

ORIGINAL

IN THE SUPREME COURT OF OHIO

State ex rel. Plunderbund Media, LLC,	:	Case No. 2013-0596
	:	
Relator,	:	Original Action in Mandamus
	:	
v.	:	
	:	
John Born, Director,	:	
Ohio Department of Public Safety, ¹	:	
	:	
Respondent.	:	

RESPONDENT'S PRESENTATION OF EVIDENCE

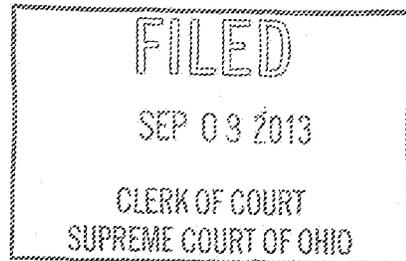
MICHAEL DeWINE
Ohio Attorney General

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William.Cole@OhioAttorneyGeneral.gov

Counsel for Respondent



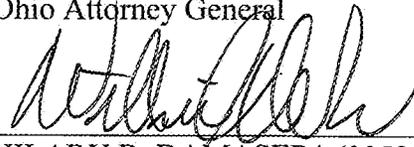
¹ John Born became Director of the Ohio Department of Public Safety on July 31, 2013. Pursuant to Civil Rule 25(D)(1), Mr. Born is automatically substituted for former Director Thomas P. Charles.

Pursuant to S. Ct. Prac. R. 12.06, Respondent presents his evidence, which consists of the following documents:

1. Affidavit of John Born
2. Affidavit of Paul Pride
3. Affidavit of Richard Baron
4. Affidavit of Patrick Kellum
5. Affidavit of James Christian Selch
6. Affidavit of David Brown

Respectfully submitted:

MICHAEL DeWINE
Ohio Attorney General



HILARY R. DAMASER* (0059190)

**Counsel of Record*

WILLIAM J. COLE (0067778)

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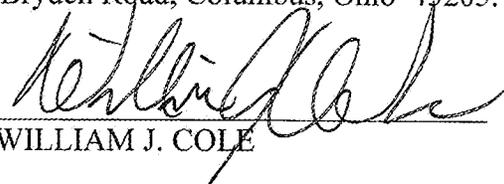
William.Cole@OhioAttorneyGeneral.gov

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Counsel for Respondent

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by regular and electronic mail, on September 3, 2013, upon Victoria E. Ullmann, 1135 Bryden Road, Columbus, Ohio 43205.



WILLIAM J. COLE

1. AFFIDAVIT OF JOHN BORN

Affidavit of John Born

STATE OF OHIO

COUNTY OF FRANKLIN: ss

Affiant, John Born, Director of the Ohio Department of Public Safety (“DPS”) and former Superintendent of the Ohio State Highway Patrol (“OSHP”), having been first duly cautioned and sworn, and being competent to testify to all matters stated herein, states from his own personal knowledge:

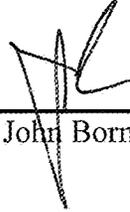
1. I hold a Master of Social Science in deviant behavior from Ohio University. I have also completed the Federal Bureau of Investigation’s National Executive Institute, governance training at Harvard Business School, and leadership training at the United States Army War College.
2. I previously served on a combating domestic terrorism national advisory committee, as the vice chair of the High Intensity Drug Trafficking Areas Executive Board, and as a commissioner on the Ohio Peace Officer Training Commission.
3. For twenty-five years, I served in the OSHP, starting as a trooper in 1987 and rising to the rank of colonel. While at the OSHP, I served as squad leader of the Office of Investigative Services, commander of Strategic Services, field operations commander for the eastern half of Ohio, and finally as Superintendent.
4. The OSHP is charged with the security of all state offices, to include both the facilities and the office holders.
5. The OSHP ensures the security of the Office of the Governor and his family, as well as the security of the Governor’s residence and state facilities. The Office of the

Governor encompasses the functions, decisions and policymaking of the public office.

