

IN THE SUPREME COURT OF OHIO

CLEVELAND CLINIC FOUNDATION )  
FAIRVIEW HOSPITAL, )

Appellants, )

v. )

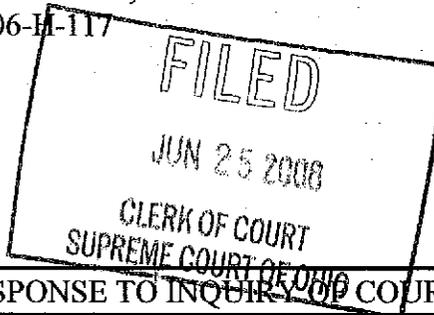
RICHARD LEVIN, TAX )  
COMMISSIONER, BEACHWOOD CITY )  
SCHOOL DISTRICT BOARD OF )  
EDUCATION, AND CLEVELAND )  
MUNICIPAL SCHOOL DISTRICT )  
BOARD OF EDUCATION, )

Appellees. )

CASE NO.: 08-0411

APPEAL FROM THE  
BOARD OF TAX APPEALS

BTA CASE NUMBERS  
2005-V-1726, 2006-V-99  
2006-H-117



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Now comes Appellees, Beachwood City School District Board of Education and Cleveland Municipal School District Board of Education, to respond to the request of the Court for the parties to address the following two issues:

1. When a public office as litigant obtains documents through civil discovery, do those documents become “public records” that the agency must disclose upon request, or do those documents qualify as “trial preparation records” that are exempt from public records disclosure pursuant to R.C. 149.43(A)(1)(g)?
2. After *State ex rel. WBNS TV v. Dues*, 101 Ohio St.3d 406, 2004-Ohio-1497, does a protective order issued by a tribunal in discovery constitute an exception from mandatory disclosure of the discovered documents as public records pursuant to the “catch all” exception at R.C. 149.43(A)(1)(v), where the tribunal has not ruled that specific documents are confidential under specific provisions of law?

## **I. STATEMENT OF FACTS AND INTRODUCTION**

The Cleveland Clinic Foundation (“CCF”) anticipates that some or all of the discovery it produces – once in the possession of either the Appellee School Boards or the Appellee Tax Commissioner – will become “public records” subject to disclosure under Ohio’s Public Records Act, R.C. 149.43. In its lone Assignment of Error, CCF requests the Court to designate unspecified and yet to be produced documents procured during discovery as “trade secrets” under R.C. 1333.61, et seq., and to seal those documents and information as trade secrets. Trade secrets are exempt from disclosure under the exemption of R.C. 149.43(A)(1)(v) for disclosures prohibited by state or federal law. *State ex rel. Besser v. Ohio St. Univ.* (2000), 87 Ohio St.3d 535, 540, 721 N.E.2d 1044.

Without foundation CCF argues in a footnote that “the Clinic believes that the media has already requested the Clinic’s documents from the Boards of Education and cites miscellaneous articles some of which do not involve the pending litigation.” To date no public records request has been made to Appellee School Boards. CCF further argues that the Ohio Board of Tax Appeals (“BTA”) failed to protect the disclosure of CCF’s trade secrets from a future public

records request. Finally, CCF argues that anything short of an order from this Court that CCF's documents are trade secrets fails to protect these documents from public disclosure.

## II. LAW AND ARGUMENT

### A. Public Record

The purpose of Ohio's Public Records Act, R.C. 149.43, is to expose government activity to public scrutiny. *White v. Clinton Cty. Bd. of Commrs.* (1996), 76 Ohio St.3d 416, 667 N.E.2d 1223. The Public Records Act "must be construed liberally in favor of access, and any doubt should be resolved in favor of disclosure of public records." *State ex rel. Strothers v. Wertheim* (1997), 80 Ohio St.3d 155, 156, 684 N.E.2d 1239, 1241. The General Assembly broadly defines a "public record" to be any record *kept* by a public office. R.C. 149.43(A)(1). Public offices generally include agencies of the state, county, cities, villages and townships. Public school districts are likewise "public offices" for purposes of R.C. 149.43. Before an item can be considered a public record, it must be in the possession of a public office. But if it is not "kept" by the public office, it is not a "public record" for purposes of R.C. 149.43(A)(1). *See, State ex rel. Cincinnati Enquirer v. Cincinnati Bd. of Edn.* (2003), 99 Ohio St.3d 6, 788 N.E.2d 629 (materials returned to superintendent candidates and not kept by Board were not public records).

