

**ORIGINAL**

IN THE SUPREME COURT OF OHIO

**10-0433**

Case No. 2010-0433  
On Appeal from the Richland  
County Court of Appeals  
Fifth Appellate District

State of Ohio Citizen Raleigh M Striker,  
Relator-Appellant,

V.

Clerk of Court, Daniel F. Smith  
Respondent-Appellee.

**APPEAL OF RIGHT**  
Court of Appeals  
Case No. 2008CA0336

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**BRIEF OF RELATOR-APPELLANT**

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7, *passim*

## STATEMENT OF THE FACTS

The Agreed Statement of Facts filed in the Court of Appeals on August 31, 2009 established the following facts:

On December 4, 2008, Relator went to the Office of Clerk of Courts of the Mansfield Municipal Court to acquire documents filed with the Clerk of Courts in Case 2006 CVH 03913 captioned "Calhoun, Kademenos and Childress, Co., LPA vs. Randy Shepherd" (herein called the Shepherd file). Relator was advised by the Respondent that the records were not available as the Clerk's case file was in the custody of the Honorable Judge Jeff Payton, and the records contained in the case file would not be accessible to the public until the case file was returned to the Clerk of Court's Office. The case file had been in the custody of Judge Payton since on or about February 7, 2008 (See Court Docket). Thereafter, Relator made his request for the public records to the Mansfield Law Director's Office, as counsel for Respondent, and was advised that he could not assist in compliance with the request for the reasons already stated by the Respondent, Clerk of Courts. Relator was not advised of the City's preference that a written request be made. Thereafter, on Monday December 29, 2008, he presented a written request for documents from the Shepherd file, specifically:

copies of entries for the dates of:

"12/20/2006, remand; 1/02/07 remand SC; 1/31/07 memorandum; 4/30/07 JE."

On December 30, 2008, the Relator filed the action in Mandamus in the Court of Appeals, requesting that the Court issue an order that the Respondent comply with the request for public records filed by Relator and that Respondent comply in all respects with the Ohio Public Records Act, and for his costs and expenses, including attorney

fees, incurred in his attempt to obtain the records requested and force compliance with the Ohio Public Records Act by the Clerk of Courts of the Mansfield Municipal Court, Respondent, Daniel Smith. Three of the four documents requested were provided to Relator on January 20, 2009.

It was more than three weeks after Relator filed his written request (and six weeks after he made his original request) that Relator finally received any response to the Public Records Request.

Ultimately, **but only in response to the filing of the mandamus action**, Respondent through counsel provided Relator copies of three of four of the public records he sought. The document of 12/20/06 Remand was never provided. A copy of the Response of the Respondent, prepared by his counsel of record, David Remy, is attached hereto as **Exhibit B** and establishes that they represented at all times that the 12/20/06 remand does not exist and is known as a marginal notation and does not refer to a specific document.

Despite the Agreed Statement of Facts, which does not stipulate the 12/20/06 Remand is not a public record subject to disclosure, and despite the Relator's continued recitations, throughout his brief, that the fourth document was not provided and constituted a continuing violation of the Public Records Act, The Court of Appeals held that the parties agreed that the fourth item (the 12/20/06 remand remand) was not a public record subject to disclosure.

The Respondent does not deny that the records requested by Relator were public records within the meaning of the statute, nor that he failed to produce the records upon requests made during normal business hours. However, Respondent denied the existence

of the fourth record, 12/20/06 Remand, throughout the course of these proceedings. Relator never doubted the existence of the record, and never conceded that it did not exist. However, despite that fact, the Court of Appeals, in its Judgment Entry at page 2, specifically found the parties “agree that the fourth item is not a public record subject to disclosure”. This is a fact wholly unsupported by the record. Despite the attempt of Respondent to get an agreed statement on this fact, Relator did not do so, and therefore it was not included in the agreed statement. In addition, the Relator in his brief, specifically denied this assertion by Respondent. However, Relator had **no proof of the existence of this document until after the Appeal of this Court’s Judgment was filed in the Ohio Supreme Court.** The Relator discovered, wholly by accident, that this document was attached to a pleading filed by Attorney for Respondent, in an unrelated case (see **attached Exhibit C**, cover page of the original pleading, and the 12/20/06 remand document which was filed as Respondent Exhibit #5 an attachment to this pleading: “Respondents’ Mansfield Municipal Court, Judge Jeff Payton and Magistrate Donald Teffner, Motion to Dismiss”, in this Court, in Ohio Supreme Court Case 08-1367, filed by Attorney David Remy on Behalf of Respondent, Mansfield Municipal Court Clerk). This pleading was filed on August 1, 2008 and the Relator’s public records request was made in December of 2008, so clearly this document was in existence at the time the request was made and was well known to Respondent and his counsel. The document was rubber-stamped as filed on January 1, 2007 (interestingly, a date when the Court should have been closed for the New Year holiday) indicating that it was in the case file of the Clerk well before the time of the public records request.

Upon discovery of this document, Relator brought this matter to the attention of Respondent's Counsel and requested some sort of response as to whether that document was in fact the document related to the Marginal notation by Respondent's counsel. Relator did in fact fax a copy of that document to Respondent's counsel. However, to date, Respondent has failed to acknowledge the fact that it exists and it has never been produced. Since this matter is pending on appeal in this Court, Relator submits that this Court may take judicial notice of its own record and therefore acknowledge the existence of this document. (Relator gives this Court notice that it filed a Civil Rule 60(b) motion with the Court of Appeals submitting this document as newly discovered evidence, since this matter has been pending in this Court for 9 months, and the one year limitation of the Civil Rule 60(b) runs out on February 8, 2011 in the event that this Court does not take judicial notice of this document, or does not find error in the Court of Appeals findings, to avoid losing this option-- however, Relator submits that this Court can and should take judicial notice of the record and consider this document in this appeal). However, in any event, it is clear that this Document did in fact exist, and it was never provided pursuant to Relator's public record request.

The Court of Appeals denied the Mandamus request, finding that the Relator withdrew his public records request when he left the office of the Clerk on December 4, 2009[sic] because he didn't say when he'd return for the documents and he didn't provide information where he could be contacted (Court of Appeals Judgment at page 4)( despite the fact that Respondent did not ask him for this information, but told Relator the file was not available because it was with the Judge). In addition, the Court of Appeals found that Relator withdrew his written request on December 29, 2008 when he left the

office with the request (again despite the fact he was not asked to leave it, or a copy of it with the clerk). The Court went on to find that providing three of the four documents within 13 business days of the filing of the Mandamus action was not unreasonable. (*Id.*)

Finally, the Court of Appeals found the Relator's claim moot since the Respondent had provided all of the requested documents (*Id. At p 6*).

With respect to the posting of the Public Records Policy, the Court of Appeals did find that the Respondent did not have a copy of the policy posted in the Clerk of Courts office and granted the Mandamus as to the posting of the policy (*Id. At 7*).

The Court of Appeals denied any award of statutory damages or attorney fees on the basis that they had determined that the Respondent did not fail to comply with the Ohio Public Records Act. (*Id. At 8*)

It is from this Judgment of the Court of Appeals on February 8, 2010 that the Relator Appeals.