6. Statewide elected officials, by virtue of their positions, are inherently vulnerable to threats and harm. The Governor, being the highest elected official in Ohio with supreme executive power of the State, is uniquely vulnerable to threats.
7. The OSHP investigates all threats against the Governor, his family, his residence, and all state facilities. Each threat and investigation thereof potentially reveals security and safety vulnerabilities.
8. OSHP security varies according to each officeholder's particular personal and family logistics. Public disclosure of the number of threats made against the Governor would expose security limitations and vulnerabilities.
9. Public disclosure of the content and credibility of threats, in both open and closed investigations, increases the risks to the safety and personal security of the Governor and his family, as well as to state buildings and facilities.
10. I have read and am familiar with the provisions of R.C. 149.433. Based on my expert knowledge, training, and experience, I believe that public disclosure of investigation records of threats made against the Governor is contrary to the text and purpose of R.C. 149.433.
11. I also believe that public disclosure of investigation records of threats made against the Governor will substantially increase the risks to the safety and personal security of the Governor, his family, his staff, his security, his cabinet, and state offices, buildings, and facilities.

AFFIANT FURTHER SAYETH NAUGHT.

I swear under penalties of perjury and falsification that the foregoing is true and accurate to the best of my knowledge, information, and belief.



John Born

Sworn and subscribed to before me, a Notary Public, on this 3rd day of September, 2013.

WAFV
Notary Public

Commission Expires. Has no expiration. WAFV

WINSTON M. FORD, Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
 My commission has no expiration date
Section 147.02 R.C.

2. AFFIDAVIT OF PAUL PRIDE

Affidavit of Paul Pride

STATE OF OHIO

COUNTY OF FRANKLIN: ss

Affiant, Paul Pride, Superintendent of the Ohio State Highway Patrol ("OSHP"), having been first duly cautioned and sworn, and being competent to testify to all matters stated herein, states from his own personal knowledge:

1. I have an Associate of Applied Science degree in Law Enforcement from Ohio University. I also completed Northwestern University's School of Police Staff and Command and training at the FBI's National Academy.
2. I have served in the OSHP for twenty-four (24) years, rising in rank from trooper to lieutenant colonel. I received the OSHP's Citation of Merit award, and was named Post and District Trooper of the year. Before being appointed Superintendent, I served as assistant superintendent, commander of the Office of Special Operations, district commander, post commander, and assistant post commander.
3. Before joining OSHP, I served seven (7) years in the United States Marine Corps.
4. The OSHP's Executive Protection Unit ("EPU") protects the Governor, other statewide officials, including Ohio Supreme Court justices, federal government officials, foreign government officials and dignitaries, the Capitol Square, and other state buildings, offices, and facilities.
5. As Superintendent, I am concerned with EPU officer safety as well as that of the Governor, or other state official or dignitary the EPU is assigned to protect. I do not want to publicly disclose any information that would jeopardize the safety of any

such positions. If the EPU's safety is jeopardized, then its officers' ability to protect the Governor and other officials is jeopardized.

6. Also as Superintendent, I authorize and manage the partnership between the OSHP, the United States Secret Service ("USSS"), and other law enforcement jurisdictions. If the OSHP publicly discloses threat intelligence, it would chill the willingness of outside law enforcement jurisdictions to partner with the OSHP in providing joint and cooperative security detail. This chilling effect would make the OSHP less effective in protecting the Governor, his family, his offices, and foreign or domestic dignitaries.
7. For purposes of OSHP executive protection, the term "public office" logically and necessarily refers to the office of the Governor, which includes the decision-making, the operation of the Governor's business, as well as the safety of the Governor himself, his family, staff, or cabinet. The EPU handles any threat intended to influence, intimidate, interfere with, or harm the office of Governor, as well as threats intended to physically harm the Governor, his family, or persons working for the office of the Governor.
8. Unlike former governors, Governor Kasich lives in his own residence instead of the traditional Governor's residence. Public release of threat information on multiple locations renders security more vulnerable to compromise. This creates more vulnerability because there are two locations where Governor Kasich resides and/or holds meetings and events.
9. Dignitary protection is a critically important task. The sophistication and speed with which information can be shared is a challenge for the EPU, as any disclosed threat

information can easily be shared (*e.g.*, by Twitter, Facebook, or blogs), thereby increasing the number of potential sources of threats, and making it more difficult to protect the Governor. Additionally, there are more opportunities for domestic and foreign terrorism after the 9/11 attacks.

