

ORIGINAL

Case No. 2014-1141

---

**Supreme Court  
of the State of Ohio**

---

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

Relator,

v.

EDWARD FITZGERALD, County Executive, County of Cuyahoga County,

and

COUNTY OF CUYAHOGA and KOULA CELEBREZZE,

Respondents.

---

**RELATOR'S MEMORANUDM  
OPPOSING RESPONDENTS' MOTION TO REFER TO MEDIATION**

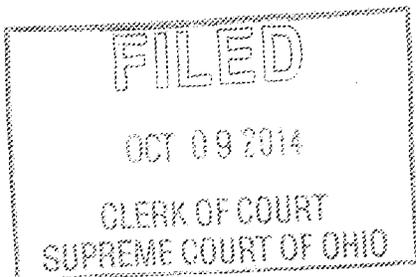
---

*Counsel for Relator*

Curt C. Hartman (0064242)  
*THE LAW FIRM OF CURT C. HARTMAN*  
7394 Ridgepoint Drive, Suite 8  
Cincinnati, OH 45230  
(513) 752-2878  
*hartmanlawfirm@fuse.net*

Daniel P. Carter (0074848)  
*LAW FIRM OF DANIEL P. CARTER*  
1400 West Sixth St. Suite 300  
Cleveland, OH 44113  
(216) 392-4509  
*dpc@dpcarterlaw.com*

Chrisophter P. Finney (0038998)  
*FINNEY LAW FIRM LLC*  
4270 Ivy Pointe Blvd., Suite 225  
Cincinnati, Ohio 45245  
(513) 943-6655  
*chris@finneylawfirm.com*



# Supreme Court of the State of Ohio

STATE OF OHIO <i>ex rel.</i>	:	Case No. 2014-1141
OHIO REPUBLICAN PARTY,	:	
	:	
Relator,	:	
	:	
v.	:	RELATOR'S MEMORANUDM
	:	OPPOSING RESPONDENTS'
EDWARD FITZGERALD, <i>et al.</i> ,	:	MOTION TO REFER TO MEDIATION
	:	
Respondents.	:	

The State of Ohio, on relation to the Ohio Republican Party (hereinafter, "Relator"), tenders the following Memorandum in Opposition to Respondents' Motion to Refer to Mediation (filed on September 29, 2014).

## MEMORANDUM IN OPPOSITION

Nearly 3 months after Relator commenced this public records mandamus action and only after this Court issued an alternative writ and established a schedule for the submission of evidence and briefing, Respondents now seek to have this matter referred to mediation. The entire premise for Respondents' belated effort is their claim that mediation "may resolve outstanding issues" by "allow[ing] the parties the opportunity to work toward a resolution of this matter or to least narrow the issues." (Motion, at 4.)

But with respect to the public records originally sought by Relator on May 22, 2014, Respondents acknowledge that they " have provided much of the information requested by Relator." (Motion, at 5.) For with respect to the key card data sought by Relator, Respondents provided the records relating to several county officials. (*See* Respondents' Motion to Dismiss (filed on August 12, 2014), at 6 ("[o]n July 31, 2014, [County Law] Director Makhlouf emailed Relator the key card swipe data for Mr. Kelly, Mr. Benders, Ms. Byrd, Ms. Rocco and Ms. Cole

for the period January 1, 2011 to the current date as requested”).) Yet, Respondents are refusing to provide the key-card swipe data for a single county official, viz., Cuyahoga County Executive Edward FitzGerald. And Respondents have already acknowledged and recognize that the only records not provided to Relator concern those relating to Edward FitzGerald. As stated by the Respondents’ legal counsel and the County Law Director in an earlier e-mail to Mr. Schrimpf:

I am writing in response to the public records requests that you submitted...seeking the key swipe date for the County Executive....

...

With respect to your request for the swipe data for the County Executive, the Sheriff’s Department has confirmed the existence of verifiable security threats barring the release of this information pursuant to R.C. 149.433. They are, therefore, not being produced herewith.

(Exhibit A to Makhlouf Affidavit submitted with Respondents’ Motion to Dismiss (filed on August 12, 2014.) Thus, both sides herein recognize that the narrow issue before the Court is whether, after “strictly constru[ing] exemptions from disclosure under R.C. 149.43 and to resolve any doubts in favor of disclosure of public records,” *State ex rel. Cleveland Police Patrolmen’s Ass’n v. Cleveland*, 84 Ohio St.3d 310, 312, 703 N.E.2d 796, 1999-Ohio-352 (1999), the Respondents can satisfy their burden of establishing the application of their claimed exemption. *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 376-377, 662 N.E.2d 334 (1996). That is the narrow issue in this case and referral to mediation will not and cannot further narrow the issue.

