?

4 A. Correct.

5 Q. And I don't remember the name of the  
6 current one.

7 A. Director Randall Williams.

8 Q. Yes. And he's still there?

9 A. Yes.

10 Q. Okay. But this decision was made, you  
11 think, before he arrived?

12 A. Yes.

13 Q. And has there been a formal decision to  
14 continue the denials while you determine whether  
15 you're making a new request to the legislature or is  
16 it just the old denial is still in effect?

17 A. We just continued with that denial.

18 Q. Okay. Okay. Number 9, please, if you  
19 could tell us the answer to that?

20 A. So the hourly rate would have included an  
21 average of the salaries of the employees that would  
22 have worked on this type of request, as well as their  
23 fringe benefits and any allocations that would have  
24 been included in their time.

25 Q. Okay. Do you know who the employees were

1 that are included in this?

2 A. We know the classification of employee  
3 that would have --

4 Q. Do you know what those classifications  
5 are?

6 A. It would have most likely been a research  
7 analyst one, two or three.

8 Q. And do analyst ones have a different  
9 hourly rate than two or three?

10 A. Yes.

11 Q. Okay. And is the research analyst the  
12 only type of employee whose time would have been used?

13 A. Most likely.

14 Q. Okay. And the average hourly rate of  
15 what the person was actually being paid plus --

16 A. No. It would have been the average  
17 hourly rate of that classification.

18 Q. Of that classification?

19 A. Yes.

20 Q. Right. So -- but you're saying -- and I  
21 have no idea what these people make --

22 A. Uh-huh.

23 Q. -- so we'll use 15 dollars an hour.

24 A. Yeah, that's fine. Because I don't know  
25 the number either.

1 Q. That's what you hear about in the news  
2 every day now is 15 dollars an hour.

3 So if that person actually makes  
4 15 dollars an hour plus fringe benefits, you would  
5 have used 15 dollars an hour in this calculation?

6 A. We would have used the average of that  
7 classification. I'm getting hung up between the  
8 person, so --

9 Q. Okay. Well, that's where -- that's where  
10 I'm confused. I just assume -- and this is obviously  
11 maybe where we're having a disconnect. I assume  
12 everyone who's a research analyst one makes the same?

13 A. And that would be incorrect.

14 Q. That's where we're having a problem.

15 A. Okay.

16 Q. I assume you made 15 dollars an hour  
17 because you're a research analyst one and I made  
18 16 dollars an hour because I'm a research analyst two,  
19 and Shawna made 17 because she's a research analyst  
20 three.

21 A. No.

22 Q. Okay. You're saying you could make  
23 anywhere between 15 and 20 dollars?

24 A. Correct.

25 Q. And I could make anywhere from 20 to 25?

1 A. Correct.

2 Q. Now I understand the confusion.

3 A. So we would take the average of each of  
4 those three ranges and then average that.

5 Q. So let's say in my example that the  
6 research analyst one gets paid anywhere between 15 and  
7 20. You would use \$17.50 --

8 A. Correct.

9 Q. -- to calculate the hourly rate?

10 A. Correct.

11 Q. Okay. It's easy once you understand.  
12 And then in addition, you would add to that you said  
13 the fringe?

14 A. Fringe benefits.

15 Q. And how was that determined? Is that the  
16 same for every employee in the department?

17 A. There's a generalized rate, yes.

18 Q. Okay. And then an allocation --

19 A. Uh-huh.

20 Q. -- what does that mean?

21 A. We have an indirect allocation and  
22 then -- I'm trying to remember on the invoice of  
23 whether it was broken out. There was a server charge  
24 allocation and -- for some computer issues, but I  
25 don't know if that was put into the rate for the --

1 the hourly rate for the employee or if that was  
2 separate shown on the calculation.

3 Q. Okay. So let's assume for the moment  
4 that you're responding to a request for birth listings  
5 or death listings that doesn't require computer time.

6 A. Okay.

7 Q. But it requires somebody to go look at  
8 something.

9 A. Uh-huh.

10 Q. So you would charge for -- in our example  
11 the \$17.50 --

12 A. Uh-huh.

13 Q. -- if it took them an hour, plus the  
14 standard fringe benefit --

15 A. Uh-huh.

16 Q. -- per hour?

17 A. Yes.

18 Q. And then if they didn't use any actual  
19 computer time, is there also an allocation?

20 A. Yes. That indirect allocation would  
21 still be there because it is charged on the  
22 department's personnel.

23 Q. Okay. And how is that determined?

24 A. That is a cost allocation method that is  
25 determined by the Division of Administration and

1 approved by the federal government.

2 Q. Okay. And is that the same for  
3 everybody?

4 A. Yes.

5 Q. And do you know what that is?

6 A. Currently? I --

7 Q. That would be fine.

8 A. -- think we're about 23 percent.

9 Q. I'm sorry. But I have absolutely no idea  
10 what that means. Using my example of one hour at  
11 \$17.50 --

12 A. Uh-huh.

13 Q. -- and fringe, to make my math easy --

14 A. Uh-huh.

15 Q. -- \$2.50. So I'm at 20 dollars.

16 A. So I don't do good mental math in my  
17 head.

18 Q. Okay.

19 A. The 23 percent would be applied to this  
20 dollar amount (indicating).

21 Q. Okay. To the 20? So now --

22 A. Much like fringe is. So fringe rate is a  
23 percentage.

24 Q. Okay.

25 A. So when you start with your 17.50 an



1 hour --

2 Q. Okay.

3 A. -- and you have a standard 48 percent  
4 fringe rate, that would apply to that hourly rate to  
5 come up with a dollar amount and then the indirect  
6 would be charged against the two of them.

7 Q. Gotcha.

8 A. Fringe and personnel.

9 Q. Gotcha. Okay. And you think it's  
10 roughly 23 percent?

11 A. It is right now.

12 Q. Right now?

13 A. Uh-huh.

14 Q. Okay. Okay. Now, Number 9 relates to  
15 the hourly rate for employee time and Number 10  
16 relates to the hourly rate for analyst time. Is  
17 there -- you had said earlier you believed that all  
18 the time was for a research analyst one, two or three.

19 A. Correct. I'm not sure what the  
20 distinction is in the questions between analyst and  
21 employee.

22 Q. Okay. So you believe that the answer to  
23 Number 9 is the same as the answer to Number 10  
24 because you believe the only employee's time who was  
25 charged was most likely an analyst?

1 A. Uh-huh. Correct.

2 Q. Okay. Okay. And what's the answer to  
3 Number 11?

4 A. The number of hours I believe was  
5 determined on the days requested. So they'd had a  
6 very large --

7 Q. On the number of days --

8 A. -- time frame. So the number of days  
9 requested.

10 Q. Okay.

11 A. And I believe they estimated  
12 approximately 10 minutes a day, so they would have  
13 taken that calculation. So they would have taken the  
14 number of days times 10 minutes and then divided it by  
15 60 minutes to get the number of hours.

16 Q. Okay. So hypothetically if she'd asked  
17 for 365 days, because I guess it really is 365 because  
18 are people born and die --

19 A. Correct.

20 Q. -- not just week --

21 A. We don't get weekends off.

22 Q. Not just week days. As soon as I said  
23 that, I was like that's kind of -- of course that's  
24 true.

25 All right. So if it's 365 days for a

1 year, 10 minutes a day would be 3,650 minutes?

2 A. Uh-huh.

3 Q. And then divide by 60 to get the number  
4 of hours. So that would be 60.833 hours in this  
5 hypothetical?

6 A. Yes.

7 Q. And then you would apply that times the  
8 rate that we just discussed above?

9 A. Yes.

10 Q. Okay. How was the 10 minutes per day of  
11 request calculated or determined? Calculate might be  
12 the wrong word.

13 A. We'd asked staff for input.

14 Q. Okay.

15 A. And they suggested that we use that.  
16 It's my personal opinion that that is a low estimate.

17 Q. Okay. And do you remember when you say  
18 "staff," who was asked this or who provided the  
19 10 minutes?

20 A. I would have to go back and ask  
21 specifically. It would have been staff within the  
22 Bureau of Vital Statistics.