10. The OSHP needs to withhold all threat information from public disclosure. Releasing even seemingly minor or insignificant pieces of information can reveal patterns, techniques, or information directly related to the security that EPU provides. The need to protect such information from public disclosure is especially important to guard against domestic terrorism. If a terrorist can get enough information to piece together a picture of how the Governor travels, conducts meetings, schedules his day, and/or visits various state and out-of-state locations, the safety and security of the Governor, his family, his staff, and his cabinet is jeopardized.
11. The fact that Governor Kasich and his wife appear more in public and written media than previous Ohio governors is a particular challenge for the EPU; threat assessments are thus more difficult to analyze and investigate. Governor Kasich's national recognition is not a good reason to provide more information to the public; rather, it is a more compelling reason to protect from public release any threat information to better ensure that he, his family, staff, security, and cabinet are safe and secure.

AFFIANT FURTHER SAYETH NAUGHT.

I swear under penalties of perjury and falsification that the foregoing is true and accurate to the best of my knowledge, information, and belief.



Paul Pride

Sworn and subscribed to before me, a Notary Public, on this 3rd day of September, 2013.



Notary Public
Heather R. Friant
Commission Expires: No expiration date
(attorney)

3. AFFIDAVIT OF RICHARD BARON

Affidavit of Richard Baron

STATE OF OHIO

COUNTY OF FRANKLIN: ss

Affiant, Richard Baron, Executive Director of Ohio Homeland Security (“OHS”), having been first duly cautioned and sworn, and being competent to testify to all matters stated herein, states from his own personal knowledge:

1. I hold a Bachelors of Science in Public Safety Management and graduated from the Southern Police Institute’s Administrative Officers Course at the University of Louisville, the Ohio State Highway Patrol (“OSHP”) Academy, and the Ohio Peace Officer Training Council (“OPOTC”).
2. I have over twenty-nine (29) years of law enforcement experience as a police officer and Ohio State trooper, and I have held every rank at the OSHP to the level of captain.
3. I was a police instructor certified by the OPOTC from 1993 to 2012, and trained law enforcement personnel at the basic and advanced levels. Specifically, I taught investigatory methodologies and intelligence to law enforcement personnel and homeland security professionals in Ohio and nationally.
4. I spent most of my tenure with the OSHP in the Office of Investigation and Security (“OIS”), which is principally responsible for conducting criminal investigations and protecting the Governor and federal and foreign dignitaries.
5. From 1993 to 2011, I commanded executive protection details and performed dignitary protection for Governors of Ohio and other states as well as federal and foreign dignitaries. I provided, planned, and commanded dignitary protection

- operations for gubernatorial inaugurations, State of the State addresses, Council of State Governments, federalism summits, and other events.
6. I have received specialized training from the OSHP and the United States Secret Service (“USSS”) in dignitary protection operation. I have worked directly with the USSS in planning and providing dignitary protection to sitting Presidents of the United States, as well as presidential candidates while in Ohio. During my time in OIS, I commanded state law enforcement personnel in these operations and served in critical security positions within the dignitary protection operation.
 7. From 2005 to 2008, I served as OHS’s Chief of Operations, commanding the Strategic Analysis and Information Center, Ohio’s primary fusion center.
 8. Since October 2011, I have served as the Executive Director of OHS and the Homeland Security Advisor for the State of Ohio. In this capacity, I regularly review intelligence information and engage in briefings and discussions with law enforcement, the Federal Bureau of Investigation and the United States Department of Homeland Security on trends, techniques, and practices of international and domestic terrorists and criminals.
 9. By virtue of being the elected official with supreme executive power of Ohio, the Governor, his residence, offices, and facilities are inherently and uniquely vulnerable to threatened or actual terrorist events, domestic and otherwise.
 10. Security planning, response plans, protocols, and techniques used by the Governor, the OSHP, and/or state facilities, detail security limitations and vulnerabilities and are therefore deemed security records and/or infrastructure records. Such information, if released publicly, could be used to commit terrorism, intimidation, or violence.

