

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE, ex rel. JOHN C. DEAL
2575 Wexford Road
Columbus, Ohio 43221-3215

Petitioner,

vs.

THE OHIO STATE UNIVERSITY
c/o Public Records Office
1534 North High ST
Columbus, Ohio 43201-2190

Respondent.

:
:
:
:
:
:
:
:
:

14-0041

No. _____

COMPLAINT FOR WRIT OF MANDAMUS

FILED
JAN 10 2014
CLERK OF COURT
SUPREME COURT OF OHIO

John C. Deal (0020223)
2575 Wexford RD
Columbus, OH 43221-3215
(614) 453-5501
jdeal@columbuscounsel.com

Relator

1. Relator John C. Deal is an Ohio resident and taxpayer.
2. Respondent The Ohio State University ("Ohio State") is a large, public university in Columbus.
3. Ranked as one of "America's Best Hospitals" for 20 years in U.S. News & World Report, Ohio State's Wexner Medical Center is central Ohio's only academic medical center.
4. In a document faxed on September 26, 2012, Dr. Kathi Kemper accepted a faculty appointment with the Wexner Medical Center at a salary of \$270,000, with her primary office to be at the Wexner Medical Center's Kenny Road facility, the OSU Center for Integrative Medicine. According to the letter, Dr. Kemper's faculty appointment was dependent upon Dr. Kemper's receiving privileges at Nationwide Children's Hospital, The Ohio State University Hospitals, and/or The Arthur G. James Cancer Hospital and the Richard J. Solove Research Institute.
5. On December 5, 2013, the Relator made a written public records request (the "Request") to Ohio State pursuant to Ohio R.C. 149.43. (See Exhibit A to the Relator's Affidavit). The request sought access to records relating to the Center for Integrative Medicine. In order to know how and by whom faculty appointments were recommended and approved with regard to certain individuals, including Dr. Kathi Kemper, the Request included
minutes of boards, committee, task forces, and other university units and organizations ... to show who is responsible for recommending and approving faculty appointments of [Dr. Kemper].
6. On December 12, 2013, Ohio State responded to the Request. With respect to the records sought concerning the faculty appointments of Dr. Kemper, Ohio State responded that
Your request for minutes showing who is responsible for recommending and approving faculty appointments of ... Dr. Kemper asks for research of a search of records containing selected information. ... [T]he Public records Act does not obligate OSU to conduct this kind of research or search.

Additionally, your request fails to identify the minutes you are looking for by date, which is how OSU generally keeps them. A request for an entire category of records (“Minutes”) is overly broad. In identifying records for purposes of presenting a viable request, the Public Records Act “does not contemplate that any individual has the right to a complete duplication of voluminous files kept by government agencies.” Finally, the established retention period of minutes is three years. The information that you seek, if it existed, would have appeared in minutes far more than three years ago. “[I]n case in which public records ... are properly disposed of in accordance with a duly adopted records retention policy, there is no entitlement to those records under the Public Records Act. [Emphasis in original; citations omitted.]

7. Under R.C. 149.43(A)(1), public records are “records kept by any public office.”

Under R.C. 149.43, Ohio State constitutes a public office and the requested records constitute public records. R.C. 149.43(B)(1) provides that “[u]pon request...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.”

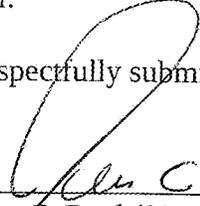
8. R.C. 149.43 does not require that a public records request identify particular records by date.

9. Ohio State violated R.C. 149.43 by refusing to provide the Relator with access to records showing who is responsible for recommending and approving faculty appointments of Dr. Kemper.

10. R.C. 149.43(C)(1) permits a party aggrieved by the failure of a public office to make public records available to proceed with a mandamus action, which may be commenced in this Court pursuant to its original jurisdiction under Section 2 of Article IV of the Ohio Constitution. R.C. 149.43(C)(1) also provides that the aggrieved party may seek a judgment that awards court costs to the person who instituted the mandamus action.

WHEREFORE, the Plaintiff requests a Writ of Mandamus (1) ordering Ohio State to produce minutes of boards, committee, task forces, and other university units and organizations to show who is responsible for recommending and approving faculty appointments of Dr. Kathi Kemper and (2) awarding the costs of this action to the Relator.

Respectfully submitted,



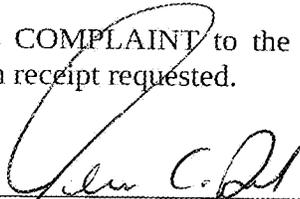
John C. Deal (0020223)
2575 Wexford RD
Columbus, OH 43221-3215
(614) 453-5501
jdeal@columbuscounsel.com

Relator

PRAECIPE FOR SERVICE

TO THE CLERK:

Please issue a Summons along with a copy of this COMPLAINT to the Respondent identified in the caption on page one via Certified Mail, return receipt requested.



John C. Deal (0020223)