## **ARGUMENT**

### **PROPOSITION OF LAW NO. I**

**THE COURT OF APPEALS ERRED IN FINDING THAT RESPONDENT, DANIEL F. SMITH, CLERK OF COURTS, DID NOT VIOLATE THE PROVISIONS OF ORC 149.43 WHEN HE FAILED TO MAKE AVAILABLE THE RECORDS OF THE MANSFIELD MUNICIPAL COURT TO RELATOR, RALEIGH STRIKER, A CITIZEN.**

### **ISSUES PRESENTED FOR REVIEW AND ARGUMENT**

**WHETHER THE COURT OF APPEALS ERRED IN FINDING THAT THE PARTIES WERE IN AGREEMENT THAT THE FOURTH REQUESTED DOCUMENT WAS NOT A PUBLIC RECORD SUBJECT TO DISCLOSURE, WHEN NO SUCH AGREEMENT APPEARS ON THE RECORD, RELATOR SPECIFICALLY CONTESTED THE RESPONDENT'S CLAIM THAT THE DOCUMENT DID NOT EXIST AND WHERE THERE IS NO EVIDENCE TO SUPPORT THAT FINDING.**

**WHETHER A CLERK OF COURT MAY REFUSE A REQUEST FOR COURT RECORDS MADE DURING NORMAL BUSINESS HOURS FOR A PROLONGED PERIOD OF TIME BASED UPON A REPRESENTATION THAT THE CASE FILE IS WITH THE JUDGE AND THEREFORE NOT AVAILABLE TO THE CLERK.**

**WHETHER A CLERK OF COURT MAY ARBITRARILY CONSIDER A REQUEST FOR PUBLIC RECORDS TO BE WITHDRAWN, AFTER SAID REQUEST IS MADE IN WRITING, WHERE THE REQUEST WAS DENIED AND THE WRITTEN REQUEST WAS RETURNED TO THE REQUESTING PARTY, WITHOUT ADVISING THE REQUESTING PARTY THAT BY TAKING THE WRITTEN REQUEST RETURNED TO HIM HIS REQUEST WOULD BE CONSIDERED WITHDRAWN.**

**WHETHER PROVISION OF PUBLIC RECORDS BY THE CLERK OF COURT MORE THAN SIX WEEKS AFTER AN ORAL REQUEST FOR THOSE DOCUMENTS WAS MADE, AND MORE THAN THREE WEEKS AFTER A WRITTEN REQUEST FOR THOSE DOCUMENTS WAS MADE AND ONLY AFTER AN ACTION IN MANDAMUS WAS FILED, IS "WITHIN A REASONABLE PERIOD OF TIME" AS PROVIDED BY ORC 149.43.**

The Respondent does not deny that the records requested by Relator were public records within the meaning of the statute, nor that he failed to produce the records upon

requests made during normal business hours. Nor does he dispute that NO documents were not produced until six weeks after the oral request and three weeks after the written request and only after the Action in Mandamus was filed. Rather, Respondent argued that 1) He did not provide the documents initially because the case was "With Judge Payton" (as it had been apparently from February 7, 2008 (see court docket) through presumably January 20, 2009 when the documents were finally provided to Relator); 2) He did not provide the documents because he considered the request "withdrawn" when he returned the written request to Relator (without advising him that his request would be considered withdrawn should he then take the document with him); and 3) by providing 3 of the 4 requested documents within three to six weeks after the request was made, those documents were provided within a reasonable time as defined by the statute. (See Respondent's Answer p.4-6).

The Court of Appeals agreed with all of these contentions, despite the fact that they are all without merit..

O.R.C. 149.43 provides:

(B) (1) Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request, a public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, the public office or the person responsible for the public record shall notify the requester of any redaction or make the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.

(2) To facilitate broader access to public records, a public office or the person

responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.

(3) If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing. The explanation shall not preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section.

(4) Unless specifically required or authorized by state or federal law or in accordance with division (B) of this section, no public office or person responsible for public records may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any requirement that the requester disclose the requestor's identity or the intended use of the requested public record constitutes a denial of the request.

(5) A public office or person responsible for public records may ask a requester to make the request in writing, may ask for the requester's identity, and may inquire about the intended use of the information requested, but may do so only after disclosing to the requester that a written request is not mandatory and that the requester may decline to reveal the requester's identity or the intended use and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester.

Exceptions to disclosure under the Public Records Act, RC § 149.43, are strictly construed against the public records custodian, and the custodian has the burden to establish the applicability of an exception. A custodian does not meet this burden if it has not proven that the requested records fall squarely within the exception. A judicially created "good sense" rule does not except a public record from disclosure under RC §

149.43. *State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 118 Ohio St. 3d 81, 886 N.E.2d 206, 2008 Ohio LEXIS 1014, 2008 Ohio 1770,(2008).

A "Record" may be a single document within a larger file of documents as well as a compilation of documents and can be any document, regardless of physical form or characteristic, whether in draft, compiled, raw, or refined form, that is created or received or used by a public office or official in the organization, functions, policies, decisions, procedures, operations, or other activities of the office. *Kish v. City of Akron*, 109 Ohio St. 3d 162, 846 N.E.2d 811, 2006 Ohio LEXIS 643, 2006 Ohio 1244,(2006).

In construing RC § 149.43, public policy requires liberal construction of the provisions defining public records and a strict construction of the exceptions. Any doubt must be resolved in favor of disclosure. *Kish v. City of Akron*, 109 Ohio St. 3d 162, 846 N.E.2d 811, 2006 Ohio LEXIS 643, 2006 Ohio 1244,(2006).. Pleadings in a case are public records subject to disclosure unless a statutory exception applies. *State ex rel. Miami Valley Broad. Corp. v. Davis*, 158 Ohio App. 3d 98, 814 N.E.2d 88, 2004 Ohio App. LEXIS 3453, 2004 Ohio 3860, (2004).

Pleadings filed with a court are public records and any exceptions to disclosure under the Public Records Act, RC § 149.43 must to be strictly construed against a public-records custodian, who bears the burden of establishing the applicability of an exception. *State ex rel. Physicians Comm. for Responsible Med. v. Bd. of Trs. of Ohio State Univ.*, 108 Ohio St. 3d 288, 843 N.E. 2d 174, 2006 Ohio LEXIS 633, 2006 Ohio 903,(2006). Public records are the people's records and the officials in whose custody they happen to be are merely trustees for the people and, therefore, where an entity fails to produce

records that are requested, claiming exemption, the burden of proof is on that entity to prove that the exemption applies and all doubts are to be resolved in favor of disclosure. *Gilbert v. County of Summit*, 2003 Ohio App. LEXIS 5337, 2003 Ohio 6012, (2003), affirmed by 104 Ohio St. 3d 660, 2004 Ohio 7108, 821 N.E.2d 564, 2004 Ohio LEXIS 3068 (2004).

In the instant case, the Respondent's argument that the documents were "waiting on Judge Payton" and thus an exemption to the public records act applied, is unfounded. Not only does this exemption not exist, but assuming, arguendo, that it did, the Respondent did not comply with the Statute in providing written authority to the Relator. Therefore, any claimed exemption was without merit and does not excuse non-compliance with the statute. The Respondent has not met the burden of proving that an exemption existed or applied in this case. However, the Court of Appeals did not address this issue at all, rather, finding that the oral request was withdrawn, merely because Relator left the office when he was refused the document he requested and that his written request was withdrawn because it was returned to him with a denial of his request noted on it. This begs the question, what was Relator expected to do? He was not told he would ever be provided the documents, nor was he asked to leave this information so he could be contacted when they became available. He was never told that he was withdrawing his request by taking the written request handed back to him by the Clerk, nor was he ever advised he needed to take further action. This is aggravated by the fact that no copy of the Public Records Law was posted in the Clerk's Office to give him any direction. The Court of Appeals erred in finding the Relator withdrew his request upon

leaving when refused the documents, and should have found the Respondent violated the Public Records Act by denying the records as “waiting on Judge Payton.”