11. Given the increased sophistication and known long-term pre-operation planning of terrorists, especially after the 9/11 attacks, such individuals can make use of publicly disclosed security information to intimidate, threaten, or harm the Governor, his family, his staff, his security, as well as State buildings, offices, and facilities. Public disclosure of information regarding the frequency and handling of threats and other criminal activities enables terrorists and others seeking to cause harm to create countermeasures, enabling them to mitigate security and law enforcement operations. This would increase the risks to safety and security of the protected person and all involved parties.
12. While most information regarding pre-operational planning is exempt from disclosure – often labeled confidential, secret, or top secret – there have been several publicized cases involving actual or thwarted terror attacks in which the terrorists engaged in long-term pre-operational planning in an effort to harm public officials.
13. The content, number, or treatment of prior or current threats (whether credible or non-credible) to the Governor, his family, and/or State buildings, offices, and facilities, contain security information that, if disclosed (even piecemeal), could be used to commit terrorism, intimidation, or violence. Terrorists use fragments of information from various sources to develop a complete picture of their intended target, including vulnerabilities and risk assessments.
14. I have read and am familiar with the decision in *U.S. v. Fullmer*, 584 F.3d 132 (3d Cir. 2009), in which animal-rights activists tried a variety of ways to obtain information about a New Jersey company that tested its products on animals. The group posted such information publicly, harassed and intimidated the company, its

employees and their families, and cost the company thousands of dollars in economic damages.

15. I have read and am familiar with the provisions of R.C. 149.433.

16. From my professional experience, the term “public office” is logically and necessarily broader than just the physical structure of a state facility. The term encompasses the position itself, as well as the person holding the position at any particular time. From a security perspective, “office” includes any threats or acts that improperly influence, or attempt to improperly influence, the office of the Governor of Ohio by, and through which, decisions are made, irrespective of whether the influence or leverage is exerted on the Governor, his family, his cabinet, or his staff.

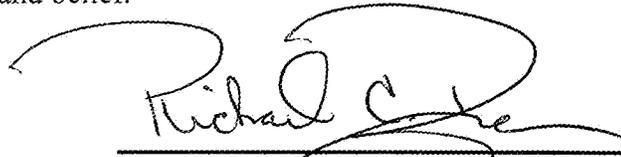
17. Several Ohio laws, specifically the corruption of office-related offenses, refer to “public office” as being the position itself rather than a physical structure.

18. During my time with OIS, I assisted with the investigation and prosecution of numerous individuals for corruption of office-related offenses. These cases dealt with offenses committed by individuals who held public positions (appointed, elected or otherwise).

19. Based on my knowledge, training, and experience, I believe that public disclosure of investigation records of threats made against the Governor is contrary to the purpose of R.C. 149.433. Such disclosure also increases the risks to the safety and personal security of the Governor and his family, as well as to the security of state buildings, offices, and facilities.

AFFIANT FURTHER SAYETH NAUGHT.

I swear under penalties of perjury and falsification that the foregoing is true and accurate to the best of my knowledge, information, and belief.


Richard Baron

Sworn and subscribed to before me, a Notary Public, on this 3rd day of September, 2013.


Notary Public
Heather R. Frient
Commission Expires: No expiration date
(attorney)

4. AFFIDAVIT OF PATRICK KELLUM

Affidavit of Patrick Kellum

STATE OF OHIO

COUNTY OF FRANKLIN: ss

Affiant, Patrick Kellum, Staff Lieutenant, Ohio State Highway Patrol ("OSHP"), having been first duly cautioned and sworn, and being competent to testify to all matters stated herein, states from his own personal knowledge:

1. I have extensive experience in law enforcement, including thirteen (13) years with Special Weapons and Tactics ("SWAT"), and seven (7) years in criminal investigations.
2. I have completed training in executive protection, including SWAT/Special Response Team ("SRT") training, secret service training, and U.S. Department of State Executive Protection Unit ("EPU") training. I have also completed training in counterterrorism and threat assessment.
3. I have instructed others on security surveillance, criminal investigation, as well as SWAT, EPU, and SRT training.
4. I have served on the FBI Joint Terrorism Task Force. I have also served as a case agent for the Arnold Classic, and as an assistant case agent for The Ohio State University.
5. I have held top secret security clearance from the FBI's Joint Terrorism Task Force. I currently hold secret clearance from the federal Department of Homeland Security.