23 Q. And that would be to do what?

24 A. To enter the information into the  
25 computer system, make sure all the correct boxes are

1 checked and the programming and parameters and  
2 everything is set appropriately to run the report  
3 and -- and get it generated.

4 Q. Okay. And this is all done via one or  
5 more computer systems?

6 A. Yes.

7 Q. Okay. All the records that have been  
8 requested here are maintained on one or more computer  
9 systems?

10 A. Correct.

11 Q. None are manually on paper anywhere that  
12 you were at least going to review?

13 A. We would not be pulling manual paper  
14 records to count them, no.

15 Q. Okay. And was the methodology to  
16 determine the number of hours the same for the death  
17 listings as requested in Topic 11?

18 A. Yes.

19 Q. The same 10 minutes per day?

20 A. Yes.

21 Q. Are the -- in big picture terms, the  
22 birth listings and death listings maintained on the  
23 same computers?

24 A. They're maintained probably on the same  
25 servers.

1 Q. Okay.

2 A. Not -- they're not maintained on  
3 individual computers.

4 Q. Okay.

5 A. They're within a computer system.

6 Q. Okay.

7 A. An information system.

8 Q. And the same information system? The  
9 birth and death are on the same information system?

10 A. I believe so.

11 Q. In arriving at an estimate of 10 minutes  
12 per day, was that methodology used on the assumption  
13 that there would be specific searches for each day?

14 A. Yes.

15 Q. So the estimate of 10 minutes per day was  
16 for a -- one or more research analyst one, two or  
17 three to enter a separate search for birth listings  
18 for each specific day that fell within the request?

19 A. Yes.

20 Q. And the same for the death listings?

21 A. Yes.

22 Q. All right. Topic Number 13 asks when the  
23 department determined that the list requested by my  
24 client could be run one year at a time rather than one  
25 day at a time?

1           A.       Well, I think we had some e-mails from  
2 you around August or so of -- I don't remember if it  
3 was 2016 or 2017. I'm guessing it was 2016, if I  
4 remember correctly.

5           Q.       Yes. Yes.

6           A.       Indicating that there was some internal  
7 discussion and disagreement within the department.  
8 The analysts, the Bureau of Vital Statistics where we  
9 were making the determination of the 10 minutes per  
10 day, were operating under the assumption that's what  
11 the statute allows.

12                    So when we were saying we can run it this  
13 way, the Department Director's Office and the Office  
14 of General Counsel were understanding them to say we  
15 can't technologically run it that way. There was a  
16 time in there that there was a disconnect.

17           Q.       Just like we had our disconnect  
18 earlier --

19           A.       Correct.

20           Q.       -- on what a research analyst one makes.

21           A.       Uh-huh. It was a disconnect where the  
22 Director's Office and OGC believed us to be saying it  
23 could not be done. We were saying because of statute,  
24 we didn't believe we could do it that way. They  
25 didn't understand it could be done that way. The

1 analyst knew it could be done that way --

2 Q. Okay.

3 A. -- technologically.

4 Q. That's what happens when you play lawyer.  
5 They should have stayed at a Holiday Inn Express the  
6 night before. They would have got it.

7 Okay. So the answer to Topic Number 13  
8 is the -- I'll call them the analysts knew all along  
9 that technologically they could run it one year at a  
10 time?

11 A. Technologically we knew it could be run  
12 in batches. How big of a batch we could run, given  
13 our technology parameters and limitations at the  
14 State, we were unsure of.

15 Q. Okay.

16 A. How -- because sometimes you put in those  
17 bigger batches and what happens is it just churns and  
18 never actually runs.

19 Q. Exactly. Yeah. Yeah. But the people  
20 and the Bureau of Vital Statistics had been saying, We  
21 can't run it other than a day, because they thought  
22 that's the only thing they could do under the statute?

23 A. Correct.

24 Q. And then following my exchange of  
25 correspondence with the Office of General Counsel,

1 there became an understanding that if we can run it in  
2 batches -- I guess the question was asked can you run  
3 it in batches and the answer was yes?

4 A. Correct.

5 Q. Did there come a conclusion that you  
6 could run it in one-year batches?

7 A. Tech-- technologically, yes.

8 Q. Okay. Yeah, forgetting the legal issue.

9 A. Correct. Because I'm -- I don't know  
10 that that's ever really been resolved of whether it  
11 can be done that way or not.

12 Q. Sure. Yes. And I didn't mean to -- I  
13 didn't mean to ask that. I meant to ask again this  
14 idea that if you get too big a batch, it just sits  
15 there and runs.

16 A. Correct.

17 Q. Did you determine that you could run a  
18 yearly batch and that would be effective?

19 A. Yes.

20 Q. Okay. Do you know -- did you look for a  
21 decade batch, do you know?

22 A. I do not believe we did. I believe based  
23 on their daily work with it, that that would not -- it  
24 wouldn't run.

25 Q. Okay. So you believe somewhere



1 between -- you believe a one-year batch would work and  
2 a ten-year batch would unlikely -- not work. Was  
3 there any assessment of anywhere between those two?

4 A. I don't think so.

5 Q. Okay. And in terms of this one-year  
6 batch working, did that matter if it was birth or  
7 death records?

8 A. No.

9 Q. Did it matter if it was -- I'm going to  
10 call them older listings versus newer listings?

11 A. I don't think so. Not for the year. I  
12 think -- I think they ran. Actually, I shouldn't say  
13 that because I don't know that we -- we tried a year  
14 and it ran.

15 Q. Whatever you --

16 A. I don't know that we tried old ones and  
17 then new ones to see. And there is differences in the  
18 technology of how the older records were stored and  
19 maintained and there's differences in where the data  
20 elements were, because those certificates have changed  
21 over time.

22 Q. That's why I was asking. Yeah. Yeah.

23 A. Uh-huh.

24 Q. Okay. All right. So you've answered 14,  
25 how the department determined the list could be run

1 one year at a time. All right. What is the -- Topic  
2 15, what is your response?

3 A. My response is we always knew that they  
4 were governed under that statute.

5 Q. And Number 16, what is your answer?

6 MS. BLIGH: And just for purposes of the  
7 record, I'm just going to object to the extent that it  
8 seeks any communications between counsel and any  
9 attorney/client privileged communications.

10 THE WITNESS: It's my understanding there  
11 was a meeting held, I was not at that meeting, with  
12 our division director at the time.

13 BY MR. RHODES:

14 Q. And I'm sorry. That would have been?

15 A. Harold Kirbey.

16 Q. Okay.

17 A. And the Department Director --

18 Q. And that would have been?

19 A. -- Peter Lyskowski, Deputy Director Brett  
20 Fischer, and our Office of General Counsel to discuss  
21 the issue. And that was at the time that they had  
22 made the determination to exercise discretion and not  
23 release the information.

24 Q. And do you know when that meeting  
25 occurred, approximately?

1           A.     I'm trying to remember the date. I did  
2 try to go back and look them up. I want to say it was  
3 around -- it was in August. I just don't remember if  
4 it was 2016 or 2017.

5           Q.     It would have been 2016.

6           A.     Okay.

7           Q.     And to your knowledge, was that the first  
8 time that the director had any involvement in  
9 responding to this request?

10          A.     I -- I don't know. I don't know at what  
11 point the director was brought in.

12          Q.     You're not aware of any involvement he  
13 had before?

14          A.     There may have been e-mails. I don't  
15 know.

16          Q.     Okay. But you haven't --

17          A.     I hadn't sat down and I hadn't seen  
18 meetings or anything like that, no.

19          Q.     And the same with Mr. Fischer?

20          A.     Mr. Fischer was aware of the issue  
21 because I think he had some conversations when we were  
22 working on costs --

23          Q.     Okay.

24          A.     -- on invoices.

25          Q.     And is he still there?

1 A. No. He's retired.

2 Q. And Mr. Kirbey had been involved --

3 A. Uh-huh.

4 Q. -- all along?

5 A. Correct.

6 Q. All right. And Topic Number 17, what is  
7 your answer to that?

8 A. So there have been concerns raised about  
9 releasing the entire database of those born or died on  
10 a certain date with their names. There is well  
11 documented research that by simply having a person's  
12 name, place of birth, which is certainly included in  
13 that because it's only people born in Missouri -- so  
14 having a person's state that they were born in, their  
15 name and their date of birth is enough information to  
16 allow people to calculate Social Security numbers.