Likewise, the Court’s finding that the return of Relator’s written request to him somehow constituted a withdrawal of that request, has no basis in law. The statute provides only that a written request “may” be requested, but provides no authority for the Respondent’s claim that return of that request while noting a denial of the request, somehow constitutes a withdrawal of the request. The denial of the request was made in writing upon the written request by notation. At that point, Respondent had effectively denied the request for the documents for a second time, by notation on the document “waiting on Judge Payton.” (See Respondent’s Exhibit F). The Court’s finding that by returning that document with the denial notated on it is now considered a withdrawal of the request is not supported by any legal authority—because, Relator submits, there is none. The return of the document was a denial—period. The Court of Appeals erred by finding that any withdrawal of the Relator’s request was made, thus relieving the Respondent of his obligation to produce the documents requested.

Finally, the Court of Appeals erred in finding the production of three of the four documents three weeks after the written request, and six weeks after the oral request, and only after this Mandamus action was filed, was within a reasonable time, and in compliance with the statute, is in error. The statute provides that “all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours”, and that “upon request, a public office or person responsible for public records shall make copies available, within a reasonable period of time.” ORC 149.43(B)(1). Relator submits that a period of

3-6 weeks to supply the records, as a matter of law, does not comply with the statutes. Moreover, the fact that it was only the filing of this Action in Mandamus that prompted the production of ANY documents, only magnifies the unreasonableness of the delay. Respondent's production of 3 of the 4 documents **only after** legal action was instituted leaves no doubt that the Respondent did not provide the records "promptly" and at reasonable times during regular business hours, nor "within a reasonable period of time" as required by the statute. The failure to provide the fourth record at all is clearly a violation of the statute.

Finally, and most important perhaps, the Court of Appeals erred in finding that the parties agree that the fourth item is not a public record subject to disclosure. There is no agreement to that fact in the Agreed Statement of Facts filed with the Court. Relator specifically did not agree to that fact, as he was certain that there was a document corresponding to the docket entry of 12/20/06 Remand. Nowhere in the record does there exist any agreement on this issue. In fact, throughout Assignment of Error Number II in the Relator's Brief, he specifically denies the 4<sup>th</sup> document does not exist and repeatedly maintains throughout his brief that the Respondent is in continuing violation for failing to produce it. Nor is there any other evidence before the Court of Appeals to support this finding. Rather, this finding is Clearly in error, as set forth above, based upon the review of the records of the Court.

The Relator discovered, wholly by accident, and after this appeal was filed, that this document was attached to a pleading filed by Attorney for Respondent, in an unrelated case (see attached Exhibit C, cover page of the original pleading, and the 12/20/06 remand document which was filed as Respondent Exhibit #5 an attachment to

this pleading: “Respondents’ Mansfield Municipal Court, Judge Jeff Payton and Magistrate Donald Teffner, Motion to Dismiss”, in this Court, in Ohio Supreme Court Case 08-1367, filed by Attorney David Remy on Behalf of Respondent, Mansfield Municipal Court Clerk). This pleading was filed on August 1, 2008 and the Relator’s public records request was made in December of 2008, so clearly this document was in existence at the time the request was made and was well known to Respondent and his counsel. The document was rubber-stamped as filed on January 1, 2007 (interestingly, a date when the Court should have been closed for the New Year holiday) indicating that it was in the case file of the Clerk well before the time of the public records request.

Upon discovery of this document, Relator brought this matter to the attention of Respondent’s Counsel and requested some sort of response as to whether that document was in fact the document related to the Marginal notation by Respondent’s counsel. Relator did in fact fax a copy of that document to Respondent’s counsel. However, to date, Respondent has failed to acknowledge the fact that it exists and it has never been produced. Since this matter is pending on appeal in this Court, Relator submits that this Court may take judicial notice of its own record and therefore acknowledge the existence of this document.

In any event, it is clear that the Court of Appeals finding that the parties were in agreement that this fourth item was not a public record subject to disclosure is not supported by the facts or the record and is clearly in error. But for this finding, the Court of Appeals would have had to find that the Respondent was in violation of the Public Records Act, since this was clearly a document subject to disclosure, and it was not and has never been provided.

Based upon all of the foregoing, Relator submits that Respondent violated the provisions of ORC 149.43 when it failed to make available the records of the Mansfield Municipal Court to Relator at all reasonable times during regular business hours, and upon request, within a reasonable period of time and that the Court of Appeals erred in finding that Respondent did not violate those provisions. On that basis, Relator respectfully requests that this Court reverse the lower Court decision.

## **PROPOSITION OF LAW NO. II**

**THE COURT OF APPEALS ERRED IN DENYING RELATOR, AS A PERSON SEEKING PUBLIC RECORDS, AN AWARD OF STATUTORY DAMAGES AND ATTORNEY FEES SINCE HE DELIVERED HIS REQUEST BY HAND TO THE PERSON RESPONSIBLE FOR THE REQUESTED RECORDS, THE REQUEST FAIRLY DESCRIBED THE PUBLIC RECORD AND THE RESPONDENT FAILED TO COMPLY WITH THE DUTIES IMPOSED UPON HIM UNDER THE PUBLIC RECORDS ACT.**

### **ISSUES PRESENTED FOR REVIEW AND ARGUMENT**

**WHETHER A PERSON SEEKING PUBLIC RECORDS IS ENTITLED TO AN AWARD OF STATUTORY DAMAGES AND ATTORNEY FEES WHEN ONLY A PORTION OF THE PUBLIC RECORDS ARE PROVIDED AND ONLY AFTER AN ACTION IN MANDAMUS IS FILED.**

The Court of Appeals denied Relator's Request for Statutory Damages and Attorney fees, based upon its finding that Respondent did not violate the public records act, and that the Respondents' ultimate production of three of the four public records responsive to Relator's request mooted the case (though Relator denied production of the forth record in his brief before the Court, did not agree it was not a public record subject to disclosure and argue that the policy and practice of the Mansfield Municipal Court Clerk constituted an ongoing violation of the public records act).

First, even had the production of 3 of the 4 documents rendered the case moot (which fact is denied by Relator), there still remained the issue of statutory damages, as well as the award of attorney fees and costs. *See, e.g., State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Info. Network, Inc. v. Dupuis, 98 Ohio St.3d 126, 128, 2002-Ohio-7041* (in public records mandamus action, "the Enquirer's claim of attorney fees would not be rendered moot by the provision of the requested record").

Violations of ORC 149.43, including the promptness requirement, justified an award of

attorney fees. *Specht v. Finnegan*, 149 Ohio App. 3d 201, 776 N.E.2d 564, 2002 Ohio App. LEXIS 4742, 2002 Ohio 4660, (2002). An award of attorney fees is proper where the respondents fail to provide any reasons justifying their noncompliance. *State ex rel. Board of Educ. v. City of Youngstown*, 84 Ohio St. 3d 51, 701 N.E.2d 986, 1998 Ohio LEXIS 3242, 1998 Ohio 501,(1998).

Pursuant to the 2007 amendments to the Public Records Act, (2006 Sub. H.B. 9, 151 Ohio Laws \_\_), a person seeking public records may be entitled to an award of statutory damages if the person responsible for such records fails to comply any duty or obligation under the Act. Specifically, R.C. 149.43(C)(1) provides:

If a requestor transmits a written request by hand delivery or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records,... the requestor shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

Thus, a requestor is entitled to an award of statutory damages if: i) the public records request was delivered by hand or by certified mail to the public office or person responsible for the requested public records; (ii) the public records request fairly describes the public record or class of public records sought; and (iii) the public office or person responsible for the requested public records fails to comply with any duty imposed upon him or her under the Public Records Act. In this case, all three criteria have been met.

