

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio, ex rel. )  
 MARK T. STREDNEY )  
 )  
 )  
 Relator, )  
 )  
 vs. )  
 )  
 ANTHONY DiCICCO, in his )  
 Capacity as Mayor of the City of )  
 Mayfield Heights, Ohio, et al. )  
 )  
 Respondents. )

Case No. 2014-1067

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**ANSWER TO COMPLAINT OF RESPONDENTS ANTHONY DiCICCO AND  
 PAUL T. MURPHY**

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**COUNSEL FOR RELATOR:**  
**DANAMARIE K. PANNELLA (0090221)**  
 1343 Sharon-Copley Road  
 P.O. Box 345  
 Sharon Center, Ohio 44274  
 Tel: 330-239-4480  
 Fax: 330-239-6224  
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**COUNSEL FOR RESPONDENTS:**  
**PAUL T. MURPHY, ESQ. (0016470)**  
 (COUNSEL OF RECORD)  
 Director of Law  
 City of Mayfield Heights, Ohio  
 5843 Mayfield Road  
 Mayfield Heights, Ohio 44124  
 Tel: 440-473-1025  
 Fax: 440-473-9595  
 Email: [carbmurph@aol.com](mailto:carbmurph@aol.com)

**RECEIVED**  
 JUL 21 2014  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

**FILED**  
 JUL 21 2014  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

Now come Respondents Anthony DiCicco, in his official capacity as Mayor of the City of Mayfield Heights, Ohio, and Paul T. Murphy, in his official capacity as Law Director of the City of Mayfield Heights, Ohio, by and through the Director of Law as Counsel of Record, and for their Answer to Relator's Complaint filed on June 26, 2014, respond as follows:

**FIRST DEFENSE**

1. Respondents deny the allegations contained in Paragraphs 1 & 2 of the Complaint in that said allegations assert legal conclusions.
2. Upon information and belief, Respondents admit the allegations contained in Paragraph 3 of the Complaint.
3. Respondents admit the allegations contained in Paragraphs 4, 5, 6 and 7 of the Complaint.
4. Respondents deny the allegations contained in Paragraphs 8 & 9 of the Complaint.
5. Respondents deny the allegations contained in Paragraph 10 of the Complaint in that said allegations assert legal conclusions.
6. Respondents admit the allegations contained in Paragraph 11 of the Complaint, and admit the accuracy of Relator Exhibits A-F.
7. Respondents admit the allegations contained in Paragraph 12 of the Complaint, and admit the accuracy of Relator Exhibit G.
8. Respondents admit the accuracy of Relator Exhibits H-J, as alleged in Paragraph 13 of the Complaint, but deny the balance of the allegations contained in said Paragraph.

9. Respondents deny the allegations contained in Paragraph 14 of the Complaint in that said allegations assert legal conclusions.
10. Respondents admit the accuracy of the allegations contained in Paragraphs 15 and 16 of the Complaint, and admit the accuracy of Relator Exhibits K, L & M.
11. Respondents deny the allegations contained in paragraphs 17, 18 and 19 of the Complaint.
12. Respondents deny the allegations contained in Paragraphs 20, 21, 22 and 23 of the Complaint in that said allegations assert legal conclusions.
13. Respondents deny each and every allegation not specifically admitted herein.

#### **SECOND DEFENSE**

14. Relator has failed to state a claim upon which relief can be granted.

#### **THIRD DEFENSE**

15. Counsel for Relator was informed by letter dated October 4, 2013, from L. Bryan Carr, former Assistant to the Law Director, that the City of Mayfield Heights would be required to retain its IT company to comb through emails to find documents that may be responsive to the September 13, 2013 public records request (Relator Exhibit G). The costs paid by the City to private contractors are part of the “actual cost” of providing the records, State ex rel Gambill v. Opperman, 135 Ohio State 3rd 298, 2013-Ohio-761, 986 NE 2d 93. As stated in Gambill, supra, at Paragraph 31, “... it is reasonable to include the cost that the engineer’s office will incur from Woolpert in extracting the requested electronic data...”. Pursuant to Section 149.43(B)(6) of the Ohio Revised Code, the City may require Relator “... to pay in advance the cost involved in providing the copy of the public record...” (Emphasis added). Consequently, those costs

must be paid by Relator before the records are searched; that information has been provided to Counsel for Relator (See Relator Exhibits G, H, I and J).

#### **FOURTH DEFENSE**

16. Respondents have provided all public records requested by Relator in the November 13, 2013 letters to the Mayfield Heights Mayor's Office and to the Mayfield Heights Law Department, Relator Exhibits L and M, as is evidenced by a letter dated December 16, 2013 from L. Bryan Carr, former Assistant to the Law Director, indicating that the City has "no documents responsive to your request". A copy of that letter is attached hereto and made a part hereof as Respondents Exhibit 1, and the Affidavit that it is a true and accurate copy from the files of the Mayor is attached hereto and made a part hereof as Respondents Exhibit 2.

#### **FIFTH DEFENSE**

17. The City of Mayfield Heights cited Relator in 2010 and 2011 in Lyndhurst Municipal Court for violations of its Criminal Code regarding animals. Relator pled no contest and was found guilty, and was sentenced. The record was eventually sealed subsequent to a hearing held on October 29, 2013. Since that plea Relator has provided the City with multiple public records requests (Relator Exhibits A-F, L, M), and the City and its various departments have complied with all requests.