17 And by placing all of that information  
18 online in a searchable database, it makes it very easy  
19 to use algorithms and computer programming to  
20 correctly generate individual's Social Security  
21 numbers.

22 Q. Then why does the Missouri Secretary of  
23 State do that very thing?

24 A. The death information that they put out  
25 cannot be put out until after 50 years.

1 Q. I'm over 50 years old. Someone could  
2 hack my identity under your theory.

3 A. No. They have to be dead for 50 years  
4 before that information is released in the Missouri  
5 Secretary of State's database.

6 Q. And why is that?

7 A. For privacy.

8 Q. No, I mean is that by statute?

9 A. I don't know. I will have to double  
10 check on whether that's statute or regulation, but I  
11 know we are prohibited from releasing it. We do not  
12 turn it over to the Secretary of State's Office. And  
13 they release it at 50 years after the death.

14 Q. Okay. But you don't know what the reason  
15 for the delay is?

16 A. I'd have to --

17 Q. I mean, the statutory or regulatory  
18 reason?

19 MS. BLIGH: I'll just object to the  
20 extent that it calls for a legal conclusion.

21 THE WITNESS: Okay.

22 BY MR. RHODES:

23 Q. You don't know? I mean if you don't  
24 know, the answer is you don't know.

25 MS. BLIGH: If you don't know --

1 THE WITNESS: I don't know.

2 BY MR. RHODES:

3 Q. Yeah. Okay. 17 actually is the process  
4 by which this decision was made.

5 A. Uh-huh.

6 Q. Was that the same process? There was a  
7 meeting with the director, the Assistant Director  
8 Mr. Kirbey, and the Office of General Counsel?

9 A. Yes.

10 Q. Okay. Was anyone else consulted as to  
11 this security concern?

12 A. Outside of the department?

13 Q. Outside of those people who attended the  
14 meeting.

15 MS. BLIGH: And again, just limit --  
16 object to the extent that it calls for attorney/client  
17 communications.

18 Outside of that, you can answer.

19 THE WITNESS: Outside of the individuals  
20 I told you in the meeting --

21 BY MR. RHODES:

22 Q. Right.

23 A. -- myself and staff that deal with vital  
24 statistics and vital records had brought those  
25 concerns forward through me to the department.

1 Q. And when did you bring those concerns  
2 forward?

3 A. I don't remember the exact date. Those  
4 concerns had been brought forward for some time during  
5 this process.

6 Q. By you?

7 A. By me and my staff. There were internal  
8 discussions, yes.

9 Q. And how did you -- you said you brought  
10 these concerns forward. Who did you forward your  
11 concerns to?

12 A. Mr. Kirbey.

13 Q. Okay. And did you do that in writing?

14 A. I think it was probably primarily verbal.

15 Q. Do you believe -- do you recall any  
16 writing where you raised this concern? Any e-mail or  
17 memo or anything in writing where you raised this  
18 concern?

19 A. I forwarded some links to some articles  
20 that talked about the research that -- when that had  
21 come out, that there was a possibility for people to  
22 obtain Social Security numbers from this information.

23 Q. Okay. So you're saying that there's, on  
24 the internet, information about using a date of  
25 birth --

1           A.       There are published articles about  
2 research done I believe by Cornell University about a  
3 study that they did that shows how that information  
4 can be used to determine Social Security numbers.

5           Q.       And you believe you forwarded links to  
6 that research to Mr. Kirbey?

7           A.       Yes.

8           Q.       Okay. Anything else?

9           A.       Verbal discussions.

10          Q.       Anything else in writing?

11          A.       Not that I can recall.

12          Q.       And are you aware of anyone else  
13 providing input or raising concerns about security  
14 relating to these requests?

15          A.       In regards to 17 through the process?

16          Q.       Yes.

17          A.       I'm only asking for the distinction  
18 because you have some questions later about  
19 communications or those who have sent stuff, so I  
20 don't know where to --

21          Q.       Okay. Well, this is the process going  
22 into the request to deny based upon the security  
23 concerns. So this would have been information that  
24 was given to the decision makers prior to the decision  
25 being made in August of 2016.



1 A. I don't think so.

2 Q. Okay. Number 18. Can you provide us the  
3 answer -- the department's answer to Number 18?

4 A. So I'll just -- I'll take them one at a  
5 time.

6 Q. Okay. That would be great.

7 A. Okay. So it's my understanding the  
8 Social Security Death Master File, you have to be  
9 credentialed to utilize that system. So you have to  
10 go through a process. And those with a legitimate  
11 need to view that information are then granted access  
12 and they can use that to verify for employment  
13 purposes that the Social Security number of employees  
14 is valid and other legitimate business reasons such as  
15 that. That's my understanding of the Social Security  
16 Death Master File and how it's accessed.

17 Ancestry.com, I can't speak to it. We  
18 don't provide them information. They find it from  
19 publicly available sources is my understanding or what  
20 people voluntarily put into that system. But the  
21 Department of Health and Senior Services does not  
22 provide them information.

23 I can't speak to the California Birth  
24 Index and their laws. I don't -- I don't know what  
25 governs them.

1                   And the Death Certificate Database at the  
2 Missouri Secretary of State's website, as we  
3 discussed, that information is only made available  
4 upon 50 years of a person's death.

5           Q.     I want to go back to the California Birth  
6 Index. The question wasn't what are they allowed by  
7 law in California to post. The question is please  
8 explain the material difference between the security  
9 concerns allegedly presented by Ms. Ganz's request and  
10 the information available in the California Birth  
11 Index. And your answer is?

12           A.     I don't know what information is  
13 available in the California Birth Index.

14           Q.     And the same thing is true with  
15 Ancestry.com?

16           A.     Correct.

17           Q.     So you're not sitting here testifying on  
18 behalf of the department today that there are  
19 differences between those security concerns regarding  
20 the request by Ms. Ganz and Ancestry.com or California  
21 Birth Index because you don't know what's available  
22 there?

23           A.     I don't know what's available there. I  
24 don't know if they are different. If they're offering  
25 the same information, I would say the security

1 concerns are the same.

2 Q. Topic 19, what is the department's answer  
3 to Topic 19?

4 A. As the request was discussed and  
5 evaluated in that meeting, it's my understanding that  
6 as -- in working to get to a more reasonable cost  
7 estimate, we seem to have perhaps gotten away from the  
8 statute, which is a single listing for a single day.  
9 And that's not what was asking to be provided.

10 So as we tried to be more reasonable in  
11 cost, it seemed that we may be slipping farther away  
12 from what's allowed under the statute, and that's a  
13 question that's still up for discussion and decision;  
14 not by me. And then the issue of the security was --  
15 is a big deal and how they were going to post and use  
16 that information. And so the department exercised its  
17 discretion not to release this information.

18 Q. But to be clear, you say you've been  
19 raising security concerns since day one?

20 A. Correct.

21 Q. Were people just not listening to you?

22 A. There was internal discussion  
23 regarding -- it was -- it wasn't a matter of not  
24 listening. It was a matter of I believe focusing on  
25 going through the process. We were asked what it

1 would cost to do it. Figure out the cost and we'll  
2 talk about going forward.

3 Q. Wasn't that --

4 A. Because the first question was what was  
5 the cost.

6 Q. Why was that the first question?

7 A. I can't -- I can't speak to that.

8 Q. Does it make any sense to go through  
9 literally months of calculating the cost if the  
10 request was going to be denied all along?

11 A. I can't speak to that.

12 Q. Wasn't that a waste of your time and  
13 everybody else who worked on the cost estimates?

14 A. We were following directions we were  
15 given.

16 Q. And who --

17 A. We were asked.

18 Q. -- gave those directions?

19 A. We -- the request came forward and it  
20 asked -- that is typ-- that is not an unusual process.  
21 When the question comes in, the first -- because,  
22 frankly, a lot of times when someone asks for  
23 information, aside from this request, the requester is  
24 interested in how much is it going to cost. Because  
25 it's going to make a difference to the requester of

1 whether they actually want to go forward with it or  
2 not.

