

Case No. _____

**Supreme Court
of the State of Ohio**

14-1141

STATE OF OHIO *ex rel.*
OHIO REPUBLICAN PARTY,

Relator,

v.

EDWARD FITZGERALD, County Executive, County of Cuyahoga,

and

COUNTY OF CUYAHOGA and KOULA CELEBREZZE,

Respondents.

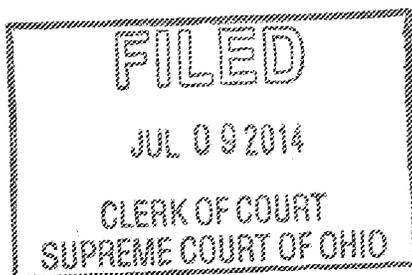
MEMORANUDM IN SUPPORT OF
VERIFIED COMPLAINT FOR WRIT OF MANDAMUS

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STATE OF OHIO <i>ex rel.</i>	:	Case No. _____
OHIO REPUBLICAN PARTY,	:	
	:	
Relator,	:	
	:	
v.	:	
	:	
EDWARD FITZGERALD, <i>et al.</i> ,	:	MEMORANUDM IN SUPPORT
	:	OF VERIFIED COMPLAINT
	:	FOR WRIT OF MANDAMUS
Respondents.	:	

The State of Ohio, on relation to the Ohio Republican Party (hereinafter, "Relator"), hereby tenders the following Memorandum in Support of the Verified Complaint for Writ of Mandamus.

MEMORANDUM IN SUPPORT

This action arises from the effort of Relator to obtain from the County of Cuyahoga, and the responsible county officials, certain public records relating to the organization, functions, policies, decisions, procedures, operations, or other activities of the County and its County Executive, Edward FitzGerald. Specifically, Relator has sought to obtain copies of the County's key-card swipe data that shows when County Executive FitzGerald enters and/or leaves a county building or parking facilities. Previously, the same or similar records had been sought by or on behalf of *The Cleveland Plain Dealer*, a newspaper of general circulation in the greater-Cuyahoga County area. And despite now having two requests for such public records, Respondents have failed to comply (and continue to refuse to comply) with their legal obligations to promptly provide copies of requested public records.

Recognizing that such public records would allow one to analyze, *inter alia*, how FitzGerald has balanced the demands between his taxpayer-financed job and his political campaign efforts, Chris Schrimpf, the communications director for Relator Ohio Republican Party, tendered on May 22, 2014, a public records request seeking the key-card swipe data relative to certain officials of the County of Cuyahoga. (Verified Complaint ¶¶17-18 & Exh.B.) In a subsequent e-mail dated June 2, 2014, to Emily Lundgard, the Director of Communications for the County of Cuyahoga, Mr. Schrimpf referenced his earlier e-mail request and then re-requested the public records at issue in this case:

Looking for the key card swipe data for County Executive FitzGerald. I am seeking to obtain the information that you previously denied the Cleveland Plain Dealer.

(Verified Complaint ¶¶19-20 & Exh. C.) And to ensure clarity to his request, Mr. Schrimpf transmitted a third e-mail on June 9, 2014, to the recipients of his earlier e-mail wherein he stated:

[Previously], I submitted a public records request seeking the key card swipe data for County Executive FitzGerald.... Within that earlier request, I indicated that it was being tendered via the Cuyahoga County Public Records Ordinance. So as to ensure there is no confusion with respect to either request, I am writing to clarify that both requests (that of May 22 and of June 2) were submitted not only based upon the Cuyahoga County Public Records Ordinance (Chapter 106 of the Cuyahoga County Code), but also pursuant to Section 12.06 of the Cuyahoga County Charter (“[r]ecords of the County shall be open to the public as provided by general law”) and pursuant to the Ohio Public Records Act (R.C. 149.43).

As this clarification should not have affected the ability or legal obligation of Cuyahoga County and its officials to produce the requested records, I would appreciate it if you would advise as to when I might reasonably expect a response. As I noted in my e-mail to you of June 2, this request seeks the same records which Cuyahoga County has already refused to provide *The Cleveland Plain Dealer*. Thus, while it might have taken two months before the County responded to the *Plain Dealer*'s request, as the request of June 2 seeks the same records, the question is simply whether Cuyahoga County is going to stand steadfast and continue its refusal to produce responsive public records or whether

it now recognizes and appreciates its legal obligations to make all responsive records available to the public.