First, it is undisputed that Relator tendered a written request for copies of public records. And it is further undisputed that this request was tendered to Respondent, who is

a "person responsible" for the public records at issue in this case. Thus, the first criteria for an award of statutory damages has been established.

Secondly, Relator's request identified four specific documents listed on docket entries of a court case in the Mansfield Municipal Court for which Relator desired "copies of the ... public case files." In identifying the specific records from which he sought copies of the public file, Relator fairly described the records that he sought. Accordingly, the second criteria for an award of statutory damages has been established.

As for the third criteria for an award of statutory damages, Respondent failed to comply with multiple duties under the Public Records Act. Quite obviously, in response to Relator's written request of December 29, 2008, Respondent failed to comply with the duty to "make copies of the requested public record available at cost and within a reasonable period of time." R.C. 149.43(B)(1). Then, three weeks after Relator tendered his written request, he was provided with only three of the four documents. As records maintained by a clerk of court are undisputedly public records, *State ex rel. Mothers Against Drunk Drivers, v. Gosser (1985), 20 Ohio St.3d 30, 33* (absent any specific statutory exclusion, any document appertaining to, or recording of, the proceedings of a court are public records), this was clearly an unreasonable amount of time to produce copies of any records. See *State ex rel. Wadd v. Cleveland (1998), 81 Ohio St.3d 50*.

Additionally, Section 149.43(B) (3) of the Revised Code sets forth two distinct obligations when a public records request is denied, in whole or in part:

... the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied ...

[i]f the initial request was provided in writing, the explanation also shall be provided to the requester in writing.

In this case, in denying Relator copies of all of the records that he requested, Respondent failed to provide an explanation with legal authority as to why they were denying the Relator's request<sup>4</sup>, let alone doing so in writing.

As the three criteria for an award of statutory damages have been established, Relator is entitled to an award of such damages.

### **Entitlement to Statutory Damages**

Statutory damages of \$100 per day per page under the Public Records Act begins on the date that a public records mandamus action is filed and is capped ten business days later at a maximum award of \$1,000 per page. *See Kish v. Akron, 109 Ohio St.3d 162.*

R.C. 149.43(C)(1) directs the calculation as follows:

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars.

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<sup>4</sup> As noted above, the only explanation provided to Relator (which was in writing) was "Waiting on Judge Payton". With respect to the latter, precedent of the Court has clearly established that "R.C. 149.43 does not contain a "Waiting on Judge Payton" exemption for public records."

This mandamus action was filed in this Court on December 30, 2008: All records responsive to Relator's request were not produced until January 21, 2009 - significantly more than 10 business days since the filing of this action (and nearly six weeks since Relator first requested the public records). As such, Relator is entitled to an award of the maximum statutory damages of \$1,000 per page for all of the records. The Court of Appeals finding that 3 of the 4 documents were provided within a reasonable time, and that the request of Relator was withdrawn, were clearly in error, as set forth above. However, At a very minimum, Relator is entitled to \$1000 for the withholding of the fourth document, which was never provided!

#### **Entitlement to Attorney Fees**

Even if this Court finds the Court of Appeals was correct in finding Respondents' ultimate production of 3 of the 4 public records responsive to Relator's request may have mooted the case with respect to the issuance *vel non* of the requested writ (though Relator denies this all as set forth above), there remains the issue of the award of attorney fees and costs. In such instances, *i.e.*, where public records were produced only after a public-records mandamus action had been filed, this Court in *State ex rel. Pennington v. Gundler (1996), 75 Ohio St.3d 171*, listed four factors to be established before attorney fees would still be awarded:

- (1) A person makes a proper request for public records pursuant to R.C. 149.43,
- (2) The custodian of the public records fails to comply with the person's request,
- (3) The requesting person files a mandamus action pursuant to R.C. 149.43 to obtain copies of the records, and
- (4) The person receives the requested public records only after the mandamus action is filed, thereby rendering the claim for a writ of mandamus moot.

In this case, all four factors have clearly been established.

Firstly, it is undisputed that Relator tendered a proper written request for copies of public records personally. And it is further undisputed that this request was tendered to Respondent, who is a "person responsible" for the public records at issue in this case. It is also noteworthy that *Pennington* involved the same type of records sought in this case, files of court cases kept and maintained by a municipal court clerk. In that case, this Court recognized that "[t]here can be no question that records sought by Pennington were public records and should have been given to Pennington in the form and within the time required by law." *Id.* at 174.

Secondly, the record further demonstrates that Respondents failed to comply with Relator's request of December 29, 2008. In fact, nearly three weeks after Relator's request, Respondent's counsel provided Relator only three of the four requested documents, refusing to produce the other public record from the case file maintained by Respondent in his capacity as clerk of courts.

Next, in light of the deliberate obstruction and avoidance of Respondent to comply fully and completely with his obligations under the Public Records Act and in order to obtain copies of all of the requested records, this mandamus action was filed on December 30, 2008. It was only in response to the filing of this mandamus action that Respondent finally produced three of the four public records that Relator had sought December 4, 2008, transmitting those records on January 21 2009- over 6 weeks after Relator submitted his oral request of December 4, 2008 and 3 weeks after the written request. The final document was falsely represented as not existing by Respondent and to date HAS NEVER BEEN PRODUCED.

Thus, all four criteria of *Pennington* have been established so as to entitle

Relator to an award of attorney fees.

Through the enactment of the Public Records Act, the General Assembly has sought to ensure and to vindicate the rights of the public to their records. See, e.g., *State ex rel. Patterson v. Ayers (1960)*, 171 Ohio St. 369, 371 ("[t]he rule in Ohio is that public records are the people's records and that the officials in whose custody they happen to be are merely trustees for the people"). When a public office or person responsible for public records fails to promptly make such records available for inspection or copying, or otherwise fails to comply with their legal obligations under the Public Records Act, the ability of the people to be fully informed of the government's operations are greatly impeded. As this Court noted in *Kish v. Akron*, 109 Ohio St.3d 162, 2006-Ohio-1244:

Public records are one portal through which the people observe their government, ensuring its' accountability, integrity, and equity while minimizing sovereign mischief and malfeasance. Public records afford an array of other utilitarian purposes necessary to a sophisticated democracy: they illuminate and foster understanding of the rationale underlying state decisions, "... promote cherished rights such as freedom of speech and press, . . . and "foster openness and ... encourage the free flow of information where it is not prohibited by law."

**Id. at 166, 2006-Ohio-1344 ¶16 (citations omitted).**

As such, the legislative goals and purposes behind the Public Records Act will be served and promoted by awarding attorney fees in successful public records cases. Statutes which allow for the award of attorney fees in public interest litigation are premised upon the recognition that privately-initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in such statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will, as a practical matter, frequently be infeasible. Stated otherwise, the attorney fee provision of the Public Records Act serves

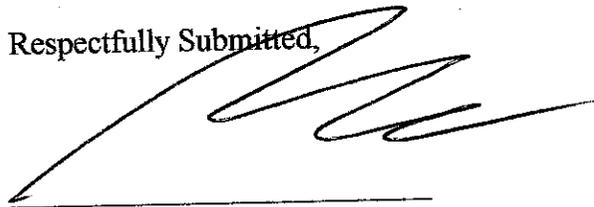
as an incentive for the pursuit of public interest-related litigation that might otherwise have been too costly to bring. In this case, it is particularly relevant, as the Relator would not have been able to move forward and enforce production of these documents, in light of the persistent obstruction and obfuscation of the Respondent, without the assistance of counsel.

To not award full attorney fees in a successful public record case would be to punish the people and their attorneys who successfully prosecute public records cases; it would completely frustrate the remedial aspect of the award of attorney fees. To not award full attorney fees in a successful public record case would be to continue to reward those public officials who engage in obfuscation, cunctation, delay and even arrogance when responding to public record cases; it would be contrary to the purpose and intent of the General Assembly in enacting the 2007 amendments. The Relator is entitled to an award of statutory damages and full attorney fees all in accordance with the facts and law as set forth above.

## CONCLUSION

The Relator submits that the Court of Appeals erred in finding that the Respondent did not violate the Ohio Public Records act, and therefore Relator requests that this Court reverse the decision of the Court of Appeals and find that Respondent has failed to comply with RC 149.43 and that Relator is entitled to an award statutory damages, attorney fees and costs pursuant to R.C. 149.43 and direct Relator's counsel to submit a bill and documentation in support of the award of attorney fees and cost.

Respectfully Submitted,



---

Lori Ann McGinnis-0060029  
1209 East Main Street  
Ashland, OH 44805  
(419) 606-1278  
Counsel for Relator-Appellant

**CERTIFICATE OF SERVICE**

Counsel for Relator hereby certifies that a true copy of the foregoing was sent by ordinary U.S. mail this 17 day of February, 2011 to David L. Remy, Law Director, City of Mansfield, 30 North Diamond Street, Mansfield, OH 44902, counsel for Respondent

  
Lori Ann McGinnis-0060029

IN THE SUPREME COURT OF OHIO

State of Ohio Citizen Raleigh M Striker,  
Relator-Appellant,

V.

Clerk of Court, Daniel F. Smith  
Respondent-Appellee.

**Case No. 2010-0443**  
On Appeal from the Richland  
County Court of Appeals  
Fifth Appellate District

**APPEAL OF RIGHT**  
Court of Appeals  
Case No. 2008CA0336

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APPENDIX

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IN THE SUPREME COURT OF OHIO

10-0433

State of Ohio Citizen Raleigh M Striker,  
Relator-Appellant,

On Appeal from the Richland  
County Court of Appeals  
Fifth Appellate District

V.

Clerk of Court, Daniel F. Smith  
Respondent-Appellee.

**APPEAL OF RIGHT**  
Court of Appeals  
Case No. 2008CA0336

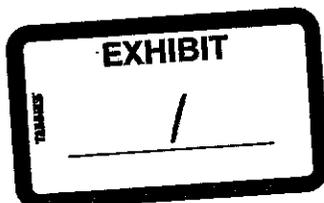
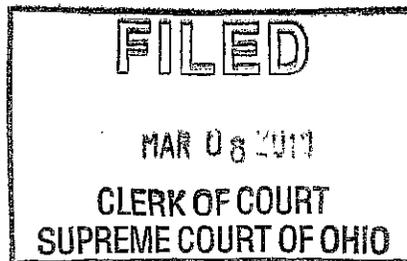
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NOTICE OF APPEAL OF APPELLANT RALEIGH STRIKER FROM A  
CASE ORIGINATING IN THE COURT OF APPEALS  
PURSUANT TO S.CT. PRAC. R 2.1(A)

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LORI ANN MCGINNIS, ESQ.-0060029  
236 Blendon Road  
West Jefferson, OH 43162  
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(419)289-8545 fax  
mcginnil@yahoo.com  
COUNSEL FOR APPELLANT  
COUNSEL OF RECORD

DAVID L. REMY, ESQ.  
30 North Diamond St.  
Mansfield, OH 44902  
COUNSEL FOR APPELLEE



IN THE SUPREME COURT OF OHIO

State of Ohio Citizen Raleigh M Striker,  
Relator-Appellant,

On Appeal from the Richland  
County Court of Appeals  
Fifth Appellate District

V.

Clerk of Court, Daniel F. Smith  
Respondent-Appellee.

**APPEAL OF RIGHT**  
Court of Appeals  
Case No. 2008CA0336

Notice of Appeal of Raleigh Striker

Appellant Raleigh Striker, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Richland County Court of Appeals, Fifth Appellate District, entered in Court of Appeals Case No. 2008CA0336 on February 8, 2010.

This case originated in the court of appeals, and is one of public or great general interest. This is an appeal of right.

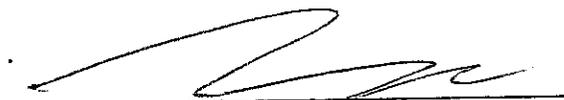
Respectfully submitted,



Lori Ann McGinnis Counsel of Record  
COUNSEL FOR APPELLANT,  
Raleigh Striker

Certificate of Service

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail and email transmission to counsel for Appellee, David Remy, Law Director, City of Mansfield, 30 North Diamond St., Mansfield, OH 44902 on 3/8/10.



Lori McGinnis  
COUNSEL FOR APPELLANT

COURT OF APPEALS  
RICHLAND COUNTY OHIO  
FILED

2010 FEB -8 AM 11:35

LINDA H. FRARY  
CLERK

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO, EX REL.  
RALEIGH M. STRIKER

Relator

-vs-

CLERK OF COURT,  
DANIEL F. SMITH

Respondent

JUDGES:  
Hon. W. Scott Gwin, P.J.  
Hon. William B. Hoffman, J.  
Hon. John W. Wise, J.

Case No. 2008-CA-0336

OPINION

CHARACTER OF PROCEEDING: Complaint for Writ of Mandamus

JUDGMENT: Granted in part; denied in part

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Relator

LORI A. MCGINNIS  
3183 Wally Road  
Loudonville, OH 44842

For Respondent

DAVID L. REMY  
30 Norfth Diamond Street  
Mansfield, OH 44902



*Gwin, P.J.*

{¶1} Relator, Raleigh M. Striker, has filed a Complaint for Writ of Mandamus against Respondent, Daniel F. Smith, Clerk of Courts alleging Respondent has failed to comply with the "Sunshine Law." Respondent has filed a brief in opposition. In addition, Relator has filed a "Motion for Supplemental (sic) Pleading" detailing additional allegations which occurred after the initial complaint was filed.

{¶2} Initially, we granted Relator's motion to supplement the Complaint. Civ.R. 15(A) permits a party to amend a pleading as a matter of course prior to the filing of a responsive pleading. Relator filed the motion to supplement the complaint on January 15, 2009. Respondent did not file an answer until January 23, 2009, therefore, Relator is able to amend his original complaint without leave of court.

{¶3} Relator essentially raises two claims in his Complaint in addition to a request for statutory damages and attorney fees. First, he requests this Court issue a writ of mandamus because Respondent did not provide copies of public records promptly upon Relator's request. Second, Relator avers Respondent has failed to properly post its public records policy.

#### **I. First Claim: Public Records**

{¶4} Relator's first claim involves a public record request for three documents: "(1) 1/02/07 remand SC, (2) 1/31/07 memorandum, and (3) 4/30/07 JE." There was a fourth item requested, however, the parties agree the fourth item was not a public record subject to disclosure. Relator went to Respondent's office and made an oral request for these documents on December 4, 2008. Relator was advised the file containing the documents was in the office of the judge assigned to the case, therefore,

the request could not be fulfilled at that time. Upon hearing this, Relator left the building. On December 29, 2008, Relator presented a written request for the documents to Respondent. Respondent made a notation on the request, "Waiting on Judge Payton, Dan Smith 12-29-08." Relator took the written request with him. Relator filed the instant Complaint the next day on December 30, 2008. Respondent provided the requested documents on January 20, 2009.