### B. Record

Before an item is properly classified as a public record, it must first meet the statutory definition of a "record" under R.C. 149.011(G). The General Assembly, in promulgating R.C. 149.011(G), adopted a three-part test for determining the existence of a "record." Generally, a record is defined as: 1) any document, device or item stored on a fixed medium; 2) that is created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, and 3) which serves to document the organization, functions, policies, decisions,

procedures, operations, or other activities of the office. R.C. 149.011(G). Items failing to meet this definition are not records and are not subject to a public records disclosure under R.C. 149.43. See, *State ex rel. Office of the Montgomery Cty. Public Defender, et al. v. Siroki, Clerk, et al.* (2006), 108 Ohio St.3d 207, 210, 842 N.E.2d 508, 512 (“[r]evealing individuals’ Social Security numbers that are contained in criminal records does not shed light on any governmental activity”); *State ex rel. Dispatch Printing Co., et al. v. Johnson Dir., et al.* (2005), 106 Ohio St.3d 160, 169, 833 N.E.2d 274, 284 (“the overriding purpose of the Public Records Act [is] to shed light on government activities, state-employee home addresses do not generally constitute records for purposes of R.C. 149.011(G) and R.C. 149.43”); *State ex rel. McCleary v. Roberts* (2000), 88 Ohio St.3d 365, 370, 725 N.E.2d 1144, 1148 (“personal information of private citizens, obtained by a public office, reduced to writing and placed in record form and used by the public office in implementing some lawful, regulatory policy is not a “public record” as contemplated by R.C. 149.43”).

Not only must an item be stored on some type of fixed medium to be a record, the item must be created, received or sent under the jurisdiction of the public office and it must document the organization, functions, policies, decisions, procedures, operations and other activities of the public office to be considered a record under R.C. 149.011(G). The definition of ‘records’ in R.C. 149.011(G) has been construed to encompass “anything a governmental unit utilizes to carry out its duties and responsibilities. *State ex rel. Mazzaro v. Ferguson* (1990), 49 Ohio St.3d 37, 39, 550 N.E.2d 464, 466, quoting *State ex rel. Jacobs v. Prudhoff* (1986), 30 Ohio App.3d 89, 92, 506 N.E.2d 927, 930. Essentially, the item must document something the office does. *State ex rel. Wilson-Simmons v. Lake Cty. Sheriff’s Dept.* (1998), 82 Ohio St.3d 37, 42, 693 N.E.2d 789, 793 (“although the alleged racist e-mail was created by public employees via a

public officer's e-mail system, it was never used to conduct the business of the public office and did not constitute records for purposes of R.C. 149.011(G) and 149.43"). Moreover, "[t]o the extent that an item does not serve to document the activities of a public office, it is not a public record and need not be disclosed. *State ex rel. Fant v. Enright* (1993), 66 Ohio St.3d 186, 188, 610 N.E.2d 997, 999. *See also, State ex rel. Beacon Journal Publishing Co. v. Bond* (2002), 98 Ohio St.3d 146, 781 N.E.2d 180.

In *State ex rel. Beacon Journal Publ'g Co. v. Whitmore* (1998), 83 Ohio St.3d 61, 63, 697 N.E.2d 640, 642, the Court rejected the "contention that a document is a 'record' under R.C. 149.011(G) if the public office 'could use' the document to carry out its duties and responsibilities." The Court observed that "R.C. 149.43 and 149.011(G) do not define 'public record' as any piece of paper received by a public office that might be used by the office." 83 Ohio St.3d at 64, 697 N.E.2d at 642. More than mere receipt and possession of a document is required to make it a record for purposes of R.C. 149.43. *Id. See also, State ex rel. Carr v. Caltrider, Registrar, Ohio Bureau of Motor Vehicles*, 2001 Ohio Misc. LEXIS 41 (Franklin Cty. C.P. 2001) ("[t]he fact that a public office could use the document to carry out its duties and responsibilities is not enough to bring a document within the scope of the definition of records"). Rather, the Court has determined that the public office must actually use the item in order for it to be considered a public record. *See, State ex rel. WBNS TV, Inc. v. Dues* (2004), 101 Ohio St.3d 406, 410, 805 N.E.2d 1116, 1122 ("any record used by a court to render a decision is a record subject to R.C. 149.43").