3           And so that -- it wasn't a matter of  
4 trying to waste time or do this. That's just simply  
5 how it goes a lot of times. Because we don't start on  
6 pulling information frequently until we can give the  
7 requester a baseline estimate and they can say, yeah,  
8 I actually do still want to go about this.

9           Q.     Can you think of any time where it's  
10 taken months to arrive at a cost estimate?

11          A.     It all depends on the nature of the  
12 request.

13          Q.     That wasn't my question. Can you recall  
14 a time, other than here, where it's taken months to  
15 arrive at a cost estimate?

16          A.     I don't know. I'd have to go back and  
17 look. I can recall times that it has definitely taken  
18 more than a couple of weeks to come up with a cost  
19 estimate, particularly when we're trying to make a  
20 clear determination of what specifically is being  
21 requested, which happens frequently.

22                   Might not have happened with this  
23 particular one, but people request stuff much like  
24 we've had our discussions and don't fully understand  
25 what one is asking for. So there's been more than one

1 occasion where it's taken significant time because we  
2 have lots of discussions about, you know, this is what  
3 you asked for but this is how the data is. Is that  
4 what you meant? And back and forth on the costs.

5 Q. But that's not -- that wasn't the delay  
6 here, was it?

7 A. The delay here was a debate over the  
8 cost.

9 Q. The request -- the original request made  
10 is still the request outstanding now, for the names  
11 and dates only. Correct?

12 A. Yes. Correct.

13 Q. And that would be a listing by day of  
14 persons born and a listing by day of persons who died?

15 A. Correct.

16 Q. So that was the original request?

17 A. Yes.

18 Q. And that's the request you spent months  
19 calculating how much it would cost to produce  
20 responsive information?

21 A. Yes.

22 Q. And so why was there a decision made to  
23 deny the request only after months had been spent  
24 determining the cost?

25 MS. BLIGH: I'm going to object that

1 that's been asked and answered with respect to her  
2 response to Number 19.

3           You can go ahead and answer again if  
4 you'd like, but --

5           THE WITNESS: So, you know, the initial  
6 request we talked about earlier, the disconnect  
7 between whether it can be -- whether legally it can be  
8 run on one day and technologically. So that took some  
9 time going back and forth with two sides not really  
10 understanding before that came to became clear.

11           And then with your request that it be run  
12 a year at a time and then, you know, making the  
13 determination can that, in fact, be run a year at a  
14 time technologically. So getting -- that took some  
15 time getting to that point alone. Because those are  
16 two -- as you know in the cost estimates, two very big  
17 differences in that cost estimate.

18 BY MR. RHODES:

19           Q. Let me stop you there. I agree with all  
20 that. And then I got a revised cost estimate of  
21 approximately 5,000 dollars.

22           A. Correct.

23           Q. And that was based upon running by year  
24 rather than by day?

25           A. Correct.

1 Q. So a determination had been made then  
2 that running the two respective requests by year would  
3 cost a total of approximately 5,000 dollars?

4 A. Uh-huh.

5 Q. Yes?

6 A. Yes.

7 Q. Okay. The request had not been denied at  
8 that point.

9 A. It had not been denied at that point, you  
10 are correct, but it also had not been approved.  
11 They -- they only focused on the cost to see if that  
12 was the direction that the requester wanted to go.  
13 And that is common practice with any request that  
14 comes in, whether it's this one or not. The initial  
15 focus is on what would it cost, to see if the  
16 requester is still wanting to proceed.

17 And then -- and this has just been the  
18 practice. Then they look at, okay, we can provide  
19 it -- not -- not -- technically we can provide it. We  
20 can generate the requested information or we have the  
21 requested information, determination and the cost of  
22 it. And then they proceed to now are we allowed to  
23 release it.

24 They start with the physically poss-- is  
25 it possible to even do what the request was and what



1 is the cost if it's possible. And then they focus on  
2 the and now can we.

3 Q. So a determination was made that it was  
4 physically, slash, technologically possible to fulfill  
5 the request at a cost of approximately 5,000 dollars?

6 A. Correct.

7 Q. So then what happened between that  
8 determination and the determination to deny the  
9 request?

10 A. At that point under any -- on almost all  
11 of our requests then they shift to, okay, technically  
12 it's possible. And then they shift focus and they  
13 gave -- they sent you the cost and then they shifted  
14 their focus to, okay, what's now allowable and what  
15 can -- you know, should be allowed and should do.

16 And then my understanding is at that  
17 point is when they began looking at the specificity of  
18 the law, a listing by a single day -- we seemed to be  
19 getting away from that language -- and the security  
20 concerns. And the decision was made to deny.

21 Q. Okay. You have said a couple times now  
22 the law allows a single listing for a single day. But  
23 you agreed earlier that the production would have been  
24 everybody born on a specific -- on one day and then  
25 the next sheet, the next table would have been

1 everybody born on the next day --

2 A. Correct.

3 Q. -- correct?

4 A. Correct.

5 Q. So that would be a single listing for a  
6 single day. Correct?

7 A. That would be a -- a database of an  
8 entire year.

9 Q. A database of 365 single listings of  
10 single days?

11 A. Correct.

12 Q. And so are you saying -- this is why I'm  
13 asking this. Are you saying the request was denied  
14 because it was not a request for a listing of  
15 individuals born on a single day?

16 A. I'm saying the request -- when they  
17 looked at it, I don't -- I don't know that legally  
18 it's ever been determined would that actually fit  
19 that. But we were uncomfortable because it appeared  
20 to be getting farther away from the language of the  
21 statute.

22 Q. Okay. But the specific question here is  
23 the reasons or reason the Missouri Department of  
24 Health and Senior Services decided to deny the  
25 request. Are you saying the request was denied

1 because the request did not comply with 193.245 or --

2 A. I'm saying that we're not sure it would  
3 have complied with that. And that, coupled with our  
4 security concerns as well, led to the determination to  
5 deny the request.

6 Q. So you are not testifying on behalf of  
7 the department that the request at issue here did not  
8 comply. You are only testifying that the request at  
9 issue here may not comply?

10 A. That's my understanding, but I -- I was  
11 not at that meeting, so I don't --

12 Q. Well, you're here to testify on behalf of  
13 the department in response to these topics. Correct?

14 A. Yes.

15 Q. And so your answer is not your personal  
16 knowledge, but what the department knows. You  
17 understand that?

18 A. Yes, I do. I didn't have -- I did not  
19 have specific discussion on this specific topic in the  
20 manner that you've presented it.

21 Q. So on behalf of the department, your  
22 answer is, in response to Topic Number 19, that the  
23 request was denied for two reasons. One, because of  
24 security concerns. Correct?

25 A. Correct.

1 Q. And we discussed those?

2 A. Yes.

3 Q. And two, because the request may not --  
4 but the department did not determine whether it, in  
5 fact, did not, but the request may not comply with  
6 193.245; is that correct?

7 A. Yes.

8 Q. And the answer to Topic 20 is what?

9 A. Garland Land was the previous state  
10 registrar for the department.

11 Q. Okay.

12 A. I think he -- he was there for a very  
13 long time, 30-plus years.

14 Q. And he's now retired?

15 A. Yes.

16 Q. And Mr. Ward replaced him?

17 A. No. There was another person in between.

18 Q. There was an interim in between?

19 A. There was another, uh-huh.

20 Q. Do you know that person's name?

21 A. Ivra Cross.

22 Q. I'm sorry?

23 A. Ivra Cross.

24 Q. And Mister?

25 A. Ms.

1 Q. Ms. I didn't recognize the name.

2 Ms. Cross still with the department?

3 A. No. Retired.

4 Q. She's retired. And Topic No. 21, what is  
5 the response?

6 A. To my knowledge, after there was some  
7 press articles, Garland Land reached out to the  
8 department and forwarded some information to us that  
9 he had forwarded to others. And then he had also made  
10 a phone call to one of our staff members saying that  
11 he was willing to help if we needed any assistance.

12 These were unsolicited communications.  
13 And at that time he also offered help for if we needed  
14 assistance in repealing the statute, that he would --  
15 he was volunteering to help. It was unsolicited.

16 Q. And did he actually provide any  
17 assistance?

18 A. Not to my knowledge, no.

19 Q. And what was -- what efforts did the  
20 department go to to get the statute repealed?

21 A. We would have made a request to the  
22 Governor's Office as part of our legislative policy  
23 for the session, that we would request the statute be  
24 repealed.