6. My primary job responsibilities include protecting the Governor of Ohio. In my experience working with Governors Taft, Strickland, and Kasich, I have personally observed that Governor Kasich has a more hands-on leadership style relative to difficult and controversial public issues facing the State, which in my professional opinion exposes him to a higher degree of potential personal harm than the other governors I have protected.
7. Furthermore, because Governor Kasich previously served in a very important national position as Chairman of the Budget Committee of the United States House of Representatives, because he was the host of a nationally-broadcast television program, and because he has written books that have been national best-sellers, Governor Kasich is the most well-known Ohio governor nationally who I have protected. His national reputation and recognition—and thus his potential exposure to harm—transcend Ohio's borders. A threat that may be less significant in Ohio may be more significant outside the border, and vice versa. The OSHP is not always aware of public sentiment outside Ohio; therefore, public disclosure of what is deemed insignificant within a particular context may well be critical in another.
8. Because of Governor Kasich's national recognition, and his demonstrated hands-on approach to difficult and controversial issues facing Ohio and the nation, the EPU decided that it should accompany Governor Kasich on all travel, even of a personal nature. This practice differs from Governors Taft and Strickland.

9. Even within Ohio, the geographical area of a threat may affect the credibility of that threat and the associated security planning. A threat that is insignificant in one geographical area or region may be significant or consequential in another area.
10. Public disclosure of threat-related information increases the vulnerability and security risks to the Governor, his family, staff, and those who protect him. Public disclosure of threat information also increases the danger to those who attend a public event with the Governor present.
11. EPU officers need to be fully informed of all threats—significant and insignificant, credible and non-credible—in order to safely and effectively protect the Governor and other officials and dignitaries. Having such information prevents the EPU officers from going into a situation uninformed, and is useful in the formation and potential alteration of the officers' protection strategy. Public disclosure of a threat—even an insignificant or non-credible threat—may require the EPU to change its tactics, especially if the person making the threat changes his or her plan based on the disclosure. This could jeopardize the safety and security of the Governor, his family, staff, and the EPU officers. It could also lead to copycat offenders choosing to carry out the threat.
12. Non-credible threats can turn into credible threats. For example, while a threat may be non-credible for logistical reasons (*e.g.*, the person making the threat is incarcerated), public disclosure could lead to others (such as accomplices or copy-cats) to act. Or, a threat deemed non-credible for

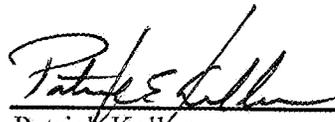
competency reasons could still be realized by another if information about the threat is publicly released.

13. Information regarding threats (credible and non-credible) against the Governor or other government officials and dignitaries should not be released publically. Such disclosure diminishes the effectiveness of the EPU and thereby jeopardizes the safety and security of the Governor, his family, staff, and those assigned to protect him. Public disclosure of threat information also increases the danger to those who attend a public event with the Governor present.

14. The EPU works with the United States Secret Service ("USSS") and other law enforcement jurisdictions in protecting foreign and domestic dignitaries. Threat intelligence is jointly shared by OSHP with other law enforcement agencies providing protection within Ohio. Public disclosure of threat information by OSHP would chill cooperative efforts with multiple law enforcement jurisdictions and thereby compromise continuity of security. If the OSHP were to release threat information about Governor Kasich, such disclosure would collaterally interfere with dignitary protection from the USSS and other law enforcement agencies.

AFFIANT FURTHER SAYETH NAUGHT.

I swear under penalties of perjury and falsification that the foregoing is true and accurate to the best of my knowledge, information, and belief.


