

ORIGINAL

The Supreme Court of Ohio

Gerald O. Strothers Jr.
14019 Northfield Ave
East Cleveland, OH 44112
(216) 324-4783

Appellant, Relator – Pro Se,

vs.

Mayor of East Cleveland Ohio,
Gary Norton Jr.,
c/o Law Department
Ronald K. Riley
Deborah Gooden Blade
14340 Euclid Ave.
East Cleveland, OH 44112
(216) 681-2393
(216) 681-2199 (FAX)

Appellee, Respondent

: Case Number: 11-1483
:
: Appeal from
:
: Original Action (Mandamus)
:
: On Appeal from the Eighth District Court
: of Appeals
: Cuyahoga County, Ohio
: Case Number: CA 10 096147

FILED
SEP 14 2011
CLERK OF COURT
SUPREME COURT OF OHIO

(Amended) MERIT BRIEF OF APPELLANT Gerald O. Strothers Jr.

S.Ct. Prac. R. 6.2.

Ohio Revised Code 149.43 (emphasis added)

(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.

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Statement of Facts

This case is all about gaining access to public records within a reasonable amount of time pursuant to Ohio Revised Code § 149.43 and whether 45 days or longer is reasonable time. Appellant, Gerald O. Strothers is trying to conduct a citizen's audit of the records in East Cleveland Ohio city hall. He has properly requested to review, inspect and copy "at cost" obvious public records concerning conditions at the jail and traffic cam finances.

In *State ex rel. Strothers v. Wertheim* (1997), 80 Ohio St.3d 155, he said the Eighth District Court of Appeals was wrong and that case changed things for the better at the Cuyahoga County Juvenile Detention Facility. Much like that case the inter alia, this case revolves around the mistreatment of prisoners in the East Cleveland Ohio jail facility and also a citizens audit of the revenues received or owed by Traffic Cams.

Strothers commenced this in December 2010 and clearly asked to *review*, inspect, and copy "at cost" public records. The first thing was to *review* or actually see the records like he did in *State ex rel. Strothers v. Fuerst*, 120 Ohio App. 3d 305¹.

¹ No one disputes that the records in question are public records. R.C. 149.43(B) provides, in part, "All public records shall be promptly prepared and made available for *inspection to any person at all reasonable times during regular business hours.*" (Emphasis added.) Relator states that he only wishes "to review and inspect" the automobile titles. As a consequence, R.C. 149.43 and *Patterson* require that respondent accommodate this request even if the request "would cost too much and take too long and interfere with the normal work of the respondent and his employees." *State ex rel. Beacon Journal Publishing Co. v. Andrews* (1976), 48 Ohio St.2d 283, 289, 2 O.O.3d 434, 437, 358 N.E.2d 565, 569 (Mandamus is appropriate to compel the registrar of the bureau of motor vehicles to make available for inspection computer printouts regarding drivers who have received cumulative points in excess of the statutory limits and the steps taken to cause suspension of those drivers' licenses.).

The court record will show that Mr. Strothers has been before the East Cleveland City Government appearing at their televised council meetings twice monthly, requesting public records access each month since December. Those verbal requests included written requests for access to obvious public records even though RC 149.43 has no such written provision.

When the Eighth District Court of Appeals denied this writ but awarded statutory damages that in itself was a contradiction that could not have made sense to even a novice in Ohio's public records laws. Mr. Strothers immediately took note that the Eighth District Court of Appeals was starting a pattern where Public Offices could delay making records public, or even make excuses for holidays and even the end of the year.

In **State ex rel. Bardwell v. Rocky River Police Dept., 2009-Ohio-727**, this Court of Appeals set back Ohio Public Records laws and cases by decades by ruling 45 days is a reasonable time. No citizen should have to wait 45 days (32 Business Days) to take a look at public records. Even though the record keeping system in East Cleveland Ohio City Hall is a mess² or because it's the end of the year and holidays and special events are happening; the very idea of delays this long are unconscionable. In 2003, Mr. Strothers requested to see obvious public records from the Maple Heights Ohio School board and had to wait until a writ was finally granted June 5, 2004, eight months later³ the release of those records started a probe into corruption in Cuyahoga County.

² R.C. 149.43(B)(2). *State ex rel. Bardwell v. City of Cleveland*, 126 Ohio St.3d 195, 2010-Ohio-3267 (city police department did not fail to organize and maintain its public records in a manner available for inspection and copying when it kept pawnbroker reports on 3x5 notecards. While the Court noted that keeping these records on 8 1/2 x11 paper could reduce delays in processing requests, there was no requirement to do so).

³ *State ex rel. Strothers v. Rish*, 2003-Ohio-2955 at ¶22 "This court finds it incredulous that, as of this date, respondent has failed to make any arrangements to disclose these public records."

The Bottom Line

Mr. Strothers is still waiting to access the original public records requested and the additional documents and files that the Eighth District Court of Appeals states should have been placed on an affidavit. ORC 149.43 does not require a written request or affidavit be submitted. Ten months have elapsed and prisoners sit in the vermin infested cells in East Cleveland's dilapidated jail facility. Each day humans are jailed in East Cleveland cells with no running water or toilets, sheets or supplies. The records Mr. Strothers has requested clearly are ones that this cash strapped city may not want the public to view nevertheless they must be located and released. Mayor Gary Norton cannot continue hand selecting the public records he wants released and conveniently hide the not so positive records. These records belong to the people and they must be organized in a manner that allows the clerks to locate requested files.

Mr. Strothers also has a right to know where the revenue from the Traffic Cam tickets is being directed; show the money trail; who, where, why, when, how money is spent. Millions of taxpayer dollars are involved in this public records request and should there be any malfeasance discovered because of this request there could possibly be criminal or civil charges filed. It is time to finally open up the records and let the people of East Cleveland see what is really going on and to find out why this jail is in such horrible condition. Mr. Strothers has three simple Propositions of law to present to this honorable court today.

Proposition of Law I:

Eight District Court of Appeals Court ruled that 45 days was reasonable amount of time to make records available.

In researching this brief, Appellant was not able to locate any possible reason why the court would rule in direct conflict with the ORC 149.43 "reasonable time" rule.

Clearly A public office must organize and maintain its records so that records are made available in response to public requests, and must provide the public access to its records retention schedule. On receiving a public records request for specific, existing records, the public office must provide prompt inspection at no cost during regular business hours, or provide copies at cost within a reasonable period.

Bardwell *supra* is just plain wrong and Strothers v. Norton 2011 is a horrific version of that bad decision. Mr. Strothers made his public records request verbally, in writing and even on Television before the entire city. He, Strothers, has contended all through this process that he has **not** received access to review, inspect and copy “at cost” the records he has requested.

The records he has requested should have been easily accessible but as the case file shows, the City of East Cleveland even responded with public records from its neighboring city “Cleveland” in lieu of providing Mr. Strothers requested due to their own office issues. The Court of Appeals requested an Inventory from both parties and on his version; Strothers indicated that he **had not** received the requested records. Instead, carefully orchestrated hand-selected records that the Mayor wanted released were given. At no time was Mr. Strothers able to review the records or retention schedule. At this point Mr. Strothers has waited since December 1, 2010 to review public records and that clearly is not a reasonable amount of time.

Proposition of Law II:

Appeals Court states that a request for public records must be made via affidavit.

The Eighth District Court of Appeals ruled that since Strothers had not provided an affidavit that his additional requests for public records were not valid. Following months of delay, Mr. Strothers decided to audit the city in reference to the receipts received from Traffic Cam tickets. Strothers also made his request verbally at the City Council Meetings, in writing and even through the Mandamus action.

The Court of Appeals ruled that this should have been included as an affidavit; however, ORC 149.43 clearly has no such provision.

Public Records requests do not have to be made via Affidavit; The COA made a terrible precedent and set public records law back decades with the mere thought that citizens now have to swear under oath that they want to review, inspect and or copy "at cost" their own public records. Obviously, Mr. Strothers has still not been able to review, inspect and copy "at cost" the records he has requested this past year.

Proposition of Law III

Appeals Court granted \$1,000.00 statutory damages but denied writ and Appellant is still waiting to review, inspect and copy records requested

Clearly, the legislature was adding some "bite" to the old 149.43 that previously had no penalty for non-compliance by adding statutory damages to those scofflaw public offices that fail to comply. In this case, Mr. Strothers concurs that The City of East Cleveland Ohio is indeed a scofflaw that should pay the statutory damages. However, this writ will allow the public to access to the public records requested. Three administrations in East Cleveland have made the public think that public records are private. It is time to end this "smoke & mirrors" approach to public records access and allow Appellee to look at the books, ledgers and files requested.

CONCLUSION

No more games, no more hiding public records in East Cleveland Ohio., citizens have a right to know that humans are forced to stay in jail conditions seen only terrorist countries. Every prisoner should have basic water and sanitary conditions and Mr. Strothers wants to find out where monies targeted for the jail are going. The requested records when finally made public might just help end the horrific conditions at the East Cleveland Ohio jail.

Another source of revenue might come if the citizens can view the receipts from those millions of dollars of traffic cam tickets issued. Mr. Strothers has requested to be able and audit the city on Thursdays going through the receipts and bills and even that has not happened or agreed to by the Appellee or his staff.

In summing it up, Mayor Gary Norton is a nice person who took over a city that had its records in a completely disorganized function. He has had plenty of time to get some type of order to the mess left by his predecessors. Now it is time to send him a message that he must let the citizens of his great city review, inspect and copy at cost those public records that belong to the people even if that may have a negative impact on his tenure as mayor or jobs of police officers and other staff.

No citizen in Ohio should have to wait 45 Days or longer for obvious public records, nor should an affidavit be required to gain access to our records. Public records access was going good until the Bardwell cases hit the dockets. Mr. Strothers has had no trouble getting public records from public offices within a reasonable amount of time. Grant this Writ and allow Mr. Strothers et al. the right to see the financial documents.

Citizens want to know what has made the City of East Cleveland so cash strapped that it cannot even paint lines on streets, or afford to make its jail habitable for human life. Mayor Norton has yet to release one ledger either from the jail or traffic cam receipts, bills, invoices. At the most recent East Cleveland City Council meeting on September 6, 2011 Mr. Strothers made a simple statement "Show Me the Money" and that is what this whole matter is about, open access to the money documents and funding in the City of East Cleveland.

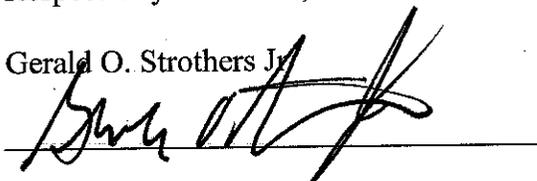
Just like in **State ex rel. Strothers v. Fuerst, 120 Ohio App. 3d 305**, Mr. Strothers wants to first review and inspect the records and maybe copy "at cost" the documents he selects. He does not want cherry picked documents such as the one the EC Mayor gave from The City of Cleveland or the few outdated pest extermination receipts from many years ago.

Based on the few documents that Mr. Strothers has received, it would appear that there are no current ledgers or money files in the city of East Cleveland. An Audit of the books clearly requires looking at the spending and outstanding bills.

Mr. Strothers and others want to know how the Mayor of East Cleveland can continue hiring staff when there appears to be no money to repair traffic signals, paint traffic lines down Euclid Ave and other streets. The requested records should show why the Mayor and Police Chief force minor traffic offenders to spend 10 or more days in a jail filled with crawling vermin and nasty insects. Grant this Writ and order The City of East Cleveland to open up their Pandora's Box of records.

Respectfully submitted,

Gerald O. Strothers Jr.



PRO SE

Certificate of Service

I certify that a copy of this Amended Merit Brief was sent by Regular U.S. Mail to counsel of record for Appellee, Mayor of East Cleveland Ohio, **Gary Norton Jr., Law Dept**, Ronald K. Riley Deborah Gooden Blade via the captioned address on the day it was filed.



Gerald O. Strothers Jr.

The Supreme Court of Ohio

11-1483

→ Gerald O. Strothers Jr.
14019 Northfield Ave
East Cleveland, OH 44112
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Appellant, Relator – Pro Se,

vs.

Mayor of East Cleveland Ohio,
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Ronald K. Riley
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(216) 681-2393
(216) 681-2199 (FAX)

Appellee, Respondent

: Notice of Appeal

: Appeal from

: Original Action (Mandamus)

: 8th District Court of Appeals

: Cuyahoga County, Ohio

: Case Number: CA 10 096147

Notice of Appeal of Appellant Gerald O. Strothers Jr.

Appellant Gerald O. Strothers Jr. Hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered in Court of Appeals case No **CA 10 096147** on July 26, 2011.

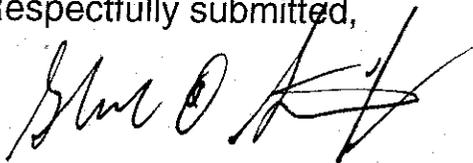
This case raises a substantial constitutional question and is one of great general interest to media and or public. It also severely impacts the provisions of Ohio Revised Code 149.43. The briefs will go into full detail how this case is in conflict with previous decisions and standing law.

FILED

AUG 30 2011

CLERK OF COURT
SUPREME COURT OF OHIO

Respectfully submitted,

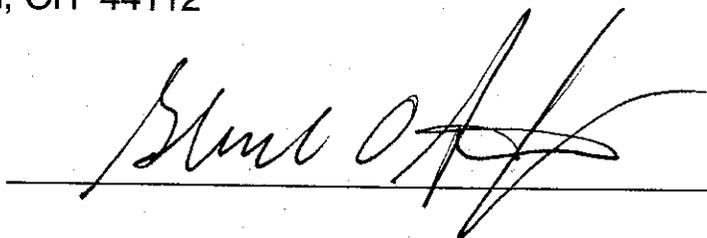


Gerald O. Strothers Jr. Appellant, Pro Se

Certificate of Service

I certify that a copy of this Notice of Appeal was sent by Certified United States Mail to The Honorable Mayor of East Cleveland Ohio, Appellee, Respondent. Certified Mail: 7008 3230 0002 3976 5993

Gary Norton Jr.,
c/o Law Department
Ronald K. Riley
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Gerald O. Strothers Jr.

Appellant / Relator – Pro Se

August 26, 2011

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

GERALD O. STROTHERS, JR.

Relator

COA NO.
96147

ORIGINAL ACTION

-vs-

MAYOR OF E. CLEVE. OH. GARY NORTON, JR

Respondent

MOTION NO. 446174

Date 07/26/11

Journal Entry

WRIT DENIED; STATUTORY DAMAGES AWARDED.

COPIES MAILED TO COUNSEL FOR ALL PARTIES - ROOM 1248

FILED AND JOURNALIZED
PER APP.R. 22(C)

JUL 26 2011

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY Frank D. Celebrezze, Jr. DEP.

Adm. Judge, MARY EILEEN KILBANE, Concurs

Judge MELODY J. STEWART,
CONCURS AND DISSENTS IN PART

Judge Frank D. Celebrezze, Jr.
FRANK D. CELEBREZZE, JR.

CA10096147

69622346



Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 96147

GERALD O. STROTHERS, JR.

RELATOR

vs.

**MAYOR OF EAST CLEVELAND, OHIO
GARY NORTON, JR.**

RESPONDENT

**JUDGMENT:
WRIT DENIED;
STATUTORY DAMAGES AWARDED**

Writ of Mandamus
Motion No. 440450
Order No. 446174

RELEASE DATE: July 26, 2011

CA10096147

69622346



VOL 0735 PG 0008

FOR RELATOR

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PIES MAILED TO COUNSEL FOR
ALL PARTIES--00678 TAXED

FRANK D. CELEBREZZE, JR., J.:

Relator, Gerald O. Strothers, Jr., requests that this court compel respondent, Gary Norton, Jr., Mayor of East Cleveland ("the mayor"), "to provide access to review, inspect and copy 'at cost'" various records. Complaint, at 4. Strothers also requests that this court award statutory damages for the delay in making the records available to him. For the reasons stated below, we deny his request for relief in mandamus and enter judgment for statutory damages in the amount of \$1,000.

Strothers sent a letter to the mayor requesting records relating to the operation of the East Cleveland jail including: food service; laundry service; financial records; purchases of jail bedding; plumbing repairs; medical care and dispensing medications; extermination contracts; jail policy regarding various prisoner rights and treatment of prisoners; and state and county inspection reports. The letter was dated December 1, 2010. The certified mail return receipt indicates that it was received on December 2, 2010.

Strothers filed the complaint in this action on December 9, 2010. On December 27, 2010, the mayor filed a "response" in which he argues that he had not been provided a reasonable opportunity to respond to the request for records when Strothers filed this action. Also on December 27, Strothers filed a motion for summary judgment.

On April 13, 2011, this court ordered the parties to each file an inventory listing the category of records requested and whether and to what extent respondent had made the records available. Each party responded.

In his inventory, Strothers attempts to expand the scope of this action to include records regarding East Cleveland's use of traffic cameras. He requested these records in a December 21, 2010 letter to the mayor and members of the city council. Although this letter is attached to his motion for summary judgment, Strothers has not moved to amend his complaint to include this additional request for records, which occurred after the filing of this action on December 9, 2010. See Civ.R. 15. As a consequence, we hold that the scope of this action is limited to the request for records in the December 1, 2010 letter.

Strothers acknowledges that he has received records. He contends, however, that he has not received all or the correct records. We note, however, that none of these representations is made in an affidavit or other material of evidentiary quality.

By contrast, the mayor filed a "supplemental response," which is supported by the affidavit of Brenda L. Blanks, Executive Assistant/Paralegal to the city's law director. Blanks avers that she was responsible for responding to the request for records.

In her affidavit, Blanks states that she mailed records to Strothers. The accompanying copy of a certified mail receipt reflects that, although the records were sent to the same address that Strothers used in filing this action, the item was returned "unclaimed." She also avers that, although she and the law director have invited Strothers by telephone and by letter to schedule an appointment to examine records, he has not done so.

Blanks also refers to respondent's inventory of records made available to Strothers. The inventory accompanies the "supplemental response" and reflects that records were transmitted to Strothers primarily on December 21, 2010 but also on January 13, 18 and 25, 2011.

R.C. 149.43 establishes the standards for making public records available. "That statute specifies two primary means of providing access to public records: (1) making the records 'available for inspection to any person at all reasonable times during regular business hours' and (2) making 'copies of the requested record[s] available at cost and within a reasonable time.' R.C. 149.43(B)(1)." *State ex rel. Patton v. Rhodes*, __ Ohio St.3d __, 2011-Ohio-3093, __ N.E.2d __, at ¶15.

As noted above, Blanks represents that the mayor has provided to Strothers either copies of the records he requested or the opportunity to inspect the records during regular business hours. She also avers that Strothers has not

acted on the opportunities to inspect records and that copies of records that were mailed to him were returned "unclaimed." Strothers has not submitted any material of evidentiary quality to rebut the averments by Blanks.

The evidence in the record in this action indicates that the mayor has made the records available to Strothers by providing him copies as well as the opportunity to inspect the records. We must conclude, therefore, that respondent has discharged his duty to make the records available to Strothers. As a consequence, we deny the request for relief in mandamus as moot.

Strothers has also requested that this court award statutory damages.

"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." R.C. 149.43(C)(1).

Strothers contends that the mayor did not timely make the records available. R.C. 149.43(B)(1) provides, in part: "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.”

The mayor received the request for records on December 2, 2010. Strothers filed this action on December 9. The first delivery of records was on December 21. Additional transmittals of records occurred on January 13, 18 and 25, 2011. In a letter from the law director dated February 11, 2011, Strothers was advised to contact Blanks “to arrange a day for any future visits to review, inspect and/or copy records.” Blanks Affidavit, at 10.

The record in this case, therefore, reflects that the mayor did not fully respond to the public records request by Strothers for at least seven weeks after receipt of the request and more than a month after Strothers commenced this action. Strothers contends that the mayor did not make the records available “within a reasonable period of time” as required by R.C. 149.43(B)(1).

In *State ex rel. Bardwell v. Rocky River Police Dept.*, Cuyahoga App. No. 91022, 2009-Ohio-727, the relator hand-delivered a public records request on January 18, 2008. The respondents transmitted records between February 7 and March 28, 2008. We observed that 45 days (32 business days) elapsed between the filing of the action in mandamus and the transmittal of the last record. As a consequence, we entered judgment for the maximum amount of statutory damages — \$1,000.

“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.” R.C. 149.43(C)(1).

The mayor has not presented to this court any authority for delaying the release of the records for 12 to 47 calendar days after the filing of this action on December 9, 2010. Clearly, some of the records were made available to Strothers more than ten calendar days after the filing of this action. The language of R.C. 149.43(C)(1) is clear and *Bardwell* exemplifies that we must enter judgment for Strothers in the amount of \$1,000 for statutory damages.¹

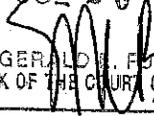
¹ Additionally, we note that the complaint has various defects. The action is not on relation of the state as required for an action in mandamus by R.C. 2731.04. *State v. Grunden*, Cuyahoga App. No. 96114, 2011-Ohio-744. Loc.App.R. 45(B)(1)(a) requires that a complaint in an original action be verified and supported by an affidavit specifying the details of the claims. Strothers filed an affidavit that states, “the statements made in the Petition are proper and true.” “It is well-established that a relator’s conclusory statement in an affidavit does not comply with the requirement of Loc.App.R. 45(B)(1)(a) that an affidavit specify the details of the claim. Failure to do

Accordingly, relator's motion for summary judgment for relief in mandamus to compel the mayor to make records available is denied. Judgment for Strothers in the amount of \$1,000 statutory damages. Respondent to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Writ denied; statutory damages awarded.


FRANK D. CELEBREZZE, JR., JUDGE

FILED AND JOURNALIZED
PER APP.R. 22(C)

JUL 26 2011

GERALD J. FERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

MARY EILEEN KILBANE, A.J., CONCURS;
MELODY J. STEWART, J., CONCURS IN PART AND DISSENTS IN PART
(SEE SEPARATE OPINION)

MELODY J. STEWART, J., CONCURRING IN PART AND DISSENTING IN PART:

I agree that the city of East Cleveland has produced the records requested by Strothers for the reasons stated in the majority opinion and that the writ is properly denied. I disagree, however, with the majority's finding that the city did not produce those records within a reasonable period of time and consequently disagree with the majority decision to award statutory damages.

so is a basis for denying relief. See, e.g., *State ex rel. Castro v. Corrigan*, Cuyahoga App. No. 96488, 2011-Ohio-1701." *State ex rel. Wright v. Cuyahoga Cty. Court of Common Pleas*, Cuyahoga App. No. 96397, 2011-Ohio-2159, at ¶4.

The rote application of the 45-day standard applied in *State ex rel. Bardwell v. Rocky River Police Dept.*, 8th Dist. No. 91022, 2009-Ohio-727, is wholly contrary to the statutory directive that public records be turned over within a "reasonable" time. The concept of "reasonableness" under R.C. 149.43(B)(1) is elastic, not static, and at all events depends on the particular facts and circumstances of each case. In *Bardwell*, we concluded that 45 days to respond to a records request seeking certain police logs expense account records for a two-month period was too long.

Strothers sought significantly more records covering a larger period of time in this case. He requested two years of records for contracts relating to food services at the city jail; contracts relating to laundry service; financial records paid to "outside contractors" including "bid requests, proposals and resumes of any winning and non-winning bidder(s)"; records documenting all purchases of jail bedding, pads and sheets; records of bid requests for jail "plumbing problems" including repairs made by in-house custodians and "all plumbing invoices minor or major"; records showing certification to provide medical care and dispensation of medications by jail personnel; records relating to contracts for extermination services, including "service calls from outside professional and non-professional exterminators"; jail policy pertaining to prisoner access to telephones, showers, exercise or recreation; inspection reports from state or

county offices tasked with monitoring jail conditions; and jail policies relating to prisoner treatment, medical care, and discipline encompassing prisoner control by non-lethal means or confinement with handcuffs or chains.

Any rational application of the reasonable time standard set forth in R.C. 149.43(B)(1) would show that the records request in this case was far more onerous than that made in *Bardwell*. Unlike the two-month time period for which records were sought in *Bardwell*, Strothers sought, without time limitation, virtually every record documenting the operation of the East Cleveland jail. Indeed, Strothers himself acknowledged in the records request that "I realize that this is a large request of documents * * *." We might also acknowledge that Strothers made his records request toward the end of the year and approaching the Christmas and New Year holidays when it could reasonably be presumed that offices were understaffed. But despite acknowledging that he requested a large number of documents, Strothers filed this complaint in mandamus just eight days after the city received his request. These facts make Strothers less a good-faith victim of delay in producing public records and more an opportunist seeking to manipulate the statutory damages provisions of the public records law. Given the circumstances described, I would find that the city's production of all requested documents within 47 days was certainly accomplished within a reasonable period of time.

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

GERALD O. STROTHERS, JR.

Relator

COA NO.
96147

ORIGINAL ACTION

RECEIVED FOR FILING

-VS-

MAYOR OF E. CLEVE. OH. GARY NORTON, JR

Respondent

MOTION NO. 443519

APR 13 2011
GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY [Signature] DEP.

Date 04/13/11

Journal Entry

RELATOR, GERALD O. STROTHERS, JR., COMMENCED THIS ORIGINAL ACTION IN MANDAMUS TO COMPEL RESPONDENT, THE MAYOR OF EAST CLEVELAND, TO MAKE AVAILABLE COPIES OF VARIOUS RECORDS RELATING TO THE EAST CLEVELAND JAIL. STROTHERS LATER FILED A MOTION FOR SUMMARY JUDGMENT AND, ON THE SAME DAY, RESPONDENT FILED A "RESPONSE TO WRIT OF MANDAMUS." RESPONDENT HAS NEVER FILED A RESPONSIVE PLEADING OR A DISPOSITIVE MOTION.

IN THE FILINGS BEFORE THE COURT, STROTHERS ACKNOWLEDGES THAT HE RECEIVED A RESPONSE FROM RESPONDENT BUT STROTHERS ALSO STATES THAT HE HAS NOT RECEIVED THE RECORDS HE REQUESTED. RESPONDENT HAS MERELY ARGUED THAT STROTHERS FILED THIS ACTION BEFORE THE CITY HAD A REASONABLE TIME TO RESPOND.

AS A CONSEQUENCE, BOTH PARTIES ARE INSTRUCTED TO FILE - ON OR BEFORE MAY 5, 2011 - AN INVENTORY LISTING: EACH CATEGORY OF RECORDS REQUESTED; AND, FOR EACH CATEGORY, WHETHER AND TO WHAT EXTENT RESPONDENT HAS MADE THE RECORDS AVAILABLE. IF RESPONDENT CONSIDERS ANY RECORDS TO BE EXEMPT FROM RELEASE, RESPONDENT SHALL INDICATE HIS REASONS FOR WITHHOLDING THE RECORDS AND PROVIDE "AN EXPLANATION, INCLUDING LEGAL AUTHORITY, SETTING FORTH WHY THE REQUEST WAS DENIED." R.C. 149.43(B)(3).

ADDITIONALLY, RESPONDENT SHALL SHOW CAUSE IN WRITING - ON OR BEFORE MAY 5, 2011 - WHY STATUTORY DAMAGES SHOULD NOT BE AWARDED TO RELATOR. SEE R.C. 149.43(C)(1).

Adm. Judge, MARY EILEEN KILBANE, Concur

Judge MELODY J. STEWART, Concur

[Signature]
Judge FRANK D. CELEBREZZE, JR.

COPIES MAILED TO COUNSEL FOR ALL PARTIES. COSTS TAXED