



PUBLIC INTEREST LAW  
CENTER OF PHILADELPHIA

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October 3, 2012

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1974-1976

**SENT VIA EMAIL**

Andrea Bankes  
Department of Public Welfare  
Right to Know Law Office  
P.O. Box 2675  
Harrisburg, PA 17105-2675  
ra-dpwrkl@pa.gov

Dear Open Records Officer Bankes:

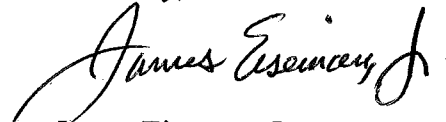
Pursuant to Pennsylvania's Right-to-Know Law, the Public Interest Law Center of Philadelphia writes to request certain documents and records from the Department of Public Welfare. The enclosed form details the request. If the responsive documents and records are already in digital format, or if conversion to digital format is not cost-prohibitive, then I would prefer to receive them in digital format.

The Public Interest Law Center of Philadelphia is a not-for-profit organization incorporated in Pennsylvania.

If you would like to contact me in writing, I would prefer that you contact me via email at [jeiseman@pilcop.org](mailto:jeiseman@pilcop.org). I would also appreciate it if you would copy my colleague Ben Geffen on all correspondence, at [bgeffen@pilcop.org](mailto:bgeffen@pilcop.org).

Thank you for your attention and assistance.

Sincerely,

  
James Eiseman, Jr.

JEjr/crm  
Enclosure



**REQUEST FOR ACCESS TO PUBLIC RECORDS UNDER  
THE PENNSYLVANIA RIGHT-TO-KNOW LAW**

<b>TO:</b>	Andrea Bankes Agency Open Records Officer Department of Public Welfare P.O. Box 2675 Harrisburg, PA 17105-2675	RTKL Request: _____ Date Request Received: _____ Date Response Sent: _____
<b>REQUESTOR:</b>	Public Interest Law Center of Philadelphia _____ Name United Way Building 1709 Benjamin Franklin Parkway, 2nd Floor _____ Address Philadelphia, PA 19103 _____ Address 215.627.7100 Ext. 226 _____ Telephone 215.627.3183 _____ Facsimile jeiseman@pilcop.org _____ Email	<b>SEND RESPONSE TO:</b> Public Interest Law Center of Philadelphia _____ Name United Way Building 1709 Benjamin Franklin Parkway, 2nd Floor _____ Address Philadelphia, PA 19103 _____ Address 215.627.7100 Ext. 226 _____ Telephone 215.627.3183 _____ Facsimile jeiseman@pilcop.org _____ Email

Pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. § 67.101, et seq., I hereby request that the Department of Public Welfare provide me access to the records identified or described below.

1	Please see the attached request.
2	
3	
4	
5	
6	

Please Note: The Pennsylvania Right-to-Know Law allows the Department of Public Welfare to charge for the cost of postage, duplication, certification and other costs necessarily incurred to respond to your request.

1) As used in this request, the following terms have the meanings assigned to them below.

(a) "Southeastern Pennsylvania" means Philadelphia, Montgomery, Bucks, Delaware, and Chester Counties.

(b) "Medicaid" means Pennsylvania's medical assistance program conducted pursuant to Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 *et seq.*

(c) "DPW" means the Pennsylvania Department of Public Welfare.

(d) "Medicaid HMO" means those corporations and/or other organizations with which DPW contracts or has contracted to provide coverage to Medicaid recipients.

(e) "Medicaid Dental Subcontractor" means those corporations, subsidiaries and/or other organizations (including, but not limited to, Dentaquest, and/or Dental Health Providers) with which any Medicaid HMO contracts and/or subcontracts, and/or has contracted and/or subcontracted, to engage dentists (and/or other providers of dental services) to provide dental services to Medicaid recipients.

(f) "Document" means any medium on which printed or electronic information is stored, including but not limited to paper and discs.

2) This request seeks all documents described below that contain information relating to any period from July 1, 2008 until June 30, 2012.

3) Each and every document, including contracts, rate schedules and correspondence in DPW's possession, custody, or control that: (a) sets forth the amount for any one or more dental procedure codes that any Medicaid HMO and/or Medicaid Dental Subcontractor pays or has paid to dentists (and/or other providers of dental services) for the provision of dental services to Medicaid recipients in Southeastern Pennsylvania, or (b) otherwise establishes the rate of payment by which any Medicaid HMO and/or Medicaid Dental Subcontractor compensates or has compensated dentists (and/or other providers of dental services) for the provision of dental services to Medicaid recipients in Southeastern Pennsylvania.