Patrick Keljum

Sworn and subscribed to before me, a Notary Public, on this 3rd day of September, 2013.


Notary Public

Commission Expires: 6/06/2017



Sandra G. Callas
Notary Public, State of Ohio
My Commission Expires 06-06-2017

5. AFFIDAVIT OF JAMES CHRISTIAN SELCH

Affidavit of James Christian Selch

STATE OF OHIO

COUNTY OF FRANKLIN: ss

Affiant, James Christian Selch, Deputy Director for State General Services with the Ohio Department of Administrative Services (“DAS”), having been first duly cautioned and sworn, and being competent to testify to all matters stated herein, states from his own personal knowledge:

1. I have been employed by DAS continuously since 2001. From 2001-2007, I was the administrator for State Information Technology (“IT”) Policy.
2. While serving as IT administrator, the scope of my responsibility was limited to information technology and telecommunications (including data and infrastructure) policy.
3. I am not, and have never been, an attorney at law.
4. I was the lead author of DAS IT Bulletin No. ITB-2006.01, regarding public record requests regarding agency information technology and telecommunications systems and infrastructure (“Bulletin”).
5. The purpose and scope of the Bulletin is limited to providing State entities with an action plan regarding public records requests regarding IT, telecommunications systems, and systems infrastructure, in light of legislative changes to R.C. 149.433.
6. The Bulletin was not intended to be an authoritative legal opinion or interpretation regarding the scope or applicability of R.C. 149.433.

AFFIANT FURTHER SAYETH NAUGHT.

I swear under penalties of perjury and falsification that the foregoing is true and accurate to the best of my knowledge, information, and belief.

James Christian Selch
James Christian Selch

Sworn and subscribed to before me, a Notary Public, on this 3RD day of September, 2013.

Jacqueline K. Murray
Notary Public
Commission Expires: _____



JACQUELINE K. MURRAY
Notary Public, State of Ohio
My Commission Expires
March 27, 2016

6. AFFIDAVIT OF DAVID BROWN

Affidavit of David Brown

STATE OF OHIO

COUNTY OF FRANKLIN: ss

Affiant, David Brown, Chief Information Security Officer (“CISO”) for the State of Ohio, having been first duly cautioned and sworn, and being competent to testify to all matters stated herein, states from his own personal knowledge:

1. I have a Bachelors of Science degree in Network and Communications Management from DeVry University.
2. Since 2003, I have been certified as an information systems security professional by International Information System Security Certification Consortium, Inc., a globally-recognized not-for-profit organization for certifying security professionals.
3. Since 2011, I have been certified in Global Information Assurance Legal Issues in Information Technology and Security by the SANS Institute, the largest source of information security training and security certification in the world.
4. Since 2012, I have been employed by the Ohio Department of Administrative Services (“DAS”) as the State CISO. I was Deputy State CISO from 2011-2012, and CISO for the Ohio Department of Public Safety from 2006-2011.
5. I am not, and have never been, an attorney at law.
6. I am familiar with DAS Information Technology Bulletin No. ITB-2006.01, regarding public record requests regarding agency information technology and telecommunications systems and infrastructure (“Bulletin”).

7. The purpose and scope of the Bulletin is limited to providing State entities with an action plan regarding public records requests regarding IT, telecommunications systems, and systems infrastructure, in light of legislative changes to R.C. 149.433.
8. The Bulletin is not, and has never been, an authoritative legal opinion or interpretation regarding the scope or applicability of R.C. 149.433.
9. The Bulletin does not expand, or attempt to or purport to expand, DAS' authority beyond IT issues, as set forth in R.C. 125.18.

AFFIANT FURTHER SAYETH NAUGHT.

I swear under penalties of perjury and falsification that the foregoing is true and accurate to the best of my knowledge, information, and belief.

David Brown

David Brown

Sworn and subscribed to before me, a Notary Public, on this 3rd day of

September, 2013.

E. C. Harrell

Notary Public

Commission Expires: None

ERIC C. HARRELL
ATTORNEY AT LAW
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION HAS NO EXPIRATION DATE
SECTION 147.03 R.C.