

In the
Supreme Court of Ohio

STATE EX REL. LOUIS KOHUS,	:	
	:	
Relator,	:	Case Number 2010-1780
	:	
v.	:	
	:	
OHIO DEPARTMENT OF PUBLIC	:	Original Action in Mandamus
SAFETY, et al.	:	
	:	
Respondents.	:	

**ANSWER OF RESPONDENTS OFFICE OF THE OHIO ATTORNEY GENERAL AND
ATTORNEY GENERAL RICHARD CORDRAY**

Now come Respondents Office of the Ohio Attorney General and Richard Cordray, Attorney General (“Respondents”), and answer the allegations in Relator’s Complaint for Writ of Mandamus (“Complaint”) as follows:

1. Respondents state that the statutes cited in Paragraph 1 of the Complaint speak for themselves, and deny for want of knowledge the remainder of the allegations contained in Paragraph 1.
2. With regard to Paragraph 2 of the Complaint, Respondents respond that Article IV, Section 2(B)(1)(b) of the Ohio Constitution, Ohio Supreme Court Rule X and R.C. 27631.01 et seq. speak for themselves. Respondents further respond that they are not required to respond to legal conclusions. To the extent any response is necessary, the allegations in Paragraph 2 are denied.
3. With regard to Paragraph 3 of the Complaint, Respondents respond that R.C. 2731.02 speaks for itself. Respondents further respond that they are not required to respond to

legal conclusions. To the extent any response is necessary, the allegations in Paragraph 3 are denied.

4. With regard to Paragraph 4 of the Complaint, Respondents deny that they have received any public records requests from an individual identifying himself as Louis M. Kohus. Respondents deny all of the remaining allegations contained in the Paragraph for want of knowledge.
5. Respondents state that the statutes cited in Paragraph 5 of the Complaint speak for themselves, and deny for want of knowledge the remainder of the allegations contained in Paragraph 5.
6. Respondents admit that Thomas J. Stickrath is the current Director of the Ohio Department of Public Safety, state that the statutes cited in Paragraph 6 of the Complaint speak for themselves, and deny the remainder of Paragraph 6 for want of knowledge.
7. Respondents admit that the Ohio State Highway Patrol is a division of the Ohio Department of Public Safety, state that the statutes cited in Paragraph 7 of the Complaint speak for themselves, and deny the remainder of Paragraph 7 for want of knowledge.
8. Respondents admit that David W. Dicken is the current Superintendent of the Ohio State Highway Patrol, state that the statutes cited in Paragraph 8 of the Complaint speak for themselves, and deny the remainder of Paragraph 8 for want of knowledge.
9. With respect to Paragraph 9 of the Complaint, Respondents admit that the Office of the Ohio Attorney General is a public office, as defined in R.C. §149.011(A), and that certain statutory powers and duties of the Attorney General are contained in Chapter

109 of the Ohio Revised Code. With respect to Relator's reference to "the public records that Mr. Kohus has requested in this case," Respondents deny they have received any public records requests from an individual who identifies himself as Louis M. Kohus. Respondents deny all other allegations made in the paragraph.

10. Respondents admit that Respondent Richard Cordray is the current Ohio Attorney General, state that the statutes cited in Paragraph 10 of the Complaint speak for themselves, and admit that the Ohio Attorney General has custody and control of public records kept by the Office of the Ohio Attorney General. With respect to Relator's reference to "the public records that Mr. Kohus has requested in this case," Respondents deny that they have received any public records requests from an individual identifying himself as Louis M. Kohus. Respondents deny all remaining allegations contained in Paragraph 10 of the Complaint.

11. The contents of Paragraphs 11 through 16 of Relator's Complaint do not set forth a short and plain statement of a claim, O.R.C.P., R. 8(A)(1), nor are the averments in these paragraphs simple, concise and direct, O.R.C.P., R. 8(E)(1), but are instead either argumentative or purported conclusions of law, to which no response is required. Further answering, Respondents admit that the statutes cited in Paragraphs 11 through 16 speak for themselves. All other allegations in these paragraphs are denied.