4) This request is not intended to seek the production of any document which was previously requested in response to the request of the Public Interest Law Center of Philadelphia and James Eiseman, Jr. dated June 17, 2011. However, in interpreting the scope of that June 7, 2011 request, the ruling on May 21, 2012 of the Hearing Examiner in *Eiseman v. DPW*, AP-2011-1098, sustaining Mr. Casey's objection shall be deemed applicable and the scope of the June 17, 2011 request shall be deemed so limited. *See* Hearing Transcript, attached as Exhibit A, at 146; *see also id.* at 140-46.



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**Quality Work. Quality People.**

**Eiseman v. DPW**

**Date:** May 21, 2012

**Before:** Hearing Examiner Finkelstein

Printed On: October 3, 2012

Sargent's Court Reporting Services, Inc.

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**EXHIBIT**

**A**

tabbles®

1 operates with the same dental subcontractor?

2 A. Do you mind saying that again?

3 Q. Sure. I'll rephrase that. I may have said it  
4 confusingly. Is it ever the case that there are, for  
5 example, two or more MCOs that use the same dental  
6 subcontractor to negotiate rates for the individual  
7 providers?

8 A. Yes.

9 Q. And so isn't it the case then when that happens  
10 that subcontractor would know the rates that were  
11 negotiated for individual dentists for two different  
12 MCOs?

13 A. Certainly.

14 ATTORNEY CASEY:

15 I'm going to object at this point. He  
16 has not asked --- the requests do not cover rates at  
17 that level. He has asked for rates that the MCOs pay,  
18 the MCOs pay only. It is not getting into what the  
19 MCO pays the subcontractor, the subcontractor then  
20 pays the provider. He's trying to get at those rates.  
21 You haven't asked for those rates. They're not  
22 relevant. I object to the relevance.

23 ATTORNEY GEFFEN:

24 A couple responses to that. One is that

25 DPW has conceded that it has in its possession,

1 custody or control the rates that are paid to dental  
2 providers and would release that information to the  
3 requester if the ultimate decision on the merits were  
4 that those data are subject to release under the Right  
5 to Know Law.

6 The second response is that if it's the  
7 intervener's position that they don't possess or have  
8 in their custody or control the rates paid to  
9 individual providers, then I would submit that they  
10 lack standing to challenge the release of that  
11 information and that the wrong parties have intervened  
12 in this case concerning the dental contractors. If  
13 I ---.

14 ATTORNEY CASEY:

15 Can I just read the portion --- the only  
16 request that involves the MCOs is number three. It  
17 says each and every document including correspondence  
18 and appendices that sets forth any rate payment  
19 including but not limited to capitation rates that DPW  
20 pay. Okay. That's DPW. Request number four,  
21 paragraph four, each and every document including  
22 correspondence and appendices in the DPW's possession,  
23 custody or control that sets forth the amount of any  
24 one or more individual dental procedure codes that any  
25 Medicaid HMO pays to provide dental services to

1 Medicaid recipients in Southeastern Pennsylvania. So  
2 if you are asking for the rates that their  
3 subcontractors pay, you have not asked for that by  
4 request.

5 ATTORNEY CRUMB:

6 And on behalf of DPW, I have not conceded  
7 that we possess these things. We forwarded this  
8 request for those rates that the MCOs pay to the MCOs.  
9 And they claim those rates to be their trade secrets  
10 and confidential proprietary information. I continue  
11 to say that we may possess some of those rates in any  
12 form. And, of course, there's still the trade secrets  
13 and confidential proprietary information of the MCOs,  
14 unless somebody hold to the contrary.

15 ATTORNEY CASEY:

16 Well, our position is they are not ---  
17 the subcontractor's rates to providers are not  
18 relevant.

19 HEARING EXAMINER:

20 Mr. Geffen, how would you ---?

21 ATTORNEY GEFFEN:

22 I'm looking at my document now at ---.

23 Forgive me now. Can we have a moment?

24 HEARING EXAMINER:

25 Sure.



1 ATTORNEY GEFFEN:

2 I'm referring to the August 25th, 2011

3 response by DPW to the Complainant's arguments. On  
4 page --- it's not numbered, but it's page six.