25 Q. And was there anything done beyond that?

1           A.     I believe there was a bill filed.     So I  
2 believe our legislative liaison probably spoke with a  
3 legislator. I can't recall which one filed the bill,  
4 but I do believe there was a bill filed or that  
5 language was put into an existing bill to have it  
6 repealed, but that bill did not pass.

7           Q.     And was there a hearing on that bill?

8           A.     I'd have to go back and double check.

9           Q.     Are you aware of any activities on behalf  
10 of the department to support that bill besides asking  
11 that it be introduced and the --

12          A.     I'm not aware of us actually testifying.  
13 I don't know that they would have needed us to testify  
14 at that particular point in time.

15          Q.     And you're not aware of there being any  
16 hearing on it?

17          A.     I'm not specifically aware, but I assume  
18 that there were.

19          Q.     Okay. And do you know if it ever got out  
20 of the committee?

21          A.     No. I didn't follow it that closely to  
22 see which stage it got to.

23          Q.     Do you know what committee this was?

24          A.     No. I'd have to go back and check.

25          Q.     And what's the answer to Topic 22?

1           A.     I don't believe we had any. We did  
2 receive -- the department did receive another  
3 unsolicited e-mail from I believe a genealogist  
4 stating her concerns with us releasing this  
5 information.

6           Q.     And you don't know of any others?

7           A.     I don't know really what you mean by  
8 affiliate of the department. I -- no, I don't believe  
9 we discussed this outside of department staff.

10          Q.     Okay. Let's go off the record.

11                   (A recess was taken.)

12                   (Exhibits 2, 3 and 4 were marked for  
13 identification.)

14 BY MR. RHODES:

15          Q.     Ms. Tesreau --

16          A.     Yes.

17          Q.     -- I want to show you what I've marked as  
18 Exhibits 2, 3 and 4 and ask you whether you were aware  
19 of these communications at the time that you answered  
20 the Topic number 22 in the request or whether you were  
21 unaware of them?

22          A.     I was unaware of them.

23          Q.     Okay.

24          A.     I didn't go through all the documentation  
25 that we submitted.

1 Q. That's fine. I just want to make sure  
2 you weren't distinguishing these for some reason from  
3 your answer to 22. You just were not aware of them?

4 A. Correct. I wasn't aware of them. I  
5 wasn't distinguishing them. But I would point out  
6 that these were each to what I believe would be his  
7 counterpart in those states.

8 Q. That's my assumption.

9 A. Yes.

10 Q. But the request for 22 --

11 A. Correct. Yes.

12 Q. Okay. You do agree, based upon what you  
13 see in front of you, that the communications in 2, 3  
14 and 4 would be responsive to Topic 22, but you just  
15 weren't aware of them at the time you gave your  
16 initial answer?

17 A. Yes.

18 Q. Do you know what the purpose of these  
19 communications in Exhibits 2, 3 and 4 was?

20 A. The purpose, I would assume --

21 Q. I'm sorry. I'm just saying do you -- are  
22 you -- I mean, I can assume based upon reading them,  
23 but do you know what the purpose was?

24 A. I think the purpose would have been to  
25 get information on how a similar state with a similar



1 record would -- or similar concerns would have handled  
2 a request of this nature. This was a very unique  
3 request and one that we had not had before.

4 Q. And do you know what the response was of  
5 any of these individuals?

6 A. I do not. I didn't -- I didn't know that  
7 the e-mails had gone.

8 (Exhibit 5 was marked for  
9 identification.)

10 BY MR. RHODES:

11 Q. Let me show you Exhibit 5. And were you  
12 aware of Exhibit 5 prior to today?

13 A. No.

14 Q. And do you know any of the individuals in  
15 Exhibits 2, 3 and 4?

16 A. I know Mr. Ward.

17 Q. I knew you were going to say that the  
18 minute I asked the question. Did you know any of the  
19 recipients of the e-mail in 2, 3 and 4?

20 A. I do not.

21 MR. RHODES: Off the record.

22 (Off the record.)

23 (Exhibit 6 was marked for  
24 identification.)

25 BY MR. RHODES:

1 Q. I'm going to show you Exhibit 6. And I  
2 believe that you testified that Mr. Garland reached  
3 out to the department following some publicity. Had  
4 you seen Exhibit 6 before today?

5 A. No, I had not.

6 Q. And I'm sorry. What is the name of the  
7 former registrar?

8 A. Garland Land.

9 Q. Garland -- so it's Mr. Land?

10 A. Yes.

11 Q. Garland is his first name?

12 A. Correct.

13 Q. And I will tell you that based upon the  
14 documents that the department has previously produced  
15 in this lawsuit, Exhibit 6 is the first document  
16 chronologically that I was provided in which Mr. Land  
17 is included.

18 A. Okay.

19 Q. What did you base your prior testimony  
20 that Mr. Land reached out to the department as opposed  
21 to what appears to be the opposite based upon  
22 Exhibit 6?

23 A. There was an e-mail that I had seen where  
24 Mr. Ward had indicated Mr. Land had contacted him, had  
25 called him about the information, the Reclaim The

1 Records. And there was an e-mail that I had seen that  
2 Mr. Land had forwarded to Mr. Ward that had an article  
3 attached about the -- the request. It was a news  
4 article.

5 Q. And who is Wayne Schramm --

6 A. Wayne --

7 Q. -- S-c-h-r-a-m-m?

8 A. He -- he was and may still be -- I'd have  
9 to double check -- an employee of the department.

10 Q. And what were his -- what was his title  
11 or responsibilities or duties in general?

12 A. He was an analyst. And then when he  
13 retired, he was a part-time employee who worked -- who  
14 telecommuted, worked for us. And that's why I say may  
15 still be. I'm not certain if he still is or not.

16 Q. And who is Chris Sutherland?

17 A. That name's not ringing a bell. This is  
18 6.

19 Q. What's the date of 6?

20 MS. BLIGH: July 21st.

21 BY MR. RHODES:

22 Q. July 21st. Be right back.

23 (Off the record.)

24 (Exhibit 7 was marked for  
25 identification.)

1 BY MR. RHODES:

2 Q. Going to show you Exhibit 7. Does this  
3 appear to be Mr. Land's response to Exhibit 6?

4 A. It does appear to be so.

5 (Exhibit 8 was marked for  
6 identification.)

7 BY MR. RHODES:

8 Q. And I'm going to show you Exhibit 8. And  
9 is Exhibit 8 the e-mail that you referred to that was  
10 the basis of your earlier answer that Mr. Land had  
11 reached out to the department following some publicity  
12 about this lawsuit?

13 A. I think so.

14 Q. Okay. So you see now that based upon  
15 Exhibit 6 and 7, that, in fact, it was the department  
16 who reached out to Mr. Land in July, well before there  
17 was any publicity about this lawsuit. Correct?

18 A. I don't know that I can say that, because  
19 the -- the e-mail from the department in July of '16  
20 says, Thank you for taking the time to discuss. I  
21 don't know who called who. Because I also know that  
22 there was an e-mail that said he called us.

23 Q. Okay. Well, there was no -- there was no  
24 lawsuit in July.

25 A. Correct.

1 Q. So there was no publicity in July.

2 A. Correct. I'm simply saying this e-mail  
3 dated -- from a department employee that says, Thank  
4 you time -- thank you for taking the time to discuss,  
5 I don't know who called who.

6 Q. Do you know why Mr. Land would have been  
7 aware of the request --

8 A. I do not.

9 Q. -- in July of 2016?

10 A. I do not. I do not.

11 Q. Do you have any reason to believe he  
12 would have been aware of the request other than being  
13 informed by someone from the department?

14 A. I do not.

15 (Exhibit 9 was marked for  
16 identification.)

17 BY MR. RHODES:

18 Q. I'm going to show you Exhibit 9 and ask  
19 you to tell me which portion of these relates to a  
20 request for birth or death records?

21 MS. BLIGH: And I'm just going to -- I'm  
22 going to object that the question is vague as to what  
23 you mean by which one of these. I don't even know  
24 that we know what this is.

25 MR. RHODES: These notes -- these were

1 documents -- unfortunately, because it has this big  
2 black, you can't see, but these are documents produced  
3 by the department.