(Verified Complaint ¶¶21-22 & Exh.D.) But to date and despite having more than a reasonable opportunity to respond,¹ no one from or on behalf of the County of Cuyahoga has responded, affirmatively or negatively, to the public records request for the key-card swipe data for County Executive FitzGerald. (Verified Complaint ¶¶23-26.) Effectively, Respondents have denied Relator's public records request.

Because Respondents have failed to comply with numerous obligations imposed upon them by the Public Records Act, the Cuyahoga County Charter and the Cuyahoga County Code, the Ohio Republican Party commenced this original action, seeking the issuance of a peremptory writ of mandamus (or, alternatively, an alternate writ of mandamus) to compel Respondents to comply with their legal obligations to produce all public records responsive to the requests that Mr. Schrimpf tendered on behalf of the Relator.

¹ As developed in the Verified Complaint, at ¶¶27-31, following submission of the public records request at issue herein, another public records request was tendered seeking the same type of records as those at issue herein, *i.e.*, key card swipe data for parking and county buildings, for the various members of the county council of the County of Cuyahoga. Within one day, responsive records were provided for numerous individuals. Thus, with respect to the same records relative to a single individual, *i.e.*, Respondent Fitzgerald, more than a reasonable time has expired to produce those records.

ARGUMENT

PROPOSITION OF LAW No. 1:

A writ of mandamus is the proper remedy for the failure of a public official or public office to comply with the requirements and mandates of the Ohio Public Records Act.

A writ of mandamus is the appropriate remedy to compel compliance with the Ohio Public Records Act. *State ex rel. Scripps Howard Broadcasting Co. v. Cuyahoga Cty. Court of Common Pleas*, 73 Ohio St. 3d 19, 23, 652 N.E.2d 179, 183 (1995); *State ex rel. Howard v. Ferreri*, 70 Ohio St. 3d 587, 593, 639 N.E.2d 1189, 1195 (1994); *see also* R.C. 149.43(C) (“a person allegedly is aggrieved by the failure of a public office to promptly prepare a public record and to make it available to the person for inspection . . . may commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section”).

A writ of mandamus is warranted when (1) the relator has a clear legal right to the relief prayed for, (2) the respondent is under a clear legal duty to perform the requested act, and (3) the relator has no plain and adequate remedy at law. *State ex rel. Berger v. McMonagle*, 6 Ohio St.3d 28, 28, 451 N.E.2d 225, 226-27 (1983). “A relator meets those three requirements when a public office fails to comply with R.C. 149.43(B) requirements for public access to public records.” *State ex rel. Beacon Journal Publishing Co. v. Bodiker*, 134 Ohio App.3d 415, 420, 731 N.E.2d 245, 249 (1999); *see State ex rel. Findlay Publishing Co. v. Schroeder*, 76 Ohio St.3d 580, 582 (1996) (“we have held that persons seeking public records pursuant to R.C. 149.43(C) need not establish the lack of an adequate remedy at law in order to be entitled to a writ of mandamus”)

This Court has “consistently held that mandamus is the appropriate remedy to seek compliance with the Public Records Act under R.C. 149.43.” *State ex rel. Highlander v. Rudduck*, 103 Ohio St.3d 370, 373, 2004-Ohio-4952, 816 N.E.2d 213, 216. As developed below, Respondents have failed to comply with the legal obligations imposed upon them pursuant to the Public Records Act. As such, this mandamus action is the proper course of action and remedy to compel Respondents to comply with their legal obligations under the Ohio Public Records Act.

PROPOSITION OF LAW No. 2:

When a public office or person responsible for public records fails to timely respond to a public records request, the relator is entitled to the issuance of a writ of mandamus compelling the compliance with the statutory duty to make the requested records available for inspection or copying.

Section 149.43(B)(1) explicitly imposes, *inter alia*, two duties upon public offices and persons responsible for public records:

... all public records responsive to [a public records] request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. ...