12. See response to Paragraph 11 of the Complaint.

13. See response to Paragraph 11 of the Complaint.

14. See response to Paragraph 11 of the Complaint.

15. See response to Paragraph 11 of the Complaint.

16. See response to Paragraph 11 of the Complaint.
17. As to Paragraph 17 of the Complaint, Respondents deny that they have received any public records requests from an individual identifying himself as Louis M. Kohus. All other allegations contained in Paragraph 17 of Relator's Complaint are denied for want of knowledge.
18. With regard to Paragraph 18, Respondents deny that any public records requests have been made by a person identifying themselves as Louis M. Kohus. Respondents admit an email from a person identifying themselves as johnqcitizen@mailworks.org was sent to Respondent Attorney General Richard Cordray's email account on Friday, September 10, 2010, containing the substantive text of Relator's Exhibit A-1. Respondents further aver that the email attached to the complaint as Exhibit A-1 speaks for itself. All other allegations in the paragraph are denied.
19. With regard to Paragraph 19 of the Complaint, Respondents deny that any public records requests have been made by a person identifying themselves as Louis M. Kohus. Respondents admit receiving a letter signed by an individual identifying himself as John Q. Citizen on September 15, 2010. Respondents further admit that letter Exhibit A-2 to Relator's Complaint appears to be a true and accurate copy of that letter. Respondents aver that the documents contained in Exhibits A-3 and A-4 of the Complaint speak for themselves. All other allegations in Paragraph 19 are denied.
20. With regard to Paragraph 20 of the Complaint, Respondents admit that as of October 18, 2010, the date Relator's Complaint was filed, Respondents had taken the following actions in response to the public records request identified in Exhibit A-1

and A-2 of the Relator's Complaint: 1) on September 17, 2010, Respondents emailed the requestor a letter informing him that the request was being processed; 2) on September 24, 2010, Respondents provide the requestor with records responsive to parts 8, 9 and 10 of his request; 3) on October 5, 2010, Respondents provided the requestor with records responsive to parts 11 and 12 of his request. Respondents further aver that since this Complaint was filed, they have taken the following additional actions on this records request: 4) on October 21, 2010, Respondents responded to parts 13 and 14 of the request; 5) on October 26, 2010, Respondents released records and provided responses to parts 1, 2, 3, 4, 5 6, 7, 15 and 16 of the request; 6) on October 29, 2010, Respondents emailed the requestor a final letter closing the request. All of the above responses were emailed to the requestor John Q. Citizen at johnqcitizen@mailworks.org. All other allegations in Paragraph 20 are denied.

21. The allegations contained in Paragraphs 21 through 32 of the Complaint all relate to Respondents other than the Respondents answering herein. These answering Respondents state that they are without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraphs 21 through 32 of the Complaint.
22. See response to Paragraph 21.
23. See response to Paragraph 21.
24. See response to Paragraph 21.
25. See response to Paragraph 21.
26. See response to Paragraph 21.
27. See response to Paragraph 21.

28. See response to Paragraph 21.
29. See response to Paragraph 21.
30. See response to Paragraph 21.
31. See response to Paragraph 21.
32. See response to Paragraph 21.
33. With regard to Paragraph 33 of the Complaint, Respondents admit that a claim for relief under R.C. §149.43(C) is limited by the ten-year statute of limitations found in R.C. §2305.14, but deny that other claims for relief brought by Relator are governed by the same statute.
34. With regard to Paragraph 34 of the Complaint, Respondents deny that Louis M. Kohus has made any public records request to the Respondents. Further, Respondents state that they have fully and lawfully responded to the public records identified in Exhibits A-1 and A-2. Finally Respondents deny that the public records request contained in Exhibits A-1 and A-2 of the Complaint were made with the clarity or specificity required for a proper public records request pursuant to R.C. §149.43.
35. Respondents deny the allegations in Paragraph 35 of the Complaint as they relate to the requests made of these answering Respondents in Relator's Exhibits A-1 and A-2. Respondents deny the allegations contained in Paragraph 35 as to other Respondents herein for want of knowledge. All other allegations contained in Paragraph 35 are denied.
36. Respondents deny the allegations contained in Paragraph 36 of the Complaint.

37. Respondents state that the statements of Relator in Paragraphs 37 are argumentative, and are in any case conclusions of law to which no response is required. To the extent responses may be required, the allegations made in this paragraph are denied.
38. Respondents deny the allegations contained in Paragraph 38 of the Complaint.
39. Respondents deny the allegations contained in Paragraph 39 of the Complaint.
40. Respondents deny the allegations contained in Paragraph 40 of the Complaint.
41. Respondents deny the allegations contained in Paragraph 41 of the Complaint.
42. These answering Respondents deny the allegations contained in Paragraph 42 of the Complaint for want of knowledge.
43. Respondents deny the allegations contained in Paragraph 43 of the Complaint as they pertain to these answering Respondents, and deny the allegations in Paragraph 43 as to other Respondents for want of knowledge.
44. In response to the allegations contained in Paragraph 44 of the Complaint, Respondents deny that they have received a public records request from an individual identifying himself as Louis M. Kohus. Respondents state that with regard to the public records request contained in Relator's Exhibits A-1 and A-2, at the time Relator's Complaint was filed, Respondents had already provided substantial records and other responses to parts 8, 9, 10, 11, and 12 of the request, and that since the filing of the Complaint Respondents have completed their provision of records and other responses to the remaining parts of the request. Further answering, Respondents deny all other allegations contained in Paragraph 44 of the Complaint.
45. The allegations contained in Paragraphs 45 and 46 of the Complaint relate to Respondents other than the Respondents answering herein. These answering

Respondents state that they are without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraphs 45 and 46 of the Complaint.

46. See response to Paragraph 45.

47. Respondents deny the allegations contained in Paragraph 47 of the Complaint.

48. The allegations contained in Paragraph 48 of the Complaint relate to Respondents other than the Respondents answering herein. These answering Respondents state that they are without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 48 of the Complaint.

49. With regard to Paragraph 49, Respondents deny that they have received any public records requests from an individual identifying himself as Louis M. Kohus. Respondents further state that R.C. §149.43(C) speaks for itself. All other allegations in the Paragraph 49 are denied.

50. With regard to Paragraph 50, Respondents deny that they have received any public records requests from an individual identifying himself as Louis M. Kohus. Respondents further state that R.C. §149.43(B)(1) speaks for itself. All other allegations in the Paragraph 50 are denied.

51. With regard to Paragraph 51, Respondents state that R.C. §149.43(E)(2) speaks for itself and requires no response. To the extent any response is required, it is denied.

52. The allegations contained in Paragraphs 52 and 53 of the Complaint relate to Respondents other than the Respondents answering herein. These answering Respondents state that they are without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraphs 52 and 53 of the Complaint.

53. See response to Paragraph 52.

54. With regard to Paragraph 54 of the Complaint, Respondents restate their responses to Paragraphs 1 through 53 of the Complaint.
55. Respondents state that the statements of Relator in Paragraphs 55 and 56 are argumentative, misstate the law, and are in any case conclusions of law to which no response is required. To the extent responses may be required, the allegations made in these paragraphs are denied.
56. See response to Paragraph 55.
57. Respondents deny that Relator has a clear legal right to the documents requested in Relator's Exhibits A-1 and A-2, other than as they have been provided in Respondents' responses to those requests. Respondents deny that they have a clear legal duty to provide the documents requested in Relator's Exhibits A-1 and A-2, other than as they have been provided in Respondents' responses to those requests. Respondents further deny that Relator has made any request for provide copies of the documents at issue, nor do Respondents have any duty to comply with Relator's request to "make ... records available [for] copying," (Relator's Exhibits A-1 and A-2) as R.C. §149.43(B)(6) expressly states that "[n]othing in this section requires a public office or person responsible for public records to allow the person seeking a copy of the public record to make the copies of the public record." Respondents have in fact gone above and beyond their duties under R.C. §149.43(B) by providing Relator with copies of all of the records produced in response to his requests, rather than merely inspection. All other allegations in Paragraph 57 are denied.
58. Respondents deny the allegations contained in Paragraph 58.
59. Respondents deny the allegations contained in Paragraph 59.

60. Respondents deny the allegations contained in Paragraph 60.
61. The allegations contained in Paragraph 61 constitute conclusions of law, to which no response is required. To the extent that a response could be required, these allegations are denied.
62. To the extent that the allegations contained in Paragraph 62 are asserted to any of Relator's claims which are not based on the remedies contained in R.C. §149.43(C), Respondents deny the allegations of Paragraph 62.
63. The contents of Paragraphs 63 and 64 constitute prayers for relief and/or conclusions of law, to which no response is required. To the extent that any response may be required, these paragraphs are denied.
64. See response to Paragraph 63.
65. Respondents restate their responses to Paragraphs 1 through 64 of the Complaint.
66. Respondents admit that as a public office, the Ohio Attorney General's office is subject to the duties imposed by R.C. §149.43, and state that the statute speaks for itself. Respondents deny that they have failed to comply with the duties imposed under R.C. §149.43.
67. Respondents deny the allegations contained in Paragraph 67.
68. Respondents deny the allegations contained in Paragraph 68.
69. Respondents deny the allegations contained in Paragraph 69.
70. With regard to Paragraph 70 of the Complaint, Respondents restate their responses to Paragraphs 1 through 69 of the Complaint.
71. The allegations contained in Paragraphs 71 through 74 of the Complaint relate to Respondents other than the Respondents answering herein. These answering

Respondents state that they are without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraphs 71 through 74 of the Complaint.