Not all of the documents produced to date or yet to be produced by CCF will be public records as many will likely fail to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office as required by R.C. 149.011(G) to be a

“record.” Additionally, many of the documents produced may ultimately be determined to be irrelevant or unnecessary for litigation. Others may qualify as trial preparation records subject to public records exemption under R.C. 149.43(A)(1)(g). Moreover, since the records must actually be *used* and not merely received by Appellee School Boards, even more documents received during discovery may not qualify as public records. Also, some of the documents produced by CCF will be available from a web-site or other generally available sources of public information. Based on the various categories of records produced during discovery, it is difficult – if not impossible - to apply a blanket standard to the documents produced by CCF during the discovery phase of litigation.

C. Trial Preparation Records

Once an item is determined to be a record under R.C. 149.011(G), and a public record under R.C. 149.43, the analysis shifts to whether an item falls within one of the statutorily enumerated exceptions to public records disclosure under R.C. 149.43(A)(1)(a)-(z).

R.C. 149.43(A)(1)(g) specifically exempts “trial preparation records” from public records disclosure. Trial preparation records are statutorily defined as “any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.” R.C. 149.43(A)(4). In order “[f]or the trial preparation exception to apply, R.C. 149.43(A)(4) requires records to be specifically compiled in reasonable anticipation of litigation.” *Franklin Cty. Sheriff’s Dept. v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 498, 502, 589 N.E.2d 24, 28; *State ex rel. Collins v. Corbin* (1992), 73 Ohio App.3d 410, 413, 597 N.E.2d 544, 546. By enacting the trial preparation exception, “the General Assembly envisioned that such documents would be based upon trial strategies and exigencies of

litigation.” *State ex rel. Jenkins v. City of Cleveland* (1992), 82 Ohio App.3d 770, 783, 613 N.E.2d 652, 661 (internal citation omitted).

A governmental body refusing to release records has the burden of proving that the records are excepted from disclosure and the exceptions are to be strictly construed against the custodian of records. *See, State ex rel. Nat’l Broadcasting Co. v. Cleveland* (1988), 38 Ohio St.3d 79, 85, 526 N.E.2d 786, 791. “When a governmental body asserts that public records are excepted from disclosure and such assertion is challenged, the court must make an individualized scrutiny of the records in question. If the court finds that these records contain excepted information, this information must be redacted and any remaining information must be released.” *State ex rel. Nat’l Broadcasting Co.*, 38 Ohio St. at 85, 526 N.E.2d at 792.

Ohio courts have narrowly construed the trial preparation record exception of R.C. 149.43(A)(1)(g). As recognized by the Court in *Franklin Cty. Sheriff’s Dept., supra*, “[m]aterial cannot be excepted from disclosure simply by an agency’s broad assertion that it constitutes trial preparation records.” 63 Ohio St.3d at 502, 589 N.E.2d at 28. In *Barton v. Shupe* (1988), 37 Ohio St.3d 308, 309, 525 N.E.2d 812, 813, the Court emphasized the strictly limited nature of the trial preparation records exception by recognizing that “[w]hile any prudent public officer would be aware that this investigation might lead to litigation – administrative, civil or criminal – the record resulting from the investigation was not ‘specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding.’”

The limited nature of the trial preparation records exception is further exemplified by the Court in *State ex rel. Beacon Journal Publishing Co. v. University of Akron* (1980), 64 Ohio St.2d 392, 415 N.E.2d 301. There, the Court affirmed a decision permitting a newspaper access to two reports detailing the rape and death of a university student. In upholding the lower court’s

decision, the Court noted that the trial preparation records exception is limited to information specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding. “Clearly, the wording of the statute indicates that the General Assembly sought to guard against these exceptions swallowing up the rule which makes public records available.” *State ex rel. Beacon Journal Publishing Co.*, 64 Ohio St.2d at 397, 415 N.E.2d at 314. But, “once a record becomes exempt from release as a ‘trial preparation record,’ that record does not lose its exempt status unless and until all ‘trials,’ ‘actions,’ and/or proceedings’ have been fully completed. *State ex rel. Steckman v. Jackson, et al.* (1994), 70 Ohio St.3d 420, 432, 639 N.E.2d 83, 92; *State ex rel. Wlwt-TV5 v. Leis* (1997), 77 Ohio St.3d 357, 677 N.E.2d 1365.