... 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. ...

Yet, despite the straightforward aspect of the request (and the ability to provide the same records for other public officials, *see* note 1, *supra*), Respondents have completely ignored the request seeking records relating to Respondent Fitzgerald, the Cuyahoga County Executive.

Notwithstanding Relator’s straightforward request and the demonstrated ability of Respondents to provide similar records within one day, Respondents have failed to comply with the request at issue herein. In fact, despite the mandate of the Ohio Public Records Act, there has been a complete lack of response from the Respondents, *i.e.*, Respondent have failed to respond affirmatively or negatively to Relator’s request. Accordingly, Relator is entitled to the

issuance of a writ of mandamus compelling immediate production of copies of the requested records.

PROPOSITION OF LAW No. 3:

When a public office or person responsible for public records fails to respond to a public records request after a reasonable period of time, such lack of answer is effectively the same as a denial of the request.

PROPOSITION OF LAW No. 4:

When a public office or person responsible for public records denies a public records request, the public office or person responsible must provide an explanation including legal authority for the denial and, upon the failure to do so, a writ of mandamus shall issue.

PROPOSITION OF LAW No. 5:

When a public office or person responsible for public records denies a public records request that was submitted in writing, the explanation including legal authority for the denial must also be made in writing and, upon the failure to do so, a writ of mandamus shall issue.

PROPOSITION OF LAW No. 6:

Pursuant to the Public Records Act, a public office or person responsible for public records is legally required to transmit copies of requested public records by mail or other means of delivery within a reasonable time and, upon the failure to do so, a writ of mandamus shall issue.

In failing to respond whatsoever to Relator's public records request after a reasonable period of time, the effect is the same as if Respondents had denied the public records request. But in so denying the public records request, Respondents have triggered yet another obligation under the Public Records Act with which they have not complied.

Section 149.43(B)(3) of the Revised Code sets forth two distinct obligations when a public records request is denied:

the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied

and

[i]f a request is ultimately denied [and] . . . [i]f the initial request was provided in writing, the explanation also shall be provided to the requester in writing.

Thus, by the explicit language of the Public Records Act, in denying a public records request, the responding public official or person responsible for the requested records has the legal duty and obligation to: (i) provide an explanation for the denial; and (ii) to include legal authority supporting the explanation of the denial. Furthermore, when the request is submitted in writing, the explanation for the denial must also be tendered in writing.

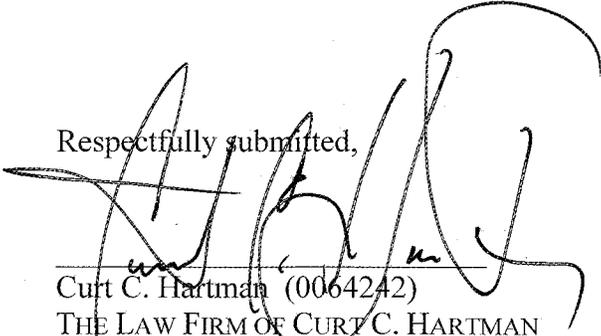
In this case, not only have Respondents failed to provide an explanation with legal authority for their denial of Relator's public records request, let alone one in writing, they have failed to provide any response whatsoever despite the requirements of the Public Records Act. In order to compel Respondents' obligations under the Public Records Act, a writ of mandamus should issue forthwith.

Furthermore, as Relator requested copies of the requested records, Respondents were obligated, pursuant to Section 149.43(B)(7) of the Public Records Act, to transmit such copies by mail or any other means of delivery. As noted above, Respondents have provided no response whatsoever to Relator's requests and, accordingly, have also failed to comply with this legal obligation. As such, a writ of mandamus should issue compelling Respondents to immediately delivery copies of the requested records to Relator.

CONCLUSION

In accordance with the foregoing, Relator is entitled to the immediate issuance of a peremptory writ of mandamus compelling Respondents to provide forthwith Relator copies of the public records at issue herein, *i.e.*, key-card swipe data that shows when County Executive FitzGerald enters and/or leaves a county building or parking facilities

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing will be served upon the Respondents herein as part of the service of the Verified Complaint herein.

