

Iowa Department of Public Health Inquiry No. 7.

8/10/2008

Thomas Newton, Director  
Iowa Department of Public Health  
Lucas State Office Building  
Des Moines, Iowa 50319-0075

Re: Computer systems and distribution of information concerning complaints for smoking ban enforcement.

Director Newton,

As you are aware, the Iowa Department of Public Health adopted and filed rules to implement the Smoke-free Air Act of 2008, House File 2212, on June 27, 2008.

**Background:** Included in the health department's rules is the following text concerning a system for complaints (I have added the underlines):

“153.8(1) Duties of department. The department shall maintain a system for receiving and investigating complaints against persons who own, operate, manage, or otherwise have custody or control of a place where smoking is prohibited and who fail to comply with the provisions of Iowa Acts, House File 2212.”

“153.8(6) Review of complaint by department. Upon receipt of a complaint, the department or its designee may contact the individual making the complaint to confirm the details of the complaint and obtain any additional information.”

The above system clearly applies to the health department's tobacco prevention and control policies and actions because that is the purpose to which it is dedicated. I am concerned about the above rules because they are exclusively focused on business owners and do not place a corresponding or equivalent emphasis on information concerning individual persons who engage in behavior that violates the Smokefree Air Act (smoking in public places). I am also concerned about the above rules because the health department has stated an affirmative duty to create a system to receive and investigate complaints but has not undertaken a corresponding duty to contact individuals who file complaints or to or to confirm details of a complaint. This raises a serious question in my mind as to the quality and integrity of information to be included in the health department's new system.

My concerns as stated above were strongly amplified when I reviewed RFP (Request for Proposal) Concept Paper # 57, presented to the Iowa Technology Governance Board by the Iowa Department of Public Health and dated December 7, 2007. The RFP is identified as “Web-Based Information System for Tobacco Control Partnerships.” The RFP outlines descriptions and criteria to create a computer system for the health department that is projected to cost \$150,000. Included in that concept paper are the following excerpts that I have paraphrased below:

Goal: To increase communication between contractors and statewide partners in tobacco prevention and control in Iowa. The third year of the contract will begin a process to look at the possibility of managing action plans and reports on-line through this information resource center.

Background: The interventions are meant to reduce exposure of individuals to second-hand smoke and to encourage cessation of tobacco use. Local partnerships are seen as the local experts and resource to the community for tobacco programs and activities. It is important that they are kept aware of initiatives and have access to all available information that is pertinent to their job.

Expected Results: Provide an environment where individuals and organizations can collaborate, communicate and share information and network with each other. Coordinate the systematic flow of information. Make relevant information accessible to statewide partners.

Some of the Recipients of this Service: The American Lung Association, American Cancer Society, American Heart Association, and the Iowa Tobacco Prevention Alliance will all be granted access to the site as well as other statewide tobacco control partners.

The American Lung Association, American Cancer Society, American Heart Association are significant and sustaining tobacco control grant recipients of the Robert Wood Johnson Foundation. The foundation ranks among the largest institutional shareholders of NicoDerm CQ Nicotine Replacement Therapy patch manufacturer, Johnson & Johnson. For example, as of March 31, 2008 Yahoo finance reported that the Robert Wood Johnson Foundation owned about 1.2 percent of the outstanding shares of Johnson & Johnson valued at approximately \$2.3 billion. Smoking bans materially support increase sales of smoking cessation Nicotine Replacement Therapy delivery device products. The organizations to be included in access to the Iowa Department of Health's computer system are therefore interlinking entities with a private foundation and pharmaceutical corporation. Clearly, the foundation and corporation have a multi-billion-dollar vested interest in obtaining and using to their mercantile advantage information contained in the Iowa Department of Public Health's prospective computer system.

The flow of money can also define the flow of information. In this case, a reported \$13.4 million flows into the Iowa Division of Tobacco Use and Prevention Control for GY 2008 under the auspices of the Iowa Tobacco Use Prevention and Control Commission; the division writes the rules for prohibition of smoking in public places; a commission voting member is the regional government relations director for the American Cancer Society; the American Cancer Society is a grant beneficiary of the Robert Wood Johnson Foundation; and the Robert Wood Johnson Foundation ranks among the top ten institutional shareholders of NicoDerm CQ patch manufacturer Johnson & Johnson. Based on the money flow one reasonably anticipates that information contained in the Iowa Department of Public Health's computer system can and will follow the same trail.

Questions: Considering that the stated purposes of the Iowa Department of Public Health's computer system are to manage action plans and to collaborate, both of which include smoking ban enforcement, I ask the following:

1. What part of HF 2212 explicitly authorizes disclosure of complaint or compliance information contained within the Iowa Department of Health's smoking ban enforcement system to private advocacy groups, private foundations or private corporations of any nature or for any purpose?
2. What information concerning complaints or enforcement related to the Smokefree Air Act will be shared with any private entity Non-Governmental Organization (NGO) outside the Iowa Department of Public Health, including the American Lung Association, American Cancer Society, and American Heart Association?

3. By what statutory authority would or does the Iowa Department of Public Health distribute sensitive compliance or other enforcement information concerning individual small businesses in Iowa than can prospectively include business names, owner names, addresses, and telephone numbers plus a description of an alleged violation, to any Non-Governmental Organization (NGO) or other private business interest?

Finally, please note that this inquiry has been sent by both U.S. Mail and through the health department's Web form. I request a response by both E-Mail and letter from the health department.

Respectfully,

Todd Shanno  
President and Director  
Iowans for Equal Rights