5 There's a paragraph in the middle of the page. The  
6 paragraph that begins, if the public record is not in  
7 possession --- that paragraph. About halfway down it  
8 says, each of the SE MCOs notified DPW that they  
9 considered their dental rates to be trade secrets  
10 and/or confidential proprietary information. To the  
11 extent that the MCOs' position is held to be incorrect  
12 by the Office of Open Records and/or Court, DPW  
13 exercises its right and powers under its contract with  
14 the MCOs for the purpose of obtaining those records  
15 for the provision of Mr. Eiseman. So I mean, I'm  
16 relying on the attorney's representation that the  
17 pleading in this case is foundational in this case  
18 that each of the SE MCOs notified DPW that they  
19 considered their dental rates, et cetera ---.

20 ATTORNEY CASEY:

21 Okay. Stop there. The key word is

22 their, their dental rates. Now, as our witnesses will  
23 testify, the MCOs' rates --- our witness will testify  
24 that they have some subcontracting work and then some  
25 direct with the provider. In each case they protect

1 the confidentiality of their rates to either the  
2 provider or the subcontractor. But the subcontractor  
3 deals with those contracts with its own provider  
4 network. It's not called for by the request. And  
5 he's asking for the MCOs' rates, whether it's the  
6 subcontractor or the providers. What he's not getting  
7 is that the witness is the subcontractor's witness,  
8 which he did not ask for.

9 ATTORNEY MYERS:

10 And I would add that he's attempting to  
11 use the DPW's response as a mechanism to expand the  
12 scope of his request. You can't use someone else's  
13 response. It doesn't matter what they say. You can't  
14 expand the scope of your request. The request didn't  
15 call for that information.

16 ATTORNEY GEFFEN:

17 And I would respond that our request does  
18 call for that information.

19 ATTORNEY MYERS:

20 Where?

21 ATTORNEY GEFFEN:

22 Paragraph four, which is the request ---.

23 HEARING EXAMINER:

24 One at a time.

25 ATTORNEY GEFFEN:

1 And it says that we want each and every  
2 document including correspondence and appendices in  
3 DPW's possession, custody or control that sets forth  
4 the amount for any one or more individual dental  
5 procedure codes that any Medicaid HMO pays to provide  
6 dental services to Medicaid recipients in Southeastern  
7 Pennsylvania. And I believe the testimony will show  
8 that the HMO pays the subcontractor because the  
9 subcontractor will take steps to provide those dental  
10 services to Medicaid recipients.

11 ATTORNEY CASEY:

12 I agree. You can ask him about the rates  
13 the HMO --- ask all the witnesses about the rates that  
14 the MCOs pay to their subcontractors. What I suggest  
15 is that you cannot ask --- it's not relevant to this  
16 hearing what the subcontractors in turn pay providers  
17 in that situation, because you haven't asked for it.

18 ATTORNEY GEFFEN:

19 No, what we've asked for is the total  
20 amount that the MCOs pay to the subcontractors. What  
21 we have asked for is the amount for any one or more  
22 individual dental procedure codes that they pay the  
23 subcontractor.

24 ATTORNEY CASEY:

25 You can ask him about what they pay. You

1 can't ask him about the subcontractors. You should've  
2 said the HMOs and/or the subcontractors.

3 ATTORNEY GEFFEN:

4 I don't know how we could've made  
5 paragraph four much clearer.

6 ATTORNEY CASEY:

7 I do.

8 HEARING EXAMINER:

9 Mr. Casey's argument sounds --- that's  
10 the way I read it.

11 ATTORNEY GEFFEN:

12 Then it's my understanding that there's  
13 no party intervening today to challenge the release or  
14 to assert that there's a trade secrecy or confidential  
15 proprietary information interest in whatever portion  
16 of the ---.

17 HEARING EXAMINER:

18 You never asked for it to begin with.

19 ATTORNEY GEFFEN:

20 Then to the extent that's the conclusion,  
21 then we'll try and work through ---.

22 HEARING EXAMINER:

23 My ruling, I'm sustaining Mr. Casey's  
24 objection.

25 BY ATTORNEY GEFFEN: