

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE ex rel. PLUNDERBUND MEDIA, LLC

Relator

CASE NUMBER

13-0596

V.

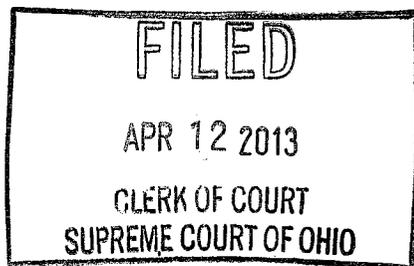
AN ORIGINAL ACTION

THOMAS CHARLES,
DIRECTOR, DEPARTMENT OF PUBLIC SAFETY

Respondent

MEMORANDUM IN SUPPORT OF COMPLAINT FOR WRIT OF MANDAMUS

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The Ohio Public Documents Act has been in effect for over half a century. State officeholders at this stage, by and large, follow the law automatically. Being responsive to the citizenry and the media is an integral part of public service. This case presents this Court with a case of first impression regarding the application of R.C. 149.433 which exempts security and infrastructure records from the definition of public records.

Ms. Mismas requested that the Ohio Department of Public Safety provide records regarding any threats against the governor. He limited this request to closed cases. He indicated that the information requested was minimal. He would have been satisfied with the cover or summary sheet of the closed investigation files. The legal counsel's office of the agency refused to provide any documents whatsoever claiming any threat of any type against the governor was an infrastructure or security record and exempt from any disclosure, even with redaction, pursuant to R.C. 149.433. They denied any obligation to redact information from the documents in order to allow some portions to be produced.

This section was created along with a variety of other governmental responses to terrorist attacks, specifically 9/11 which occurred in the 2000's. This section exempts infrastructure and security records from the definition of public records and exempts these records from disclosure.

This section defines infrastructure and security records as follows:

(2) "Infrastructure record" means any record that discloses the configuration of a public office's or chartered nonpublic school's critical systems including, but not limited to, communication, computer, electrical, mechanical, ventilation, water, and plumbing systems, security codes, or the infrastructure or structural configuration of the building in which a public office or chartered nonpublic school is located. "Infrastructure record" does not mean a simple floor plan that discloses only the spatial relationship of components of a public office or chartered nonpublic school or the building in which a public office or chartered nonpublic school is located.

(3) "Security record" means any of the following:

- (a) Any record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage;
- (b) Any record assembled, prepared, or maintained by a public office or public body to prevent, mitigate, or respond to acts of terrorism, including any of the following:
 - (i) Those portions of records containing specific and unique vulnerability assessments or specific and unique response plans either of which is intended to prevent or mitigate acts of terrorism, and communication codes or deployment plans of law enforcement or emergency response personnel;
 - (ii) Specific intelligence information and specific investigative records shared by federal and international law enforcement agencies with state and local law enforcement and public safety agencies;
 - (iii) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies, and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism.

Although this section reads as a broader exemption than required by the federal government, which focuses on critical infrastructure, it does not allow concealment of all records related to state government security. 6 USC 131-4. Many such records are mundane, and few would concern the kind of terrorist activity that this section is intended to address. This section is not intended as a blanket exemption for any and all information that the state can remotely argue is related to some form of security issue.

R.C. 149.433(a), refers to protection of physical structures outlined in Section 2. It refers to “office” not officer so it is not focused on individuals. This refers to materials such as the placement of security cameras, blueprints, or the scheduling of security personnel. Section (b) (ii) and (iii) refer to materials shared by federal and international law enforcement that has no bearing here. Section (b)(i) does not support Public Safety’s denial of these records and supports Punderbund’s expectation to receive documents with redaction. This section clearly presumes

that materials will be provided with redaction as opposed to complete refusal of the record by referring to “[t]hose portions of records.”

In order for a writ of mandamus to issue, relator must show that (1) he has a clear legal right to the relief prayed for, (2) respondent is under a clear legal duty to perform the requested act, and (3) relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Liberty Mills v. Locker* (1986) 22 Ohio St. 3d 883. “Mandamus is the appropriate remedy to compel compliance with R.C. 149.43, Ohio’s Public Records Act.” *State ex rel. Physicians Commt. For Responsible Medicine v. Ohio State Univ. Bd. of Trustees*, 108 Ohio St.3d 288.

R.C. 149.43 provides that public officials are to respond promptly to requests for public documents:

(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.

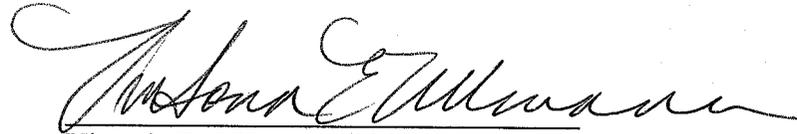
This Court has consistently interpreted R.C. 149.43 liberally in favor of disclosure of public records. *State ex rel. Rucker v. Guernsey Cty. Sheriff’s Office*, 126 Ohio St.3d 224, 2010-Ohio-3288, 932 N.E.2d 327, ¶ 6. But the relator must still establish entitlement to the requested extraordinary relief by clear and convincing evidence. *State ex rel. Doner v. Zody*, 130 Ohio St.3d 446, 2011-Ohio-6117, 958 N.E.2d 1235, paragraph three of the syllabus.

In *State ex rel. Cincinnati Enquirer v. Craig*, 132 Ohio St.3d 68, 2012-Ohio-1999, this Court discussed a public document request made by the *Enquirer* to the Cincinnati Police to obtain information regarding serious threats to the lives of police officers by a dangerous motorcycle gang. This Court determined redaction was the proper method of protecting information in public documents involving threats to police officers and that the documents

should otherwise be provided. Although this case was based upon personal privacy concerns, the requirement to redact information is applicable also to materials falling under 143.433 as well. The governor is considerably less vulnerable than the police officers threatened in the *Enquirer* decision. R.C. 149.433 indicates on its face that the records requested should be provided, with redaction of any actual secure information. .

Plunderbund, LLC has amply demonstrated its right to a writ of mandamus ordering the production of the records requested as well as costs and attorney's fees.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Victoria E. Ullmann".

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