72. See response to Paragraph 71.

73. See response to Paragraph 71.

74. See response to Paragraph 71.

75. Respondents restate their responses to Paragraphs 1 through 74 of the Complaint.

76. Respondents state that the statements of Relator in Paragraph 76 are argumentative, misstate the law, and are in any case conclusions of law to which no response is required. To the extent a response may be required, the allegations are denied.

77. Respondents deny the allegations contained in Paragraph 77 of the Complaint.

78. Respondents deny the allegations contained in Paragraph 78 of the Complaint.

79. With regard to Paragraph 79 of the Complaint, Respondents restate their responses to Paragraphs 1 through 78 of the Complaint.

80. Respondents state that R.C. §149.43(B)(2) speaks for itself, and deny any other allegations contained in Paragraph 80.

81. The allegations contained in Paragraph 81 of the Complaint relate to Respondents other than the Respondents answering herein. These answering Respondents state that they are without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 81 of the Complaint.

82. Respondents deny the allegations contained in Paragraph 82, and deny the allegations as they relate to other Respondents to this action for lack of knowledge.

83. With regard to Paragraph 83 of the Complaint, Respondents restate their responses to Paragraphs 1 through 82 of the Complaint.

84. Respondents state that R.C. §149.43 speaks for itself, and deny any other allegations contained in Paragraph 84.
85. Respondents state that the allegations contained in Paragraph 85 constitute a conclusion of law to which no response is required.
86. Respondents deny the allegations contained in Paragraph 86.
87. Respondents deny the allegations contained in Paragraph 87.
88. Respondents deny the allegations contained in Paragraph 88.
89. Respondents restate their responses to Paragraphs 1 through 88 of the Complaint.
90. Respondents state that R.C. §149.43(E)(2) speaks for itself, and deny any other allegations contained in Paragraph 90.
91. The allegations contained in Paragraphs 91 through 94 of the Complaint relate to Respondents other than the Respondents answering herein. These answering Respondents state that they are without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraphs 91 through 94 of the Complaint.
92. See response to Paragraph 91.
93. See response to Paragraph 91.
94. See response to Paragraph 91.
95. These answering Respondents deny each and every allegation in the Complaint not otherwise expressly admitted.

FIRST DEFENSE

96. The Court lacks subject matter jurisdiction to hear Relator's claims of negligence.

SECOND DEFENSE

97. The Court lacks subject matter jurisdiction to hear Relator's claims regarding alleged violation of R.C. §149.43(E)(2).

THIRD DEFENSE

98. Relator has failed to state a claim upon which relief can be granted.

FOURTH DEFENSE

99. Relator has no clear legal right to the relief requested.

FIFTH DEFENSE

100. Relator fails to establish a clear legal duty of Respondents to provide the relief requested.

SIXTH DEFENSE

101. Relator is not eligible for an award of attorney fees in this matter.

SEVENTH DEFENSE

102. Relator is not eligible for any award of litigation costs associated with this matter.

EIGHTH DEFENSE

103. Relator is not entitled to separate awards of statutory damages "for each record."

NINTH DEFENSE

104. Relator is not entitled to non-statutory compensatory damages.

TENTH DEFENSE

105. Relator has an adequate remedy at law as to any claims other than those sought under §149.43(C).

ELEVENTH DEFENSE

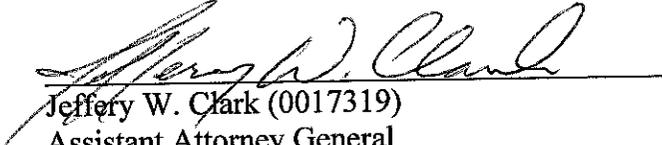
106. This case is moot.

107. Respondents reserve the right to add additional defenses, including additional affirmative defenses, as may be disclosed during the course of this proceeding.

WHEREFORE, having answered Relator's Complaint for Writ of Mandamus, Respondents respectfully request that this Court dismiss Relator's Complaint.

Respectfully submitted,

RICHARD CORDRAY (0038034)
Ohio Attorney General

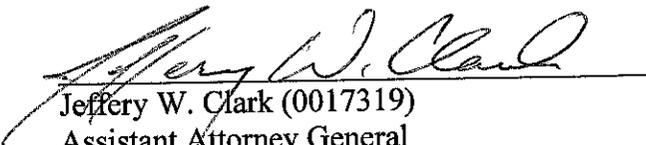


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Richard Cordray, Attorney General*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Answer of Respondents Office of the Ohio Attorney General and Attorney General Richard Cordray* was sent by U.S. mail on November 9, 2010 to Relator *Pro Se*, Louis M. Kohus, 6219 Woodlark Drive, Cincinnati, Ohio 45230.



Jeffery W. Clark (0017319)
Assistant Attorney General