{¶15} Respondent raises three arguments in his defense. First, Respondent states the file containing the documents sought by Relator was in the possession of the trial court judge at the time Relator made his request. Respondent argues R.C. 149.43(B)(1) merely requires public records to be made available to a requestor "within a reasonable period of time". Because the file was not in the possession of the clerk at the time of the request, Respondent could not instantly fulfill the request. Both times Relator appeared at the Clerk's office, Respondent notified Relator of the immediate unavailability of the documents. Upon learning this, Relator left the office each time without leaving the request.

{¶16} This act of leaving the office is the crux of Respondent's second argument. Respondent argues Relator withdrew his request by failing to leave a copy of the request with Respondent.

{¶17} We will address these arguments together as they are intertwined. The Tenth District Court of Appeals has examined the duty of a public office pursuant to a public records request, "[P]ublic offices are required to promptly prepare records and transmit them within a reasonable period of time after receiving the request for the copy. The term "promptly" is not defined in the statute. However, statutes in other states give

their agencies from between three and 12 days from the date the public records were requested to make the documents available. The word "prompt" is defined as "performed readily or immediately." Webster's Eleventh New Collegiate Dictionary (2005) 994." *State ex rel. Simonsen v. Ohio Dept. of Rehab. & Corr.* 2008 WL 5381924, 6 (Ohio App. 10 Dist.).

{¶8} Other courts have examined the number of days which may be considered reasonable or unreasonable. Ten business days has been held to be reasonable while 32, 37, and 79 business days have been held to be unreasonable. See *State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Commrs.*, 2009 WL 3387654, 1 (Ohio App. 8 Dist.) (ten business days not violation); *State ex rel. Simonsen v. Ohio Dept. of Rehab. & Corr.*, 2009 WL 250867, 7 (Ohio App. 10 Dist.) (37 days not reasonable); *State ex rel. Bardwell v. Rocky River Police Dept.*, 2009 WL 406600, 7 (Ohio App. 8 Dist.) (32 business days unreasonable); *Bardwell v. Cleveland*, 2009 WL 3478444, 5 (Ohio App. 8 Dist.) (79 days unreasonable). In the instant case, the records were given to Relator on the 13<sup>th</sup> business day after the request was made in writing. We cannot say 13 days is unreasonable under these circumstances.

{¶9} We find the oral request made on December 4, 2009 was withdrawn when Relator left the office. Relator did not indicate he would return for the records nor did he leave information for Respondent to contact him once the file had been retrieved.

{¶10} Again, Relator took his written request with him on December 29, 2008. Respondent was not in possession of a list of the records sought until Respondent was served with a copy of the Complaint on January 5, 2009. Once Respondent was in

possession of the list of records, they were provided to Relator on the tenth business day following Respondent's receipt of the request.

{¶11} Whether we consider the request made on December 29 or January 5, we find Respondent provided the copies requested promptly within a reasonable time in either case.

{¶12} Finally, Respondent's third contention is the instant complaint is moot. Upon receiving a copy of the complaint in this case, Respondent learned the list of documents Relator wanted. Respondent made copies of those documents and furnished them to Relator which Respondent argues makes this cause of action moot.

{¶13} The Supreme Court addressed an analogous fact pattern in *State ex rel. Toledo Blade Co. v. Ohio Bureau of Workers' Comp. et al.* (2005), 106 Ohio St.3d 113. In *Toledo Blade*, the Blade requested certain records from the Ohio Bureau of Workers' Compensation (BWC). After the Complaint was filed, the BWC provided certain records. The Supreme Court held, "The Blade's mandamus claim for unredacted audit reports of coin-inventory records is moot because respondents have now provided these records. See *State ex rel. Cranford v. Cleveland*, 103 Ohio St.3d 196, 2004-Ohio-4884, 814 N.E.2d 1218, ¶ 23, quoting \*116 *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Info. Network, Inc. v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, 781 N.E.2d 163, ¶ 8 (" 'In general, the provision\*\*715 of requested records to a relator in a public-records mandamus case renders the mandamus claim moot' "). *State ex rel. Toledo Blade Co. v. Ohio Bur. of Workers' Comp.* (2005), 106 Ohio St.3d 113, 115-116, 832 N.E.2d 711, 714 – 715.

{¶14} We find Relator's claim to be moot based upon Respondent's having provided the requested documents to Relator. Further, even had the claim not been moot, we do not find Respondent failed to comply with his duty under the Public Records Act.

## **II. Second Claim: Posting of Public Records Policy**

{¶15} Relator claims Respondent has failed to post its public records policy. R.C. 149.43(E)(2) provides in part, "The public office shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public office and in all locations where the public office has branches." The parties filed an Agreed Statement of Facts which states, "A Public Records Rights poster is not posted in the Clerk of Courts Office. However, copies of such rights are located in the City's Mail Bulletin Board located on the Third Floor of the Administration Building and at certain other locations throughout the building."

{¶16} Respondent argues the posters in the Administration Building comply with the statute. The statute requires the poster to be displayed in the public office. The parties agree the poster is not located in the Clerk of Court's office. Although the parties agree the poster appears throughout the building, Respondent has failed to prove the posters appear sufficiently close to his office to comply with the statute. Because Respondent concedes the poster is not located in his office, the writ of mandamus is granted with respect to placement of the poster only.

## **III. Third Claim: Award of Statutory Damages and Attorney Fees**

{¶17} R.C. 149.43(C) requires an award of statutory damages in cases where a written request is made and where the public office has failed to comply with the written

request. Relator did not transmit a written request until the filing of the Complaint. Because we have found Respondent did not fail to comply with a written request, statutory damages should not be awarded.

{¶18} R.C. 149.43(C)(2)(b) allows an award of attorney fees only if judgment is rendered ordering a public office to comply with division (B) of the Public Records Act. Because we have not rendered a judgment against Respondent for violation of division (B), attorney fees cannot be awarded.

{¶19} A writ of mandamus is issued relating only to the posting of the public records policy. Respondent shall immediately post his public records policy poster in the office of the clerk of courts.

{¶20} WRIT DENIED IN PART AND GRANTED IN PART.

{¶21} COSTS TO RELATOR.

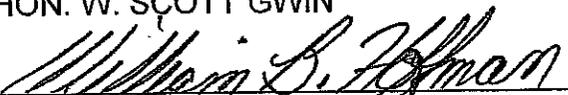
{¶22} IT IS SO ORDERED.

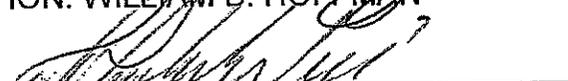
By Gwin, P.J.,

Hoffman, J., and

Wise, J., concur

  
HON. W. SCOTT GWIN

  
HON. WILLIAM B. HOFFMAN

  
HON. JOHN W. WISE

COURT OF APPEALS  
RICHLAND COUNTY OHIO  
FILED

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LINDA H. FRARY  
CLERK

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO, EX REL.  
RALEIGH M. STRIKER

Relator

-vs-

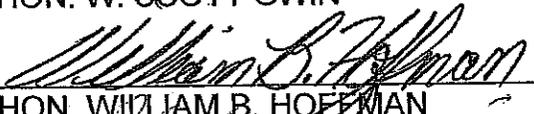
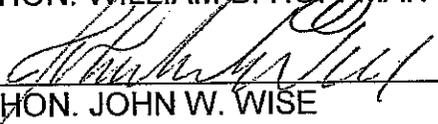
CLERK OF COURT,  
DANIEL F. SMITH

Respondent

JUDGMENT ENTRY

CASE NO. 2008-CA-0336

For the reasons stated in our accompanying Memorandum-Opinion, the Writ is granted in part and denied in part. Costs to be divided equally between Relator and Respondent.

