



Sue Simon – Editor
 2230 E. Bradford Ave., #H
 Milwaukee, WI 53211
 Phone (800) 556-5866
 FAX (414) 962-2197
 susanksimon@aol.com

Funeral Monitor

Subscription Office
 761 Lighthouse Ave #A
 Monterey, CA 93940
 Phone (800) 453-1199
 FAX (831) 657-9137
 info@funeralmonitor.com
 www.funeralmonitor.com

Ron Hast – Publisher
 Phone (800) 766-4278
 FAX (415) 435-7415
 RonHast@aol.com

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Freedom of Information Far From Free

By all appearances, the Massachusetts' Division of Professional Licensure may be more concerned with business-as-usual than accountability, transparency, safeguarding consumer protections, and maybe even enforcing its own laws. The disconnect between the bureau's talk and its walk has left some wondering why.

In late January, the consumer activist who has tirelessly spent the better part of a year simply trying to verify the existence and soundness of the \$30-plus million said to be deposited with Wachovia Bank in Cooperative Funeral Fund preneed contracts in the state, filed an "Application for Complaint" with DPL against "all licensed funeral establishments that placed preneed funeral contract funds in Massachusetts Funeral Service Escrow Account managed by CFF, and the managers of those establishments."

After reviewing the complaint and "seeking the opinion of the funeral board," the assigned DPL investigator "was told to return" copies of the complaint to the activist, with this explanation: "It is necessary for you to identify specific funeral homes and licensees in order for this to be in an acceptable format. This would require individual complaints against both the establishment and the licensee."

Fair enough, thought the activist. "If I am to provide the identities of the establishments, DPL needs to let me see and copy the reports." So he filed a freedom of information request seeking to examine the state's annual preneed reports between 1992 and 2004.

And DPL went from uncooperative to obstructionist.

"I assumed," says the activist, "since they *had* the reports, they might have been

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willing to look them up themselves. But no, they collect the reports and level a fine against folks that don't send them in, but are apparently not willing to read them."

Public records, according to DPL, are defined as "all books, papers, maps, recorded tapes, financial statements, and statistical tabulations...unless such materials fall within exemptions" such as "personnel and medical files or information...social security numbers, a person's home telephone number, bank account numbers, transcripts, recommendations, and so on." In which case before the records could be made public, they'd have to be reviewed and redacted, or entirely exempted from dissemination.

Although the preneed funeral reports do "not specifically request information that would need to be redacted...funeral directors who file the reports frequently include information on the form that is not specifically requested but still falls under the 'Personal Privacy Exemption...'"

This is rich. The board attorney says FH owners "frequently" fill in blanks that do not exist. That they voluntarily include extraneous, personal information about specific clients on annual, one-page preneed summary reports. Yet the activist says, "In the past and without making copies, I have looked at three different years of annual preneed reports. In NO case did I see even ONE example of exempt material."

For its part, the state apparently accepts what it claims are more-detailed-than-necessary reports as preneed Gospel, but can't make them public until it reviews and removes some of the information. For which the requester must pay. Through the nose.

"Pursuant to 950 CMR 32.00, the Division's fees for review and copying of public records are as follows:

Attorney review: \$25/hour
Xerox: 20 cents/page
Case retrieval/redaction time:
\$14/hour

"At this time, it appears that there is a maximum of 700 preneed funeral reports filed with the division each year.....[and] a maximum of 6,300 reports that will have to be retrieved, reproduced, reviewed, and redacted for compliance with exemptions from the public records law." (Three years have been lopped off the request. The staff can't locate any records from 1999 "due to the recent physical reorganization of the division;" the 2003 reports "are currently the subject of an investigation and therefore exempt from disclosure;" and the 2004s don't have to be filed until the end of June.)

"The division believes there will be an average of two pages associated with each

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Editor: Sue Simon
Publisher: Ron Hast
Associate Publisher: Allan Abbott
General Manager: Gregory Abbott
Communications: Ingrid Abbott

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report, totaling approximately 12,600 pages. Fees for copying those documents are estimated to be a maximum of \$2,520.00 (12,600 pages x 20 cents/page). The division further estimates approximately 23 hours for retrieving, reproducing, reviewing, and redacting the records. Fees for this work are estimated to be a maximum of \$322 (23 hours x \$14). The division then will require a review by the legal department of the final work product to ensure legal compliance, which it estimates will take approximately four hours. Fees for this work are estimated to be a maximum of \$100 (4 hours x \$25). Based on the above estimates...the total estimated fee for the documents and work associated with the division's response to your public records request would be \$2,942.00.

"If you wish the division to continue to process your request, please send...a check or money order...for the specified

amount..."

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If the division of professional licensure actually cared about the financial health and welfare of the FHs under its jurisdiction, it might be examining its own files rather than trying to sell them for a price it understands full well is beyond the means of an unpaid, volunteer watchdog. He owns a portable scanner, however, and in an effort to keep the investigation affordable, asked for permission to use it in the DPL offices. "Because copying the requested records is an integral part of the review and potential redaction of exempt information," he was told, "the division is unable to permit you to copy the documents you have requested with your own machine."

What the world needs now is an army of Elliott Spitzers. Or maybe just one in Massachusetts.

Monitoring.....

To Everything, There Is a Season

After a decade of devoting his Sunday nights to offering a virtual buffet of opinion, fact, and fancy to participating industry leaders nationwide at www.funeralserviceprofessional.com, host and "community leader" FD **John McDonough** of Lovely Lowell, Massachusetts, had his electronic rug pulled out from under him in early June by the Masters of the Universe at AOL-Time Warner.

"We are writing to let you know that on June 8, 2005, AOL's volunteer Community Leader Program will be discontinued," explained AOL just a week before it shuttered the program. "...As a volunteer community leader, you have been a good

neighbor to other members in AOL's communities. Whether it's because you're enthusiastic about new technology, great at conversation, good with other people, have personal interest in your communities, or are driven by the urge to help others, you and other members like you have assumed an active role in the communities you love. You welcomed people, introduced them to others, helped them settle into AOL's communities, and contributed to a positive online experience for so many people online.

"In recognition of your participation in AOL's volunteer program, you will receive a credit toward twelve (12) months of AOL service.....After that time, your account will automatically convert to a paid member account that will be billed to a method of