#### **SIXTH DEFENSE**

18. The City of Mayfield Heights filed suit against Relator on July 18, 2013, in the Cuyahoga County Court of Common Pleas, Case No. 810871, seeking abatement of a nuisance at Relator's property. The nuisance was abated by Relator or at his direction, and the case was dismissed without prejudice on November 12, 2013.

Motion was denied by the court on December 6, 2013. Relator has appealed that denial to the Eighth District Court of Appeals, Case No. CA14100842. The issues have been briefed, and the case is scheduled for oral argument on August 12, 2014. During the pendency of these actions Relator has continued to submit to the City multiple public records requests in lieu of discovery (Relator Exhibits A-F, L, M), and the City and its various departments have complied with all requests.

**RELIEF REQUESTED**

Having fully answered the Complaint, Respondents request that:

1. The Complaint as to them be dismissed because
  - (a) Respondents have fully complied with Relator's September 13, 2013 records request, and need not further comply until the "actual cost" of providing the records is paid; and
  - (b) Respondents have fully complied with Relator's November 13, 2013 records requests (Respondents Exhibit 1).
2. They recover their costs and reasonable attorney fees.

Respectfully submitted,

PAUL T. MURPHY CO., L.P.A.

  
PAUL T. MURPHY (0016470)

COUNSEL OF RECORD

5843 Mayfield Road

Mayfield Heights, Ohio 44124

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(440) 473-9595 Fax

[carbmurph@aol.com](mailto:carbmurph@aol.com)

*Director of Law, City of Mayfield Heights, Ohio*

**CERTIFICATE OF SERVICE**

A copy of the foregoing has been sent by email and by regular U.S. Mail on this  
18<sup>th</sup> day of July, 2014 to the following:

DANAMARIE K. PANNELLA (0090221)  
1343 Sharon-Copley Road  
P.O. Box 345  
Sharon Center, Ohio 44274  
*Counsel for Defendant/Appellant*  
*Mark T. Stredney*

  
\_\_\_\_\_  
PAUL T. MURPHY (0016470)  
*Attorney for Plaintiff/Appellee*  
*City of Mayfield Heights, Ohio*



## CITY OF MAYFIELD HEIGHTS

6154 MAYFIELD ROAD • MAYFIELD HEIGHTS, OHIO 44124-3296  
TELEPHONE 216/442-2626  
FAX 216/442-3818

LEONARD F. CARR  
Director of Law

December 16, 2013

DanaMarie K. Pannella  
Holland & Muirden  
1343 Sharon-Copley Road  
P.O. Box 345  
Sharon Center, Ohio 44274

Re: Public Records Requests dated November 13, 2013

Ms. Pannella:

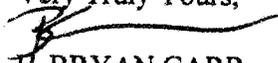
Relative to the above captioned matter, I am in receipt of your Public Records Requests dated November 13, 2013 directed to: (1) "Mayfield Heights Mayor's Office, Attn: Custodian of Records"; and (2) "Mayfield Heights Law Department, Attn: Custodian of Records."

Be advised that your office, in error, mailed your request addressed to the Mayor's Office to the Law Department. Your request addressed to the Law Department was mailed to the Mayor's Office. In the future, to avoid confusion and delay, kindly remind your office staff to ensure that your correspondence is addressed and mailed correctly.

With regard to your Records Request directed to the "Mayfield Heights Law Department, Attn: Custodian of Records," be advised the Law Department is not a custodian of City records. Thus, the Law Department has no documents responsive to your request.

With regard to your Records Request directed to the "Mayfield Heights Mayor's Office, Attn: Custodian of Records" (the same request you forwarded on September 13, 2013, with a different time frame; which was responded to by the City) be advised there are no documents responsive to your request.

Very Truly Yours,

  
L. BRYAN CARR

Assistant to the Law Director

cc: Mayor Anthony J. DiCicco

*Relators Exhibit 1  
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MARK T. STREDNEY

Relator,

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ANTHONY DiCICCO, et al.

Respondents

Case No. 2014-1067

AFFIDAVIT IN SUPPORT OF  
ANSWER OF RESPONDENT

**AFFIDAVIT IN SUPPORT OF ANSWER OF RESPONDENTS**

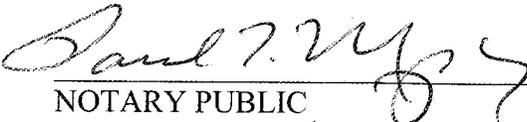
Now comes Renee C. Augustine, being first duly sworn, and deposes and says as follows:

1. That this Affidavit is made from personal knowledge;
2. That I am the Executive Secretary to the Mayor of the City of Mayfield Heights, Ohio;
3. That the letter dated December 16, 2013, from L. Bryan Carr to DanaMarie K. Pannella, copy to Mayor Anthony DiCicco, is a true and accurate copy of a letter in the Mayor's files regarding a Public Records Request from Ms. Pannella dated November 13, 2013, as stated in said letter.

**FURTHER AFFIANT SAYETH NAUGHT.**

  
 \_\_\_\_\_  
 RENEE C. AUGUSTINE

Sworn to before me and subscribed in my presence on this 17<sup>th</sup> day of  
JULY, 2014.

  
 \_\_\_\_\_  
 NOTARY PUBLIC  
 STATE OF OHIO  
 ATTORNEY AT LAW  
 MY COMMISSION HAS  
 NO EXPIRATION

Respondents Exhibit 2  
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