

# Inside Healthcare Computing

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July 17, 2007

Mr. Steve Kelly, CIO  
Wilkes Regional Medical Center  
1370 West D Street, North Wilkesboro, NC 28659

Dear Mr. Kelly:

Thank you for your prompt response to *Inside Healthcare Computing's* request for public records at your public institution, specifically the Master Software License and Services Agreement dated May 5, 2006 that Wilkes Regional Medical Center signed with QuadraMed® Corporation. We have considered the points raised in your denial of the request and those cited by Mr. Wells, QuadraMed® Corporation's Assistant General Counsel, in his accompanying letter and respond to them, for the record, as follows:

- Mr. Wells contends that our request lacks legal authority. Specifically, that my citation of NCGS §132 applies only to "agencies of North Carolina or its subdivisions," that Wilkes Regional Medical Center is not such an organization therefore the law is not enforceable against the hospital. This is not correct: NCGS §132-1 states that "an agency of North Carolina government or its subdivisions shall mean *and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.*" Therefore, Wilkes Regional Medical Center operates as a public entity (is listed as such in a directory of public hospitals) and is subject to the North Carolina Public Records Law.
- We re-emphasized that we are not seeking any trade secret or competitive financial information that the vendor submitted during the competitive bidding process. The competitive bidding statute of the North Carolina Public Records Law (G.S. § 143-52) provides that every bid or proposal submitted to a public agency shall become public record and be made available for public inspection following award of the contract. Although the law states that "*trade secrets, test data and similar proprietary information*" included in a bid or proposal may remain confidential," it does not protect the final price(s) a public agency agrees to pay for a product or service rendered once a contract has been awarded.

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QuadraMed® Corporation's claim that the final price is protected under the law and that this information is propriety is not supported by the North Carolina Public Records Law. Moreover, a public agency is accountable not only as to how it spends the public's monies, but how much is ultimately spent.

As stated in our original letter, pursuant to G.S. § 132-6(c), a request cannot be denied "*on the grounds that confidential information is co-mingled with the requested non-confidential information.*" The statute provides for redaction of such information. *IHC* maintains that the finalized contract, including line item expenditures, is a public record. However, we also agree to and expect the hospital and vendor to redact material that legally constitutes a trade secret, as defined in General Statute 66-152, specifically any code, formula, method, device, pattern, procedure, process or proprietary material—such as a profit/loss statement, statement of assets, salary structure, or marketing plans.

- The "nondisclosure" clause 7.A, specifically referring to "this Agreement" cannot shield the entire contract from public access. A mutually obligatory nondisclosure clause is standard practice in vendor dealings with private hospitals, but the North Carolina Public Records Law (and federal law) creates a statutory mandate that holds public hospitals to a higher level of openness and runs counter to blanket nondisclosure agreements that vendors have a vested interest in enforcing. Moreover, the non-disclosure agreement, itself, contains exceptions that exempt information from disclosure protection. North Carolina's Public Records Law provides the right to obtain information, and, therefore supersedes contradictory provisions in the nondisclosure agreement the hospital signed with QuadraMed® Corporation. It is incumbent upon Wilkes Regional Medical Center to release the contract after redacting only trade secret or propriety information legally determined to be protected from disclosure by state law.
- We are surprised that Mr. Wells found our request for information to which the public is entitled to be "legally threatening," when we were simply exercising the public's right to information codified by state (and federal) laws. When a legitimate public records request is denied, obtaining the statutory citation of the specific provision(s) of law upon which the denial is based is reasonable, normal and legal. Our letter neither implied nor stated any threat; it is a civil request for a public record, *made according to law*.
- Regarding Mr. Wells' comment that there are "amicable and proper fashions for *bona fide* reporters who want to write a story about QuadraMed® and Wilkes" collaboration to contact the vendor and hospital "to initiate a possible dialog." With all due respect, it is not within Mr. Well's purview to question my credentials as a *bona fide* reporter in relationship to the request. North Carolina's Public Records Law provides, in G.S. § 132-6, that public records may be requested by "any person." The requester's purpose is irrelevant, and public officials are prohibited from inquiring about it G.S. § 132-6(b). However, we did, out of courtesy, explain who we are and the purpose of our request in our original letter.

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Mr. Wells' statement above seems to reflect the vendor's desire to control the editorial content of the story. *Inside Healthcare Computing* is a subscriber-supported trade journal that takes no advertising from vendors. Our readers—CIOs, IT Directors, and vendors—count on us for cutting edge reporting that gets the real story behind the press releases.

I assure you that this request is part of an ongoing study by *Inside Healthcare Computing* of the costs and purchase terms of hospital software, hardware, systems integration, implementation, maintenance, and consulting services. Our reporting helps hospitals, such as yours, negotiate better prices with vendors and explore new approaches to systemic HIS solutions. We believe this kind of reporting is essential to reducing the cost of healthcare, and in so doing, serves a vital public interest. We have made similar requests at hundreds of public hospitals nationwide and have accessed more than 300 HIS contracts to date.

*Inside Healthcare Computing* desires to resolve this matter in a quick, productive manner, with the least possible burden on the hospital. We reaffirm our request that a copy of the May 5, 2006 QuadraMed® Corporation contract\* (suitably redacted) be provided to *Inside Healthcare Computing*. We agree to reimburse Wilkes Regional Medical Center for all copying and postage costs to have the material mailed to our editorial office in Durham (address on letterhead).

If I may address any further issues of concern, please contact me directly. Thank you in advance for your time and consideration.

Sincerely,

**Rachel Ross @ the Research Desk**  
**310-287-0905 rrsearch@ca.rr.com**  
**INSIDE HEALTHCARE COMPUTING**  
**Los Angeles, California**

cc: Mr. Tim Dotson, Editor, *Inside Healthcare Computing*  
Ms. Catherine Schwartz, Publisher, *Inside Healthcare Computing*  
Mr. David W. Wells, Assistant General Counsel, QuadraMed® Corporation  
Mr. Antony Rispoli, CFO, WRMC

\* QuadraMed's LIS; QuadraMed's radiology/PACS offerings, Affinity® HIS, Quantim® health information management (HIM); TempusOne® enterprise scheduling products; advanced patient care technology using QuadraMed's CPOE.

Final resolution: Contact received Aug. 22, 2007.