

IN THE SUPREME COURT OF OHIO

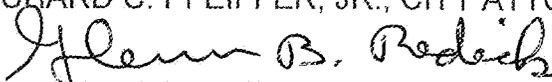
STATE EX REL. JANICE M. CONWAY, :
 :
 Petitioner-Relator, : Case No. 14-0252
 :
 v. :
 :
 FRANKLIN COUNTY PROSECUTOR'S :
 OFFICE, *et al.*, :
 :
 Respondents.

MOTION TO DISMISS OF RESPONDENT, THE CITY OF COLUMBUS, DIVISION OF
POLICE, KEEPER OF RECORDS

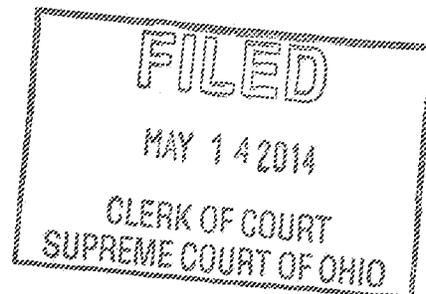
This Respondent, the City of Columbus, hereby moves the Court pursuant to S.Ct. Proc.R. 12.04 to dismiss this matter as to this Respondent for the reasons that are set forth in the accompanying memorandum.

Respectfully submitted,

CITY OF COLUMBUS, DEPARTMENT OF LAW
RICHARD C. PFEIFFER, JR., CITY ATTORNEY



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MEMORANDUM IN SUPPORT OF MOTION

Relator, Janice M. Conway, has filed a complaint requesting that the Court issue a Writ of Mandamus against this Respondent based upon O.R.C. § 149.43, the Ohio Public Records Law. R.C. 149.43 relates to any records that are kept by a public office or a public agency. The City of Columbus, as well as the Columbus Division of Police, is a public agency to which the law applies. Not all records kept by a public agency are public records, as there are exceptions contained within R.C. 149.43 and also court ordered exceptions.

In this instance, Relator made a proper request to this Respondent for public records, and Respondent admits that this Respondent responded to her request, although Relator is not satisfied with the response. (Please see Relator's Complaint, paragraph 11, and a letter from Officer Donna Welch to Janice Conway dated March 19, 2013, attached as Exhibit L to the Complaint.) In her response, Officer Welch advised that the records are non-existent within the Division and/or they are confidential law enforcement investigatory records, which are exempt pursuant to O.R.C. 149.43(2). Although there is no requirement in the public records law that a responding agency specifically explain its reasoning in refusing to produce records in response to a demand, it is the accepted practice for a public agency to set forth why the records are not being produced, if, in fact, they are not being produced. Here the Division of Police indicated that the records requested are non-existent and/or are exempt as confidential law enforcement investigatory records. Thus, the record is clear that the City of Columbus responded to Relator in a manner that is consistent with the law.

Relator requested from this Respondent the following documents:

1. Recordings or transcripts made by the Columbus Police Division or *Franklin County Sheriff's office*. . . (Paragraph 7(1) of Complaint) (emphasis added);
2. Surveillance footage given to Columbus Police Division . . . (Paragraph 7(2) of Complaint);
3. Statements made documenting statements made by Ronald Trent and documenting his movements (Paragraph 8(3) of Complaint);
4. *Audio recordings by the Franklin County Sheriff's Department* (Paragraph 7(4) of Complaint) (emphasis added).

The affidavit attached to this Motion explains why the Columbus Police Division does not have the documents that Relator requested.

In summary, Respondent, City of Columbus, has fully complied with Relator's request for public records. The City of Columbus does not have any of the records requested. We cannot produce what we do not have. *State ex. rel. Chatfield v. Gammill* 130 Ohio St.3d 36, 2012 Ohio 1862.

For all of the above reasons, it is requested that the Court sustain this Motion and dismiss Relator's Complaint as to this Respondent.