4 MS. BLIGH: Okay. And I'm sorry. I just  
5 didn't see a Bates number.

6 MR. RHODES: You can't see a Bates number  
7 because of the giant black on the bottom.

8 MS. BLIGH: Sure. Sure.

9 MR. RHODES: In fact, I can probably tell  
10 you what the Bates number is. 834 and 835.

11 MS. BLIGH: Okay.

12 THE WITNESS: The only iss-- the only  
13 thing that I see on this document is a notation for --  
14 to call Harold and Keri regarding birth and death  
15 requests 1910 to 2015.

16 BY MR. RHODES:

17 Q. Okay. So the next thing below that, Mak  
18 agreed to drop identifiers. You don't believe that  
19 relates to a request --

20 A. No.

21 Q. -- for birth or death records?

22 A. No. Not as it pertains to this case.

23 Q. Or any birth or death records? Remember  
24 because this -- one of the topics here is all birth  
25 and death record listing requests.

1 A. Uh-huh.

2 Q. And I'm just asking the information  
3 underneath, Call Harold, slash, Keri --

4 A. The information here is birth and death  
5 record request listing, so the listing under 193.145  
6 [sic].

7 Q. Exactly. And I just don't know what  
8 this --

9 A. No. That would not have been under  
10 there.

11 Q. Okay. That's all I wanted to know  
12 because I had no idea what --

13 A. Uh-huh.

14 Q. -- what it was.

15 (Exhibit 10 was marked for  
16 identification.)

17 BY MR. RHODES:

18 Q. I'm going to show you Exhibit 10. And  
19 the top e-mail from Mr. Ward, who was the state  
20 registrar. Correct?

21 A. Correct.

22 Q. Says, FYI, I've called Stacy and she's  
23 going to talk to Harold. We're not to do anything for  
24 now until -- until Stacy gets back to me. Vital  
25 records are not Sunshineable.

1 Do you see that?

2 A. Yes.

3 Q. You had testified that no one looked at  
4 whether these records were responsive and producible  
5 until after the cost estimate had been prepared.

6 A. I had testified that the department --  
7 the department director, the upper levels of the  
8 department had not sat down to make that  
9 determination.

10 Q. And Mr. Ward as the state registrar has  
11 no role in that?

12 A. He has a role. And that was something  
13 that we had talked about earlier, that we had raised  
14 these concerns. But the process for moving forward,  
15 as we discussed earlier, was making the determination  
16 is it technically possible to produce the information  
17 or do we have the information that has been requested  
18 and what is the cost to do it before they move onto  
19 should we, could we under the law do it.

20 This information -- I mean this is  
21 consistent with what I had said. We -- the program  
22 and others, myself included, had voiced concerns, but  
23 that wasn't the process for going through to make the  
24 determination at the department.

25 Q. How can you say this e-mail is consistent



1 when the state registrar says, quote, We're not to do  
2 anything for now?

3 A. It's -- that statement is in regards to  
4 generating lists. We weren't going to begin  
5 generating lists and incurring costs.

6 Q. He says, Until Stacy gets back to me.  
7 Who is Stacy?

8 A. Stacy Kempker is an administrative  
9 assistant.

10 Q. To?

11 A. To Harold Kirbey and now to myself. And  
12 so it was about her communicating back to him whether  
13 we're supposed to start -- what the decision, the  
14 determination of whether we should start generating  
15 lists.

16 Q. And the e-mail as to Janet Wilson, who  
17 was she at the time?

18 A. She's one of our employees, I believe.  
19 Yes.

20 Q. What was her job?

21 A. She's the BRFSS and the YRBS County Level  
22 Study it says below -- down below on that document and  
23 mor-- Missouri cancer registry coordinator.

24 Q. That's B-R-F-S-S, comma, Y-R-B-S.

25 And do you know why she was involved in

1 this request?

2 A. It would have been helping direct and  
3 assisting in the collection of the request if we were  
4 to generate those lists.

5 Q. And Lynette Jackson also received the  
6 e-mail?

7 A. She was support person in -- for Bureau  
8 of Vital Statistics.

9 Q. And David Kelly?

10 A. One of our employees.

11 Q. And what was his job?

12 A. I'll have to double check, but I believe  
13 he was an analyst.

14 Q. And Lois?

15 A. Also one of our employees.

16 Q. And her job?

17 A. I'll have to double check. At the time  
18 she was either a supervisor or a manager in that unit  
19 or an analyst in that unit.

20 Q. In response to Topic 19, after looking at  
21 Exhibit 10, are you -- is the department now saying  
22 that the request was denied because, quote, vital  
23 records are not Sunshineable, closed quote?

24 A. It is our position that vital records are  
25 governed by Statute 193.245, which is different than

1 the Sunshine statutes, yes.

2 Q. So is it the department's position that  
3 my client's requests were denied because, quote, vital  
4 records are not Sunshineable, closed quote?

5 A. It's the department's position that vital  
6 records are governed by 193.245, which is not part of  
7 the Sunshine statute.

8 Q. And is it the department's position that  
9 my client's listings are not covered by the Sunshine  
10 Law?

11 A. Yes.

12 (Exhibit 11 was marked for  
13 identification.)

14 BY MR. RHODES:

15 Q. Let me show you Exhibit 11. I want to  
16 ask you about the e-mail that starts in the middle of  
17 the first page on Exhibit 11 from Cherri Baysinger.  
18 Tell me what Ms. Baysinger's job was at the time.

19 A. She's a section administrator for the  
20 section for Epidemiology for Public Health Practice,  
21 which would include the Bureaus of Vital Statistics  
22 and Vital Records.

23 Q. And this e-mail went to you?

24 A. Yes.

25 Q. Mr. Kirbey at the time was your boss?

1 A. Yes.

2 Q. Lisa Brown, what was her job at the time?

3 A. She was the other deputy director for the  
4 division.

5 Q. Okay. And Ms. Baysinger states in the  
6 last paragraph on this page, She started down the  
7 these are public records street.

8 A. Yes.

9 Q. Do you know what that means?

10 A. Just -- I'm assuming she was saying that  
11 Ms. Ganz was indicating that these records are a  
12 public record.

13 Q. Oh, down -- oh, it's slang for she  
14 started down the road with the argument that these are  
15 public records?

16 A. That's how I would interpret that, but --

17 Q. Okay. Now I get public records street.

18 A. -- I didn't write it.

19 Q. I would have put public road.

20 I told her that Missouri is not an open  
21 records state and that there was a process in our  
22 Vital Records law to release birth and death listings.

23 Is it the department's position that  
24 Missouri is not an open records state and was that the  
25 basis for the denial of my client's request?

1           A.       In regards to open record -- or in  
2 regards to vital statistics, vital records, these  
3 records, yes, they are governed by 193.245.

4           Q.       And specifically birth and death  
5 listings?

6           A.       A listing of birth and death as  
7 requested, yes.

8           Q.       So it's the department's position that as  
9 to birth and death listings, quote, Missouri is not an  
10 open records state, closed quote?

11          A.       Correct. It's governed by 193.245.

12                   (Exhibit 12 was marked for  
13 identification.)

14 BY MR. RHODES:

15          Q.       I want to show you Exhibit 12. This is  
16 an e-mail from Stacy Kempker. And in the first  
17 paragraph it reads, This is the quote for this DOB  
18 Sunshine request. It would be the same for the DOD  
19 one.

20                   Do I take it these are abbreviations for  
21 date of birth and date of death?

22          A.       Yes. That's what I would assume.

23          Q.       The only information that we would be  
24 allowed to give them is the DOB or DOD and a name in  
25 no corresponding order. There would be no way to

1 identify John Doe died or was born on this day.

2 Do I correctly read this that Ms. Kempker  
3 was stating that you would provide a list of names --  
4 let's say there was a request for two days, date of  
5 birth -- listing -- birth listing for two days,  
6 September 1st and September 2nd. That she would  
7 provide the list of names in one response and the  
8 dates in another so that you would have no way of  
9 knowing if John Doe died or born on September 1st or  
10 September 2nd?

11 A. If the request -- as stated here, for  
12 December 10-- 1910 to the 2015, for those dates, yes,  
13 that's what she was talking about in this regard.