D. Documents Obtained in Civil Discovery

Whether records produced during civil discovery become public records or fall within the trial preparation records exception of R.C. 149.43(A)(1)(g), is tempered by the narrower question of whether documents obtained by a public office during civil discovery are subject to a disclosure at all prior to trial?

The First Appellate District recognized that “[d]iscovery has historically never been open to public.” *Adams v. Metallica, Inc.* (2001), 143 Ohio App.3d 482, 487, 758 N.E.2d 286, 289. But, among the statutory exceptions to R.C. 149.43, there is no specific exception excluding documents obtained during discovery – rather, a more narrow exception for “trial preparation records.” However, in the context of the criminal discovery rules, the Court has held that “information that a criminal prosecutor has disclosed to the defendant for discovery purposes pursuant to CrimR. 16 is not thereby subject to release as a ‘public record’ pursuant to R.C. 149.43.” *State ex rel. WHIO-TV-7 v. Lowe, et al.* (1997), 77 Ohio St.3d 350, 355, 673 N.E.2d

1360, 1364. In so finding, the Court relied on the following excerpt from the Eleventh Circuit

Court of Appeals in *United States v. Anderson*, 799 F.2d 1438, 1441 (11<sup>th</sup> Cir. 1986):

“Discovery is neither a public process nor typically a matter of public record. Historically, discovery materials were not available to the public or press. See *Seattle Times Co. v. Rhineheart* (1984), 467 U.S. 20 (pretrial interrogatories and depositions ‘were not open to the public at common law’); *Gannett Co. v. DePasquale* (1979), 443 U.S. 368, 396 (Burger, C.J., concurring) (“It has never occurred to anyone, so far as I am aware, that a pretrial deposition or pretrial interrogatories were other than wholly private to the litigants.”). Moreover, documents collected during discovery are not “judicial records.” Discovery, whether civil or criminal, is essentially a private process because the litigants and the courts assume that the sole purpose of the discovery is to assist trial preparation. That is why the parties regularly agree, and courts often order, that discovery information will remain private. Marcus, *Myth and Reality in Protective Order Litigation*, 69 *Cornell L. Rev.* 1, 15 (1983).

If it were otherwise and discovery information and discovery orders were readily available to the public and the press, the consequences to the smooth functioning of the discovery process would be severe. Not only would voluntary discovery be chilled, but whatever discovery and court encouragement that would take place would be oral, which is undesirable to the extent that it creates misunderstanding and surprise for the litigants and the trial judge. Litigants should not be discouraged from putting their discovery agreements in writing, and district judges should not be discouraged from facilitating voluntary discovery.”

In her concurring opinion in *Lowe, supra*, Justice Stratton observed that the “court’s decision today strikes a careful balance between the public’s right to know and the need to guard the fundamental integrity and fairness of a trial for both the defendant and the state. *Lowe*, 77 Ohio St.3d at 356, 673 N.E.2d at 1364. *But see, State ex rel. Mothers Against Drunk Drivers, et al. v. Gosser* (1985), 20 Ohio St.3d 30, 485 N.E.2d 706 (records relating to disposition of DWI cases were “public records” in possession of municipal court). At the beginning of the opinion in *Lowe*, the Court pointed out that information exchanged in discovery ordinarily would not be considered to be work product or trial preparation materials:

“This case presents the issue of whether information that the criminal prosecutor has disclosed to the defendant for discovery purposes pursuant to Crim.R. 16, and therefore ordinarily would

not be considered to be work product or trial preparation materials, is precluded from release to the public pursuant to the public records doctrine.”

*Lowe, supra*, 77 Ohio St.3d at 353, 673 N.E.2d at 1363.

The Court ultimately determined in *Lowe* that documents exchanged with a criminal defendant in discovery – although not necessarily considered to be either work product or trial preparation records – were nonetheless exempt from disclosure under R.C. 149.43. “[P]retrial discovery is not a public component of a trial and any controls on the discovery process do not prevent the public dissemination of information gathered through means other than discovery.” *Lowe*, 77 Ohio St.3d at 355, 673 N.E.2d at 1364 citing *Seattle Times v. Rhineheart* (1984), 467 U.S. 20, 33-34.