Respectfully submitted,

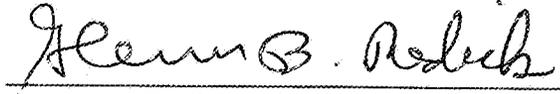
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **Motion To Dismiss Of Respondent, The City Of Columbus, Division Of Police, Keeper Of Records** was mailed by First Class U.S. Mail, postage prepaid, to Janice M. Conway, 2005 Dyer Road, Grove City, OH 43123, this 15th day of May 2014.



Glenn B. Redick, Chief Litigation Attorney

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Petitioner-Relator, : Case No. 14-0252
v. :
FRANKLIN COUNTY PROSECUTOR'S :
OFFICE, *et al.*, :
Respondents.

AFFIDAVIT OF DONNA WELCH

STATE OF OHIO)
 : SS
FRANKLIN COUNTY)

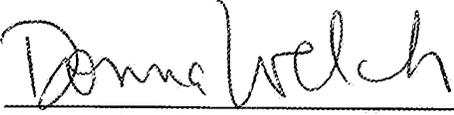
I, Donna Welch, being first duly cautioned and sworn, state that I have personal knowledge of the facts stated herein, that I am competent to testify to the matters stated herein, and that the following matters are true:

1. I am employed by the City of Columbus, Division of Police, as a Columbus Police Officer.
2. I am assigned to the Public Records Unit, where my duties are to respond to requests to view and/or copy public records relating to the Columbus Police Division.
3. In that capacity, I was given a letter from Janice Conway dated February 15, 2013, requesting certain records.
4. The letter was received by the Public Records Unit on February 27, 2013, and was given to me to handle.
5. I secured the file relating to the referenced criminal cases and reviewed the documents that were still in the Division's possession.

6. The cases to which Relator refers in her Complaint, 02CR-1153, 02CR-3117, and 02CR-3118 (Paragraph 2 of the Complaint) all related to James T. Conway III. These cases are criminal cases involving aggravated murder, kidnapping, possession of criminal tools, abuse of a corpse, obstructing justice and tampering with evidence.
7. Mr. Conway was found guilty of all charges and sentenced to death. He is currently in prison awaiting his execution.
8. The incidents that gave rise to these charges occurred in 2001.
9. I reviewed the file and determined that we do not have and, in fact, never had many of the documents because they were never documents we created. As an example: in Paragraph 7(4), Relator requested audio records made by the Franklin County Sheriff's office. The Columbus Police Division does not have any such recordings.
10. Further, as to surveillance recordings (Paragraph 7(1) of Complaint) or security surveillance (Paragraph 7(2) of Complaint), I could find no such documents or recordings in the file of the Columbus Police Division.
11. I reviewed the detective's progress notes and found no reference to any security tapes. I assume that, to the extent the Columbus Police Division ever had any such tapes, they were at some point given to the Franklin County Prosecutor's Office for the prosecution of the cases.
12. Relator requested, in Paragraphs 7(3) and 7(4) of the Complaint, documents relating to Ronald Trent, who was a confidential informant.

13. From what I can determine from a review of the file, the Columbus Police Division never talked with Mr. Trent, as it appears his involvement with Mr. Conway stemmed from the time they both were incarcerated in the Franklin County jail, which occurred after he was charged by the Columbus Police Division.
14. I could find no evidence in the file that any detectives ever talked with Mr. Trent.
15. I responded to Relator's demand for records in my letter of March 19, 2013, attached to the Complaint as Exhibit L, which is a true and accurate copy.
16. From my review of the files regarding the criminal cases, it appeared to me that the Columbus Police Division never had any of the tapes requested, but to the extent that we ever did have them, it is my belief that they were turned over to the Prosecutor's Office. Of course, in the one instance, the Columbus Police Division did not have any records made by the Franklin County Sheriff's Office.
17. In my letter of March 19, 2013, I also checked the area that indicates that the information requested relates to confidential law enforcement investigatory work product out of an abundance of caution, because there is ongoing litigation involving the aforementioned criminal cases.

Further affiant sayeth not.



Donna Welch

SWORN TO BEFORE ME and subscribed in my presence this 14th day of May

2014.



Notary Public, State of Ohio
GLENN B. REDICK
attorney at law
SPT and Commissioner