14 Q. Yes.

15 A. That if -- going back to the are we  
16 asking for a specific day or are you asking for a  
17 batch? So if you asked for a batch, we would give you  
18 all of them and not do the delineation.

19 Q. So if there was -- if Jane Doe was born  
20 on -- well, let me go back to using John Doe.

21 If John Doe was born on September 1st and  
22 Jane Doe was born on September 2nd and those were the  
23 only two people born in the state on those two dates  
24 and I made a request for births on September 1st and  
25 2nd, you'd give me Jane and John Doe, but you wouldn't

1 tell me which day they were born on?

2 A. That's what we would go back and forth on  
3 getting the specificity of what you're requesting. It  
4 could be interpreted both ways. So yes, if the  
5 request came in and said, I need everybody who's born  
6 on September 1st and 2nd, that can be interpreted two  
7 different ways. And I could give you, as you stated  
8 in your example, two names and no distinction of what  
9 day they were born or the dates with -- distinguished.

10 Q. Is that what Ms. Ganz's request was?

11 A. I have to look back. I think it's on  
12 here.

13 So just speaking directly to this  
14 example, and I would use this example that we applied  
15 to all of them. This is what we run into all the time  
16 with data when I talk about we would go back and forth  
17 with requesters because it can be very unclear even  
18 when it seems clear what they're asking for.

19 You could read her request both ways. So  
20 when she's giving us the statute, in which case she  
21 indicates Missouri's Vital Records statutes are  
22 governed by 193.245.1 -- she points to point one.  
23 She's saying a listing of persons who are born or die  
24 on a particular date. And she says, Based on this  
25 statute, I would like to order such a listing covering

1 all persons born in the state of Missouri between  
2 January 1, 1910 and December 31st, 2015.

3 Without clarification between the  
4 requests -- the requester and ourselves, I think two  
5 different individuals could interpret that two  
6 different ways. And one could say they want a listing  
7 of everybody between 1910 and 2015 that doesn't  
8 distinguish between -- they want a listing. Well,  
9 that would be a listing that doesn't distinguish who  
10 was born on which days.

11 Q. Doesn't she say, This is a request for  
12 just the basic index to the births?

13 A. Yes. But that's still the same thing.  
14 She's making the distinction between I'm asking for a  
15 listing and not actual birth certificates.

16 Q. Right. She didn't say a listing. She  
17 said an index. You can't have an index of just names  
18 without dates, can you?

19 A. I don't know.

20 Q. What do you think an index is? What do  
21 you think a birth index is?

22 A. A listing of people born.

23 Q. Without regard to when they're born?

24 A. It could be.

25 Q. You think that's a birth index?



1           A.       Depends on what a researcher is looking  
2 for.

3           Q.       I'm asking what you think.

4           A.       Yes. I think it could be both ways if --  
5 and again, that's where we're going with these  
6 different things. Depending on what a researcher or  
7 an individual who's requesting this is looking for,  
8 perhaps they're interested in names. So the index  
9 would be the names because it's a listing of the  
10 names. Or they're interested in the dates. I -- I  
11 don't know without that clarification.

12          Q.       And when did you obtain that  
13 clarification?

14          A.       That was part of everything that was  
15 going back and forth. So I'm assuming we got  
16 additional feedback after this e-mail from Ms. Kempker  
17 saying we would be -- if you give a listing from 1910  
18 to 2015, it would have all of the names, but not a  
19 distinction between the days.

20          Q.       But you don't know when that  
21 clarification would have come?

22          A.       I don't know when that e-mail would have  
23 come, if we got clarification that came back in. I'm  
24 assuming we did, but I don't know what date.

25          Q.       Did the department deny my client's

1 request because it didn't understand whether it wanted  
2 to match the names to the dates?

3 MS. BLIGH: Okay. Objection. I'm going  
4 to object to the extent it's been asked and answered.  
5 I think Ms. Tesreau has indicated multiple times why  
6 the department denied the request.

7 THE WITNESS: Okay.

8 MS. BLIGH: You can answer if you'd like.

9 THE WITNESS: On the -- I mean --

10 BY MR. RHODES:

11 Q. Do you want me to repeat the question?

12 A. Yeah, that's fine.

13 Q. Did the department deny my client's  
14 request because it didn't know whether Ms. Ganz wanted  
15 the names matched to the dates?

16 A. No.

17 MS. BLIGH: Same objection.

18 THE WITNESS: Okay.

19 (Exhibit 13 was marked for  
20 identification.)

21 BY MR. RHODES:

22 Q. I'll show you Exhibit 13. In Exhibit 13  
23 Ms. Wambuguh -- am I close?

24 A. Wambuguh.

25 Q. Wambuguh stated she had spoken to

1 Ms. Ganz and discussed the following points. One, we  
2 can only provide name and date for listing birth or  
3 death. Do you see that?

4 A. Yes.

5 Q. Why would she say that if that's not  
6 true?

7 A. Can you restate? I'm not sure what  
8 you're asking.

9 Q. I thought you said that it was denied  
10 because the department can't provide a name and date  
11 for birth and death listings.

12 MS. BLIGH: I'm going to object. I'm not  
13 sure that that's an accurate recitation of what you  
14 testified to. I just -- I think -- I think what she  
15 testified to is what they can and what they -- what  
16 they can technologically provide as opposed to what  
17 they should provide with respect to the particular  
18 statutory wording is different.

19 THE WITNESS: So I think this e-mail is  
20 consistent with what I have said. When going back and  
21 speaking with someone, what she's -- what -- what  
22 Mrs. Wambuguh is lining out here is that under  
23 193.245, we can only provide a name and a date.  
24 Again, this would be looking at it as if someone was  
25 asking us for a listing for a particular day. So it's

1 talking about the technicality of what can we provide.

2 BY MR. RHODES:

3 Q. Okay.

4 A. It's not talking about what we are  
5 legally allowed to provide or whether the department  
6 would exercise discretion in provision of.

7 Q. And I need to go look for something.

8 Do you remember which exhibit was where  
9 we discussed how you -- the number of days in the  
10 request? Didn't we look at that earlier today?

11 A. I don't think so in an exhibit.

12 Q. Oh, I thought we did. Oh, it's right  
13 here, Exhibit 12. If you'll look at Exhibit 12.  
14 Right -- oh, that's 13.

15 Okay. So we talked about Exhibit 12 and  
16 I want to go back to this. The second full paragraph,  
17 for birth using the mainframe. Do you see that  
18 paragraph?

19 A. Yes.

20 Q. From December 1, 1910 to December 31,  
21 2015 is 38,381 days --

22 A. Yes.

23 Q. -- correct?

24 A. Yes.

25 Q. So I want to make sure I understand your

1 position since your counsel has indicated that she  
2 thinks I may not understand it. Are you saying that  
3 if my client had made 38,381 separate requests, one  
4 for each day, the department would have fulfilled  
5 those requests?

6 A. No, I'm not saying that.

7 Q. Well, that's why I asked that question  
8 because you keep saying the statute only allows a  
9 listing for one day.

10 A. Correct.

11 Q. And prior to the change in policy in  
12 response to this lawsuit, the department regularly  
13 satisfied requests for birth or death listings for one  
14 day.

15 A. Correct.

16 Q. So why are you -- why is your answer to  
17 my question no, that if my client had made 38,381  
18 separate requests --

19 A. Uh-huh.

20 Q. -- you would have denied them?

21 A. Because we would have seen the volume of  
22 requests and that it was requesting all of the  
23 information that was in there and we would have  
24 questioned why are we requesting 38,000 listings. And  
25 the information that was provided with that request is

1 to publish them. That raised -- that would have  
2 raised security concerns. And I think we would have  
3 had the same result where we would have exercised  
4 discretion and denied the question.

5 Q. But you would not have denied it on the  
6 grounds that the request was for more than one day,  
7 would you?

8 A. Collectively that they were asking for  
9 38,000 days, yes.

10 Q. But you keep saying the statute only  
11 allows one request for one day.

12 A. The statute allows one request for one  
13 day and the statute --

14 Q. Does the --

15 A. -- grants us discretion on granting those  
16 requests. And so what I had testified to is that  
17 routinely when we received a request from an  
18 individual for a day or two days, we typically granted  
19 it.