  
HON. W. SCOTT GWIN  
  
HON. WILLIAM B. HOFFMAN  
  
HON. JOHN W. WISE

# City of Mansfield, Ohio

30 N. Diamond St. Mansfield, OH 44902



David L. Remy

Law Director

January 20, 2009

Raleigh M. Striker  
3560 Alvin Road  
Shelby, OH 44875

Dear Mr. Striker:

Enclosed please find copies of documents you requested from the Clerk of Court's Office on December 29, 2008 in the case entitled "*Calhoun, Kademenos & Childress Co. L.P.A. v. Randy D. Shepherd*". The initial document you request which was referred to by you as being "12/20/06 remand" does not exist. That reference on the docket is known as a marginal notation and does not refer to a specific document.

Sincerely,

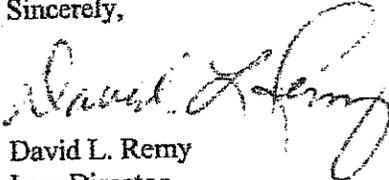
  
David L. Remy  
Law Director

EXHIBIT "B"



IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL.  
RANDY SHEPHERD

CASE NO. 08-1367

Relator,

vs.

ORIGINAL ACTION  
IN MANDAMUS

MANSFIELD MUNICIPAL COURT  
ET AL.

Respondents

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RESPONDENTS', MANSFIELD MUNICIPAL COURT, JUDGE JEFF PAYTON AND  
MAGISTRATE DONALD TEFFNER,  
MOTION TO DISMISS

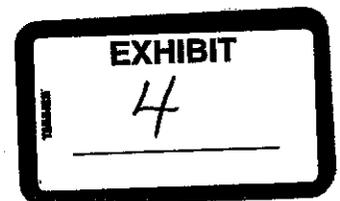
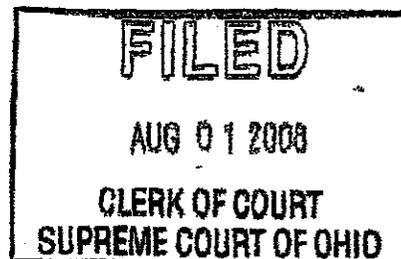
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COUNSEL FOR RESPONDENTS:

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(S. Ct. Reg. #0023702)  
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City of Mansfield, Ohio  
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Mansfield, OH 44902  
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Fax: (419) 755-9697  
E-mail: [dremy@ci.mansfield.oh.us](mailto:dremy@ci.mansfield.oh.us)

PRO SE RELATOR:

Randy Shepherd  
3558 Alvin Road  
Shelby, OH 44875



IN THE MUNICIPAL COURT OF MANSFIELD, OHIO

CALHOUN KADEMENOS :  
& CHILDRESS CO LPA :

CASE# 06CVH 3913

PLAINTIFF :

VS. :

RANDY D. SHEPHERD :

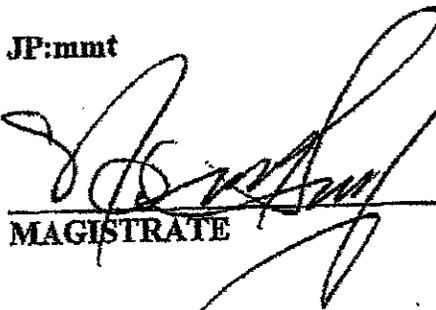
JUDGMENT ENTRY

DEFENDANT :

This 20th day of December, 2006 this case came on for hearing upon the Courts own Motion and for good cause shown the herein case is remanded to the Magistrate, for hearing and the Magistrate is hereby ORDERED to report all issues to the Court.

SO ORDERED.

JP:mmt

  
MAGISTRATE

  
JUDGE JEFF PAYTON

FILED  
JAN - 1 2007  
MUNICIPAL COURT  
MANSFIELD, OHIO  
DANIEL F. SMITH, CLERK

**ORC Ann. 149.43 (2010)**

**§ 149.43. Availability of public records**

(A) As used in this section:

(1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for profit entity operating the alternative school pursuant to section 3313.533 [3313.53.3] of the Revised Code. "Public record" does not mean any of the following:

(a) Medical records;

(b) Records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and post-release control sanctions;

(c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 [2919.12.1] of the Revised Code and to appeals of actions arising under those sections;

(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under section 3705.12 of the Revised Code;

(e) Information in a record contained in the putative father registry established by section 3107.062 [3107.06.2] of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;

(f) Records listed in division (A) of section 3107.42 of the Revised Code or specified in division (A) of section 3107.52 of the Revised Code;

(g) Trial preparation records;

(h) Confidential law enforcement investigatory records;

(i) Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;

(j) DNA records stored in the DNA database pursuant to section 109.573 [109.57.3] of the Revised Code;

(k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;

(l) Records maintained by the department of youth services pertaining to



children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;

(m) Intellectual property records;

(n) Donor profile records;

(o) Records maintained by the department of job and family services pursuant to section 3121.894 [3121.89.4] of the Revised Code;

(p) Peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation residential and familial information;

(q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;

(r) Information pertaining to the recreational activities of a person under the age of eighteen;

(s) Records provided to, statements made by review board members during meetings of, and all work products of a child fatality review board acting under sections 307.621 [307.62.1] to 307.629 [307.62.9] of the Revised Code, and child fatality review data submitted by the child fatality review board to the department of health or a national child death review database, other than the report prepared pursuant to division (A) of section 307.626 [307.62.6] of the Revised Code;

(t) Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to section 5153.171 [5153.17.1] of the Revised Code other than the information released under that section;

(u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of examiners of nursing home administrators administers under section 4751.04 of the Revised Code or contracts under that section with a private or government entity to administer;

(v) Records the release of which is prohibited by state or federal law;

(w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code;

(x) Information reported and evaluations conducted pursuant to section 3701.072 [3701.07.2] of the Revised Code.

(y) Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information

that identifies any individual who benefits directly or indirectly from financial assistance from the agency;

(z) Records listed in section 5101.29 of the Revised Code.

(aa) Discharges recorded with a county recorder under section 317.24 of the Revised Code, as specified in division (B)(2) of that section.

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means 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.

(5) "Intellectual property record" means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.

(6) "Donor profile record" means all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.

(7) "Peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation residential and

familial information" means any information that discloses any of the following about a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation:

(a) The address of the actual personal residence of a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation, except for the state or political subdivision in which the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation resides;

(b) Information compiled from referral to or participation in an employee assistance program;

(c) The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation;

(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation by the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's employer;

(e) The identity and amount of any charitable or employment benefit deduction made by the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's employer from the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's compensation unless the amount of the deduction is required by state or federal law;

(f) The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation;

(g) A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

As used in divisions (A)(7) and (B)(9) of this section, "peace officer" has the same meaning as in section 109.71 of the Revised Code and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

As used in divisions (A)(7) and (B)(5) of this section, "correctional employee" means any employee of the department of rehabilitation and correction who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.

As used in divisions (A)(7) and (B)(5) of this section, "youth services employee" means any employee of the department of youth services who in the course of performing the employee's job duties has or has had contact with children committed to the custody of the department of youth services.

As used in divisions (A)(7) and (B)(9) of this section, "firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

As used in divisions (A)(7) and (B)(9) of this section, "EMT" means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I," and "paramedic" have the same meanings as in section 4765.01 of the Revised Code.

