



Idahoans for Openness in Government

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Carol Moehrle
Director, NCHD
215 10th St.
Lewiston, ID 83501

P.O. Box 9391
Boise, Idaho 83707

Phone: 208 336-2854
www.openidaho.org

Dear Director Moehrle:

We write to you today to apprise you of a very serious public health concern in our state – a matter of life and death. It also concerns openness in government, which is the primary mission of Idahoans for Openness in Government (IDOG), a non-profit, non-partisan coalition that works to educate government officials, the press and the public about the importance of compliance with Idaho’s open government laws. The concern is this: We strongly urge you to promptly identify nursing homes or other long-term care facilities in Idaho with COVID-19 infections or deaths, along with numbers. Making this information public is crucial to our public health and safety in Idaho.

This story starts in Lewiston, where residents of Nez Perce County were alarmed in April when their county suddenly shot up to the highest per-capita death rate in the state from COVID-19, with 19 deaths. Rumors were rampant in the community that they were all at one nursing home, Life Care Center, which is the same company as the Kirkland, Wash. nursing home where the pandemic’s first outbreak occurred.

The company that owns the center sent Lewiston Tribune reporters to its national arm with their inquiries, and the national arm stonewalled, refusing to tell the Lewiston newspaper anything. The Public Health-Idaho North-Central District reacted similarly, claiming, erroneously, that to tell the community what was actually happening with this sudden rash of deaths would violate HIPAA. The newspaper wasn’t seeking names of individuals or any private health information – just the location of the deaths, so the community would know what was happening and the furor of rumors could be put to rest.

Eventually, the newspaper was able to chip away at the story by contacting the surviving families, which they were reluctant to do. It turned out that 18 of the 19 deaths were residents of the Life Care Center in Lewiston. Once the newspaper had that information, the national company opened up and agreed to discuss what was going on.

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There's a significant difference in how Idaho's seven public health districts are approaching this, with each district director apparently having carte blanche to decide what information to release and what not to release. Some, like Central District Health, have released the names of long-term care facilities with COVID-19 outbreaks and the number of cases at each, even putting out a press release about a major outbreak at a local facility; others have refused, providing only blacked-out, useless information to reporters and the public with no facility names or numbers.

When questioned about this matter by the press, Gov. Brad Little and state Health & Welfare Director Dave Jeppesen have claimed that to name a nursing home, or even a zip code or city name, in a small community would effectively identify the person who was sick and died, and that is private information. This is not accurate. People have a right to know about public health concerns in their community – including when they're considering placing a loved one in a recently opened bed at a local long-term care facility. Idaho's health districts have never hesitated to name restaurants that violate sanitation standards or that have an employee who has been documented to have a communicable disease; they do so to protect the public health. This information must be released for the same reason.

In addition, people who have died don't have a privacy right in the fact of their death.

We have heard that lobbyists for the nursing home industry have been putting lots of pressure on local health districts to suppress this information, in an effort to protect their private business interests and avoid any harm to their reputations. If true, this is extremely inappropriate, not to mention illegal if not reported as lobbying activity. In our state, we don't subordinate public safety to anyone's private profits; that's a matter of law, as witnessed by our public health reports on restaurants.

One of our IDOG board members shared an experience at his employer, a state agency, where an employee tested positive for COVID-19, and the memo to other employees was so uninformative that no one could tell if they had had contact with that employee or not – an important issue of public health and safety, and for that matter, life and death. Going the extra mile to somehow over-accommodate privacy concerns is not appropriate when it compromises public health.

Back in Lewiston, it's interesting to note that the public reaction to the Lewiston Tribune's reporting was not to disparage the local Life Care Center, but instead was one of overwhelming support for its local employees and how hard they'd worked through the outbreak and how they'd implemented every preventive measure but still the facility was stricken. A.L. Butch Alford, semi-retired former Lewiston Tribune publisher and an IDOG board member, said, "The public and the surviving families came to the defense of the individual employees, and talked

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about how the guidelines were followed. They could not explain why it happened. ... The local center was critical of the national organization for not being open about what was going on.”

In this time of public health crisis, it is exceedingly important to follow the law, including the provisions of the Idaho Public Records Act, and to keep the public informed. Please release the names of nursing homes with COVID-19 infections and deaths, including numbers. Idahoans deserve to know.

Sincerely,

The IDOG Board

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