20 This request, even if they had asked for  
21 individual days, would have been very far outside the  
22 norm of what we have ever been asked to provide  
23 before. And I am confident that it would have raised,  
24 to the level of internal discussion much like this  
25 request did, about whether it was appropriate,

1 allowable to release this data.

2 Q. Okay. That's why we're here, to keep  
3 drilling down. So are you now saying in response to  
4 Topic Number 19 that the reason or reasons the  
5 department denied the request all related to the  
6 exercise of the department's discretion?

7 A. I'm not sure I'm grasping all related to  
8 the exercise of discretion.

9 Q. Okay. Let's say I asked for all listings  
10 of elephant births.

11 A. Yes.

12 Q. I assume you would deny that on the  
13 grounds that you don't have those?

14 A. Correct.

15 Q. Okay. I don't know why I came up with  
16 elephant, but I just did.

17 And let's say I asked for a listing of  
18 individuals born in Cole County, Missouri on  
19 September 28th, 1956. You would deny at least that  
20 part of the request that -- well, you would deny that  
21 request?

22 A. Correct.

23 Q. Because you believe that information is  
24 not allowable under the statute?

25 A. Yes. Statute says we can provide a

1 listing for Missouri.

2 Q. Correct. So under the department's  
3 interpretation of the statute, you believe the statute  
4 also says you may deny a request that's otherwise  
5 allowable under the statute, i.e., a request for just  
6 the names and date of a particular date?

7 A. Yes.

8 Q. So did the department deny my client's  
9 request because the request did not fit within the  
10 allowable information, i.e., a listing of names of  
11 persons born in Missouri on a specific date, or did it  
12 determine that the request was within the allowable  
13 information but the department would nevertheless  
14 exercise its discretion to deny the request?

15 A. I think it was a combination of factors.  
16 Yes, the department -- even if -- the department  
17 believes that even if there is a request within the  
18 parameters of the statute, it has discretion to deny  
19 that request.

20 Q. I understand that.

21 A. I think all of those factors played into  
22 the denial of this request.

23 Q. Okay. Well, was one of those factors the  
24 department's belief that the -- that the request did  
25 not fit within the allowable parameters, without



1 regard to the exercise of discretion of the statute?

2 A. I think there was concern that the manner  
3 in which it was asked to be provided does not fit  
4 within those parameters.

5 Q. Which is exactly why I asked my question.  
6 A req-- 38,381 separate requests for just the specific  
7 information listed in the statute, i.e., a listing of  
8 persons born on each of those dates --

9 A. Correct.

10 Q. -- the only basis the department had --  
11 would have for denying each of those requests was  
12 under the department's discretion?

13 A. Correct.

14 Q. Okay. And you believe the department  
15 would have exercised the same discretion in denying  
16 those individual 38,381 requests --

17 A. Yes.

18 Q. -- as it did in response to the  
19 request --

20 A. Yes.

21 Q. -- that was submitted?

22 A. Yes.

23 (Exhibit 14 was marked for  
24 identification.)

25 BY MR. RHODES:

1 Q. Let me show you Exhibit 14. Exhibit 14  
2 is an e-mail from Ms. Loethen --

3 A. Loethen.

4 Q. -- Loethen to me dated July 22nd, 2016 in  
5 which she states, Staff is reviewing the information  
6 you provided below to determine whether lists  
7 compliant with Section 193.245 could be created in  
8 fewer hours, thereby reducing the cost estimates.

9 Section 193.245 is the statute we've been  
10 talking about today?

11 A. Correct.

12 (Exhibit 15 was marked for  
13 identification.)

14 BY MR. RHODES:

15 Q. And then I'll show you Exhibit 15. And  
16 if you turn to the second page, you'll see that this  
17 is -- the top of the second page is the same e-mail  
18 that we just looked at from Exhibit 14. I then  
19 respond to her asking her to provide me an update.  
20 And then she responds to me with e-mail that's on the  
21 first page of Exhibit 15 dated August 1st. Do you see  
22 that?

23 A. Yes.

24 Q. And she indicates at this point that  
25 staff has determined that they can run the list for

1 one year at a time versus one day at a time as  
2 originally estimated. Correct?

3 A. Yes.

4 Q. And these lists are the lists that in  
5 this e-mail chain she tells me are lists compliant  
6 with Section 193.245. Correct?

7 A. What she's saying is they can run lists  
8 one year at a time. I don't believe she's saying that  
9 those lists are, in fact, compliant with 193.245.

10 Q. Well, on July 22nd she wrote me and said,  
11 Staff is reviewing the information you provided below  
12 to determine whether lists compliant with Section  
13 193.245 could be created in fewer hours, thereby  
14 reducing the cost estimates. I will check the status  
15 of this and get back to you. Correct?

16 A. That is what she put on there, but our  
17 staff would only be -- our staff could not answer  
18 whether they're compliant with 193.245. Our staff  
19 would only be dealing with the technologically can we  
20 run this.

21 Q. But Ms. Loethen would be capable of  
22 making that determination, wouldn't she?

23 A. Yes. But I don't know that she had at  
24 that point.

25 Q. Didn't she tell me that she would provide

1 me the estimate on providing lists compliant with  
2 Section 193.245 and didn't she provide me that on  
3 August 1st?

4 A. She determined on -- the e-mail that she  
5 sent on August 1st stated that they could run the list  
6 for one year at a time. She did not indicate on  
7 August 1st that that would be compliant with the  
8 statute.

9 Q. But what list would she be running unless  
10 it was the list that she said, quote, Lists compliant  
11 with Section 193.245?

12 A. She also -- I don't -- I don't know. I  
13 would not necessarily take that to state definitively  
14 that that's -- those lists are compliant with 193.245.

15 Q. Well, what other list do you think she  
16 was giving the estimate for? The list of elephant  
17 births?

18 A. No. She was giving information because  
19 you had requested that we try to find a way to run it  
20 in a shorter amount of time with fewer hours. At that  
21 particular point in time during those conversations,  
22 to my knowledge, they had not sat down and had a  
23 discussion of whether that listing was still compliant  
24 with 193.245.

25 Q. Okay. How do I determine the date of

1 this meeting that you've referred to in which the  
2 decision was made?

3 A. I'll have to go back and look. Or if we  
4 can take a break, I can call back and try to determine  
5 it.

6 Q. Yeah. If we could do that, please. That  
7 would be great. Thank you. We can do that now.

8 A. Okay.

9 (A recess was taken.)

10 BY MR. RHODES:

11 Q. Okay. Do you have the answer?

12 A. Yes. Can you restate the question,  
13 please?

14 Q. Do you know the date of the meeting at  
15 which the decision was made to deny my client's  
16 request?

17 A. It was August 8th of 2016.

18 Q. And that was at the meeting that you  
19 previously discussed?

20 A. Yes.

21 Q. Okay. That's all I have. Thank you.

22 MS. BLIGH: Is that for the entire  
23 deposition?

24 MR. RHODES: For the entire deposition.

25 MS. BLIGH: Okay.

1 THE COURT REPORTER: Signature?

2 MS. BLIGH: We'll waive signature.

3 (Signature waived.)

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CERTIFICATE OF REPORTER

I, Tracy Thorpe Taylor, CCR No. 939, within the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



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Tracy Thorpe Taylor, CCR, CRR

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COURT MEMO  
IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

GANZ, )  
vs. ) Case No. 16AC-CC00503  
MISSOURI DEPARTMENT OF HEALTH )  
AND SENIOR SERVICES, )

CERTIFICATE OF OFFICER AND  
STATEMENT OF DEPOSITION CHARGES  
(Rule 57.03 (g)(2)(a) & Sec. 492.590 RSMO 1985.)

Deposition of Kerri Tesreau  
Taken on behalf of plaintiff  
July 27, 2018

Name and address of person or firm having custody of  
the original transcript:

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TAXED IN FAVOR OF: BERNARD RHODES  
TOTAL.....\$\_\_\_\_\_

TAXED IN FAVOR OF: SHAWNA BLIGH  
TOTAL.....\$\_\_\_\_\_

Upon delivery of transcripts, the above charges had  
not been paid. It is anticipated that all charges  
will be paid in the normal course of business.