As used in divisions (A)(7) and (B)(9) of this section, "investigator of the bureau of criminal identification and investigation" has the meaning defined in section 2903.11 of the Revised Code.

(8) "Information pertaining to the recreational activities of a person under the age of eighteen" means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses any of the following:

(a) The address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person;

(b) The social security number, birth date, or photographic image of a person under the age of eighteen;

(c) Any medical record, history, or information pertaining to a person under the age of eighteen;

(d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.

(9) "Community control sanction" has the same meaning as in section 2929.01 of

the Revised Code.

(10) "Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.

(11) "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 [149.01.1] of the Revised Code.

(12) "Designee" and "elected official" have the same meanings as in section 109.43 of the Revised Code.

(B) (1) Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request, a public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, the public office or the person responsible for the public record shall notify the requester of any redaction or make the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.

(2) To facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.

(3) If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing. The explanation shall not preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section.

(4) Unless specifically required or authorized by state or federal law or in accordance with division (B) of this section, no public office or person responsible for public records may limit or condition the availability of public records by requiring

disclosure of the requester's identity or the intended use of the requested public record. Any requirement that the requester disclose the requestor's identity or the intended use of the requested public record constitutes a denial of the request.

(5) A public office or person responsible for public records may ask a requester to make the request in writing, may ask for the requester's identity, and may inquire about the intended use of the information requested, but may do so only after disclosing to the requester that a written request is not mandatory and that the requester may decline to reveal the requester's identity or the intended use and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester.

(6) If any person chooses to obtain a copy of a public record in accordance with division (B) of this section, the public office or person responsible for the public record may require that person to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the person seeking the copy under this division. The public office or the person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person seeking the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy. Nothing in this section requires a public office or person responsible for the public record to allow the person seeking a copy of the public record to make the copies of the public record.

(7) Upon a request made in accordance with division (B) of this section and subject to division (B)(6) of this section, a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail or by any other means of delivery or transmission within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.

Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail or by any other means of delivery or transmission pursuant to this division. A public office that adopts a policy and procedures under this division shall comply with them in performing its duties under this division.

In any policy and procedures adopted under this division, a public office may limit the number of records requested by a person that the office will transmit by United States mail to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes. For purposes of this

division, "commercial" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(8) A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(9) Upon written request made and signed by a journalist on or after December 16, 1999, a public office, or person responsible for public records, having custody of the records of the agency employing a specified peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation shall disclose to the journalist the address of the actual personal residence of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation and, if the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's spouse, former spouse, or child. The request shall include the journalist's name and title and the name and address of the journalist's employer and shall state that disclosure of the information sought would be in the public interest.

As used in this division, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

(C) (1) If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable,

that includes an order fixing statutory damages under division (C)(1) of this section. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

If a requestor transmits a written request by hand delivery or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requestor shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars. The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information. The existence of this injury shall be conclusively presumed. The award of statutory damages shall be in addition to all other remedies authorized by this section.

The court may reduce an award of statutory damages or not award statutory damages if the court determines both of the following:

(a) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(b) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(2) (a) If the court issues a writ of mandamus that orders the public office or the person responsible for the public record to comply with division (B) of this section and determines that the circumstances described in division (C)(1) of this section exist, the court shall determine and award to the relator all court costs.

(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, the court

(2) The public office shall distribute the public records policy adopted by the public office under division (E)(1) of this section to the employee of the public office who is the records custodian or records manager or otherwise has custody of the records of that office. The public office shall require that employee to acknowledge receipt of the copy of the public records policy. The public office shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public office and in all locations where the public office has branch offices. The public office may post its public records policy on the internet web site of the public office if the public office maintains an internet web site. A public office that has established a manual or handbook of its general policies and procedures for all employees of the public office shall include the public records policy of the public office in the manual or handbook.

(F) (1) The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in division (F)(1) of this section:

(a) "Actual cost" means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

(b) "Bulk commercial special extraction request" means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or data base by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. "Bulk commercial special extraction request" does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

(c) "Commercial" means profit-seeking production, buying, or selling of any good, service, or other product.

(d) "Special extraction costs" means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the bureau, or the actual cost incurred to create computer programs to make the special extraction. "Special extraction costs" include any charges paid to a public agency for computer or records services.

(3) For purposes of divisions (F)(1) and (2) of this section, "surveys, marketing, solicitation, or resale for commercial purposes" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

may award reasonable attorney's fees subject to reduction as described in division (C)(2)(c) of this section. The court shall award reasonable attorney's fees, subject to reduction as described in division (C)(2)(c) of this section when either of the following applies:

(i) The public office or the person responsible for the public records failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B) of this section.

(ii) The public office or the person responsible for the public records promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time.

(c) Court costs and reasonable attorney's fees awarded under this section shall be construed as remedial and not punitive. Reasonable attorney's fees shall include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees. The court may reduce an award of attorney's fees to the relator or not award attorney's fees to the relator if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(ii) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records as described in division (C)(2)(c)(i) of this section would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.

(E) (1) To ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of this section, all elected officials or their appropriate designees shall attend training approved by the attorney general as provided in section 109.43 of the Revised Code. In addition, all public offices shall adopt a public records policy in compliance with this section for responding to public records requests. In adopting a public records policy under this division, a public office may obtain guidance from the model public records policy developed and provided to the public office by the attorney general under section 109.43 of the Revised Code. Except as otherwise provided in this section, the policy may not limit the number of public records that the public office will make available to a single person, may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours.

**History:**

130 v 155 (Eff 9-27-63); 138 v S 62 (Eff 1-18-80); 140 v H 84 (Eff 3-19-85); 141 v H 238 (Eff 7-1-85); 141 v H 319 (Eff 3-24-86); 142 v S 275 (Eff 10-15-87); 145 v H 152 (Eff 7-1-93); 146 v H 5 (Eff 8-30-95); 146 v S 269 (Eff 7-1-96); 146 v H 353 (Eff 9-17-96); 146 v H 419 (Eff 9-18-96); 146 v S 277, § 1 (Eff 3-31-97); 146 v H 438, § 3 (Eff 7-1-97); 146 v S 277, § 6 (Eff 7-1-97); 147 v H 352 (Eff 1-1-98); 147 v H 421 (Eff 5-6-98); 148 v S 55 (Eff 10-26-99); 148 v S 78 (Eff 12-16-99); 148 v H 471 (Eff 7-1-2000); 148 v H 539 (Eff 6-21-2000); 148 v H 640 (Eff 9-14-2000); 148 v H 448 (Eff 10-5-2000); 148 v S 180 (Eff 3-22-2001); 149 v H 196 (Eff 11-20-2001); 149 v S 180 (Eff 4-9-2003); 149 v S 258. Eff 4-9-2003; 149 v H 490, § 1, eff. 1-1-04; 150 v H 6, § 1, eff. 2-12-04; 150 v H 431, § 1, eff. 7-1-05; 150 v H 303, § 1, eff. 10-29-05; 151 v H 141, § eff. 3-30-07; 151 v H 9, § 1, eff. 9-29-07; 152 v H 214, § 1, eff. 5-14-08; 152 v S 248, § 1, eff. 4-7-09; 153 v H 1, § 101.01, eff. 10-16-09.

**Section Notes:**

The effective date is set by § 812.10 of 153 v H 1.

The provisions of 815.10 of 153 v H 1 read as follows:

SECTION 815.10. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the following sections, presented in this act as composites of the sections as amended by the acts indicated, are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act:

\* \* \*

Section 149.43 of the Revised Code as amended by Am. Sub. H.B. 214 and Am. Sub. S.B. 248, both of the 127th General Assembly.