The mere production by CCF of boxes containing numerically stamped documents may not constitute a public record or even trial preparation records. A trial preparation record is not necessarily a document which is useful to the public entity but is a document which the public entity has determined to use in the litigation. Moreover, documents produced in discovery may not constitute public records or even records at all. Thus, documents produced during discovery could be neither public records under R.C. 149.43 or trial preparation materials exempt from disclosure under R.C. 149.43(A)(1)(g).

It is conceivable that records procured in discovery could enter the public domain if filed with the trial court or at the conclusion of litigation. By seeking trade secret status for documents produced in discovery, CCF is likely seeking to bar disclosure during and after litigation if a court did not determine that the documents were trial preparation materials under that exception in R.C. 149.43(A)(1)(g). However, in *Lowe, supra*, the Court recognized even without determining the documents were work product or trial preparation that documents exchanged in

discovery – at least in a criminal proceeding – were exempt from disclosure because they were produced during the discovery phase of litigation.

E. *State ex rel. WBNS TV v. Dues* and *Statutory v. Judicial Exception to Ohio's Public Records Laws*

The earliest case on whether discovery material may be requested by a third party pursuant to a public records request is *State ex rel. MADD v. Gosser* (1985), 20 Ohio St.3d 30, 485 N.E. 2d 706. In *MADD*, the Ohio Supreme Court granted a writ of mandamus to a party seeking to compel a clerk of courts to release court documents related to DUI prosecutions. The Court held that absent any specific statutory exclusion all documents or proceedings of a court are public records, must be kept under R.C. 149.43, and be made available for public inspection. As pointed out by the First Appellate District, “among the statutory exceptions to R.C. 149.43 there is none that specifically excludes discovery materials.” *Adams*, 143 Ohio App. 3d at 488, 758 N.E.2d at 290.

In *WHIO-TV-7*, the Court determined that discovery exchanged by a prosecutor with a defendant pursuant to CrimR. 16 was not subject to release as a public record. 77 Ohio St.3d at 355, 673 N.E.2d at 1364. This Court recognized that exemptions for work product and trial preparation records would not lose their exempt status because of the disclosure of these records in criminal discovery.

According to the First Appellate District, the Supreme Court created a judicial, rather than statutory, exclusion for criminal pretrial discovery under R.C. 149.43. The First Appellate District further recognized that “the Court in *Lowe* based its decision on the need to strike ‘a careful balance between the public's right to know and the need to guard the fundamental integrity and fairness of a trial for both the defendant and the state.’” *State ex rel. The Cincinnati Enquirer v. Dinkelacker* (2001), 144 Ohio App.3d 725, 730, 761 N.E.2d 656, 660.

In *Lowe*, the Court rejected an argument that the public has a First Amendment right to pretrial discovery materials, relying on a U.S. Supreme Court holding in *Seattle Times Co. v. Rhinehart* (1984), 467 U.S. 20, 27, 104 S.Ct. 2199, 2204, 81 L.Ed.2d 17, 23, that pretrial discovery is not a public component of a trial. This Court referenced an Eleventh Circuit Court of Appeals decision which stated in *United States v. Anderson*, 799 F.2d 1438, 1441 (11<sup>th</sup> Cir. 1986), that “discovery is neither a public process nor typically a matter of public record.” As to policy, this Court in *Lowe* stated that “...discovery should be encouraged and that public disclosure would have a chilling effect on the parties’s search for and exchange of information pursuant to the discovery rules.” 79 Ohio St.3d at 354, 673 N.E.2d at 1363-1364. Next, the Court recognized that “the purpose of Ohio’s Public Records Act, R.C. 149.43, is to expose government activity to public scrutiny, which is absolutely essential to the proper working of a democracy.” 79 Ohio St.3d at 355, 673 N.E.2d at 1364. In reconciling the conflict, the Court found that a criminal proceeding is one of a certain number of governmental activities that would be “totally frustrated if conducted openly.” *Press-Enterprise Co. v. California Superior Court* (1986), 478 U.S. 1, 8-9, 106 S.Ct. 2735, 2740, 92 L.Ed.2d 1, 10. This Court pointed out that “criminal discovery is one of those governmental activities that would be frustrated if subjected to the required disclosure contemplated by R.C. 149.43.