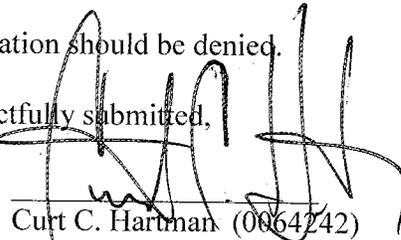
As for the potential of resolving the case, Respondents have repeatedly demonstrated an undiminishing effort to hide public records relating to FitzGerald. As developed in the Complaint, a reporter from *The Cleveland Plain Dealer* previously requested the same public records at issue herein, i.e., key-card swipe data for Edward FitzGerald, and the reporter was rebuffed; when Relator picked up the cause, the unbending position of Respondents continued.

And even more demonstrative of Respondents' recalcitrance of working towards resolution of the issue herein is the fact that when Relator's counsel sought from the Cuyahoga County Sheriff copies of all offense-or-incident reports in which Edward FitzGerald was identified as the reportee, complainant or victim (so as to confirm the existence *vel non* of the claimed security threats against Edward FitzGerald), the response from the Cuyahoga County Law Department (which represents Respondents herein) was the same: "These records are not public records and are not subject to disclosure... [T]he request [for offense-or-incident reports] is denied pursuant to ORC 149.433." (See attached e-mail dated August 14, 2014, from Deputy Chief Director of the Cuyahoga County Law Department Nora L. Hurley). If Respondents or their counsel won't recognize the well-established precedent of this Court that "[r]outine offense and incident reports are subject to immediate release upon request," *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 639 N.E.2d 83 (1994)(syllabus ¶5); accord *State ex rel. Rasul-Bey v. Onunwor*, 94 Ohio St.3d 119, 120, 760 N.E.2d 421, 2002-Ohio-67 (Ohio 2002)("[o]ffense and incident reports initiate criminal investigations but are not part of the investigation, and they are not exempt from disclosure under R.C. 149.43"); see also *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 378, 662 N.E.2d 334, 1996-Ohio-214 (1996)("[o]nce clothed with the public records cloak, the records cannot be defrocked of their status"), then Respondents clearly do not have any *bona fide* desire or interest to produce the public records at issue herein; mediation will simply further delay that which Respondents should have release long ago. See *Dayton Newspapers, Inc. v. City of Dayton*, 45 Ohio St.2d 107, 109, 341 N.E.2d 576 (1976)("[t]he rule in Ohio is that public records are the people's records, and that the officials in whose custody they happen to be are merely trustees for the people").

*Conclusion*

The Respondents' effort, at this late stage of this case, to suddenly seek mediation is disingenuous. The underlying public record request is over 5 months old and this mandamus action has been pending for over 3 months. Yet, instead of seeking mediation soon after this action was commenced, Respondents waited to seek mediation only after this Court rejected their earlier efforts to have the case thrown out. If Respondents truly felt that mediation was a useful process that would allow for a resolution of the case, they should have sought mediation at the beginning of the case, not after this Court already authorized discovery and set a schedule for submission on the merits. Throughout this process (as well as the earlier effort of *The Plain Dealer* to obtain the same records and the effort of Relator's counsel to obtain related offense-and-incident reports), FitzGerald and the County have only demonstrated an absolute and uncompromising stance that they will not release the requested public records; they have not changed their position. Mediation is not going to change the Respondents' recalcitrance. Accordingly, the motion to refer the matter to mediation should be denied.

Respectfully submitted,



Curt C. Hartman (0064242)  
THE LAW FIRM OF CURT C. HARTMAN  
7394 Ridgepoint Drive, Suite 8  
Cincinnati, OH 45230  
(513) 752-2878  
[hartmanlawfirm@fuse.net](mailto:hartmanlawfirm@fuse.net)

Daniel P. Carter (0074848)  
LAW FIRM OF DANIEL P. CARTER  
1400 West Sixth Street, Suite 300  
Cleveland, OH 44113  
(216) 392-4509  
[dpc@dpcarterlaw.com](mailto:dpc@dpcarterlaw.com)

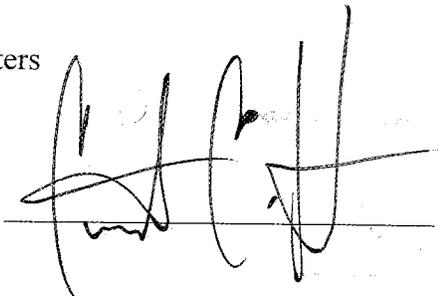
Christopher P. Finney (0038998)  
FINNEY LAW FIRM LLC  
4270 Ivy Pointe Blvd., Suite 225  
Cincinnati, Ohio 45245  
(513) 943-6655  
[chris@finneylawfirm.com](mailto:chris@finneylawfirm.com)

*Attorneys for Relator*

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing will be served upon the following via regular mail on the 6th day of October 2014:

Majeed G. Makhlouf  
Robin M. Wilson  
Cuyahoga County Department of Law  
Cuyahoga County Administrative Headquarters  
2079 East Ninth Street, 7th Floor  
Cleveland, Ohio 44115

A handwritten signature in black ink, appearing to be 'M. Wilson', written over a horizontal line.