In finding that criminal discovery would be frustrated if subjected to disclosure under R.C. 149.43, the Court in *Lowe* held that the exchanged materials were not public records. As pointed out by the First Appellate District in 2001, “it is noteworthy that the court did not base its holding on any statutory exclusions of the Public Records Act, thus appearing to contradict its own syllabus law in *MADD*.” *Adams*, 143 Ohio App. 3d at 488, 758 N.E.2d at 291. The court in *Adams* then employed a balancing test of the interests involved to determine whether to modify a

protective order, which would allow release of the material. *Dinkelbaker, supra*, 144 Ohio App.3d at 730, 761 N.E.2d at 660. The First Appellate District in *Adams* proceeded with an analysis as to judicially created exceptions to Ohio's public records laws which this Court later rejected as unpersuasive in *State ex rel. WBNS TV, Inc. v. Dues*, 101 Ohio St.3d 406, 805 N.E. 2d 1116.

The First Appellate District explained the difficulty to reconcile "...the holding of *Lowe* with the first paragraph of the syllabus of *MADD. Lowe*, being the latter case, must be viewed as creating an exception to *MADD* for pretrial discovery." *Adams, supra*, at 489, 758 N.E.2d 291. In considering whether a protective order issued by a court "trumps" the Public Records Act, the First Appellate District acknowledged that "we do not know how the Ohio Supreme Court would answer this question." *Id.* Yet the First Appellate District took heart of its conclusion that this Court recognized a judicial balancing test to weigh the factors affecting the parties and the public to establish a judicial exception to Ohio Public Records Act, as follows:

"Obviously, in *Lowe*, the court assumed it had the authority to create its own exceptions to the Public Records Act--exceptions in addition to those created by statute. The court's language in *Lowe*, particularly the lengthy quote from Anderson referring to both civil and criminal discovery as private processes, would strongly indicate that the court felt that both forms of discovery were not public records."

However, in 2004, this Court rejected the use by a Probate Court Judge of a judicially created exception to Ohio's Public Records Act. See, *State ex rel. WBNS TV, Inc. v. Dues, supra*. Although the Judge relied on *Lowe* and *Adams*, this Court pointed out as follows:

"Notwithstanding the arguments of respondents and their amici, we have not authorized courts or other records custodians to create new exceptions to R.C. 149.43 based on a balancing of interests or generalized privacy concerns."

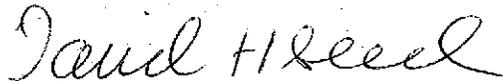
*WBNS-TV*, 101 Ohio St.3d at 411, 805 N.E.2d at 1123.

The Court rejected the use of a balancing test to create additional exemptions to Ohio's Public Records Act other than those established by the General Assembly. *Id.* Further, the Court noted that "insofar as the court of appeals in *Adams*, 143 Ohio App. 3d at 489, 758 N.E.2d 286, referred to judicially created exceptions, it did so in dicta, and that dicta is not persuasive." Consequently, following the *WBNS TV* decision, a protective order issued by a tribunal, such as the BTA, does not constitute an exception from the mandatory disclosure of discovered documents pursuant to the "catch all" exception at R.C. 149.43(A)(1)(v). Further, as the documents have not been identified and produced, the protective order approved by the BTA does not specify whether a document once in the possession of a public entity is both a public record and trial preparation materials. Once in possession of discovery, the public entity in using the documents can determine which documents are trial preparation materials, useful to the litigation, or irrelevant to the matter. Moreover, it may not be practical for the BTA in advance of a public records request to address on a document by document basis whether a specific document is exempt under the exceptions to Ohio's Public Records Act.

### III. CONCLUSION

To date no public records request has been made to Appellee School Boards and it is premature to determine whether a specific document is a public record, let alone trial preparation materials.

Respectfully submitted,



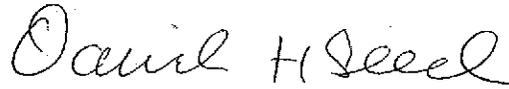
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Board of Education and Cleveland Municipal School  
District Board of Education

#### IV. CERTIFICATE OF SERVICE

A true copy of the foregoing Brief has been served by regular U. S. mail upon Tracy K. Stratford, Esq. and Stephen G. Sozio, Esq., Jones Day, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114 and Lawrence Pratt, Esq. and Alan Schwepe, Esq., Assistant Attorneys General, State Office Tower, 25<sup>th</sup> Fl., 30 East Broad Street, Columbus, Ohio 43215 on this 25<sup>th</sup> day of June, 2008.



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David H. Seed (0066033)