

IN THE SUPREME COURT
OF THE STATE OF OHIO

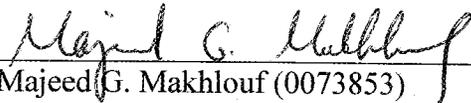
The State of Ohio <i>ex rel.</i>	:	CASE NO. 2014-1141
Ohio Republican Party,	:	
	:	
Relator,	:	
	:	
v.	:	RESPONDENTS' MOTION FOR
	:	<u>PROTECTIVE ORDER</u>
Edward FitzGerald, et al.,	:	
	:	
Respondents.	:	

Respondent County of Cuyahoga respectfully moves the Court pursuant to Ohio Civ. R. 26(C) for a protective order barring the deposition *duces tecum* of Sheriff Deputy D. Paul Soprek. Relator Ohio Republican Party has issued a notice of deposition *duces tecum* of Sheriff Deputy D. Paul Soprek commanding his deposition on Monday, October 20, 2014, at 1:00 p.m., and instructing him to produce highly confidential and sensitive security threat information. There is good cause for granting a protective order for the reasons set forth in the attached Memorandum in Support which is incorporated.

A certification showing that reasonable efforts were made to resolve this matter through discussions with counsel for Relator prior to filing this Motion is included at the end of the Memorandum in Support and incorporated herein by reference.

Respectfully submitted,

CUYAHOGA COUNTY DEPARTMENT OF LAW
Majeed G. Makhoulf, Director



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Counsel for Respondents

County of Cuyahoga, Ohio;

County Executive Edward FitzGerald; and

Koula Celebrezze

[Representation pursuant to August 27, 2013
Agreement governing the division of
duties between the Cuyahoga
County Prosecutor's Office and
Department of Law]

MEMORANDUM IN SUPPORT

INTRODUCTION

This matter involves Relator Ohio Republican Party's request for the security key-card data that regulates access into the county's buildings and Respondent Cuyahoga County's determination pursuant to R.C. 149.433 that the requested records are not public records subject to mandatory disclosure pursuant to R.C. 149.43.

There is much confusion in the media about this case and the basis for the County's position. The County's legal position, which Respondents' counsel repeatedly articulated to Relator's counsel, is that the security key-card data is not a public record pursuant to R.C. 149.433 without regard to the existence of security threats against the County Executive. The release of documents protected by R.C. 149.433 is a discretionary act under the statute.

In exercising its discretion if and when to release such information, the County assesses the associated risks, including verification of security threats and whether the information may reveal nonpublic entryways and such other infrastructure. In this case, the existence of security threats and the Executive's access to high-level, non-public entryways and other infrastructure caused the County to *exercise its discretion* not to release the security key-card data Relator requested.

The real question in this case is whether the security key-card data is a public record or whether it is protected under R.C. 149.433. No amount of depositions or inquiry into the substance of the security threats against the Executive would help resolve this case. How the County exercises its discretion is immaterial to the outcome of this case. Mandamus simply

cannot lie over a discretionary act or the rationale behind the County's exercise of a discretionary act.

On Friday, October 17, 2014, Relator noticed the deposition of Deputy D. Paul Soprek—the Cuyahoga County Sheriff's Deputy responsible for the Principal Protection Unit and Executive FitzGerald's security to take place on Monday, October 20, 2014. The Notice of Deposition instructed Deputy Soprek to produce highly confidential and sensitive security threat records at his deposition.

As explained, Deputy Soprek's deposition will not aid the Court in resolving this dispute. Nonetheless, Respondents' counsel were willing to produce Deputy Soprek for deposition, but sought assurances from Relator's counsel that he will not inquire about the security threats against Executive FitzGerald—highly confidential and extremely sensitive law enforcement information the release of which jeopardizes the Sheriff's Department's investigations and the Executive's security.

Relator's counsel responded that he did not intend to “get into the minutia” of the security threats, but that the solution was for the parties to go through the theatrical performance of Relator's counsel asking Deputy Soprek questions about highly confidential, sensitive security threat information, and the County's lawyers objecting and instructing the witness not to answer. The purpose of a deposition is to solicit evidence that would aid the Court in resolving the questions before it and not for a political party to use the time and resources of a public county law enforcement officials and lawyers to produce theater for a party's political commercial to accuse their opponent in a political race of trying to hide information the release of which jeopardizes law enforcement operations.

The Court should not tolerate such conduct.

STATEMENT OF FACTS

A. The Security Key-Card Data:

The records at issue in this case are governmental building security key card data—literally, data from a security system the purpose of which is to protect governmental offices by regulating who has access into different parts of governmental buildings. (Respondents' Evidence filed on October 14, 2014, Affidavit of David DeGrandis, ¶ 3.)

The purchase and installation of this security key-card system is part and parcel of the County's security plan to protect its facilities. Different users have different levels of access based on the level of their security credentials, and the security key-card system is used to determine whether the person seeking access has the appropriate security credentials to access the area they're seeking to enter. The access is regulated by hours, by floors, and even rooms on the same floor, and it is used by the Sheriff's Department for the protection of the County's facilities and those who use them. (Respondents' Evidence filed on October 14, 2014, Affidavit of David DeGrandis, ¶ 6.)

The security key-card data reveals sensitive security information, such as user patterns, not only in terms of hours of entry, but also in terms of access points. For instance, if an individual with high-level security credentials, such as the County Executive, utilizes a non-public entryway to enter an area that is secured via the key-card system without the presence of security personnel, the security key-card data will not only reveal the time patterns of entry, but it will also reveal the existence of the non-public, secured entryway itself. (Respondents' Evidence filed on October 14, 2014, Affidavit of David DeGrandis, ¶ 7.)

B. Deputy Soprek and the Sheriff Department's Principal Protection Unit:

Sheriff Deputy D. Paul Soprek is a career detective with the Cuyahoga County Sheriff's Department, and he directs the Sheriff's Department Principal Protection Unit. He has been employed by the Cuyahoga County Sheriff's Department for 20 years: 6 years as a correction officer, 14 years as a deputy sheriff, and have been a detective for the past 10 years. (Respondents' Evidence filed on October 14, 2014, Affidavit of Deputy D. Paul Soprek, ¶ 2.)

His experience at the Sheriff's Department includes serving as the Terrorism Liaison Officer at the Homeland Security Northeast Ohio Fusion Center. He has also served as a member of the FBI-JHAT Task Force (the Joint Hazardous Materials Assessment Team). His experience also includes 10 years as an operator on the SWAT team, holding Ohio and FBI advanced certifications in breaching and most modern weapons systems. (Respondents' Evidence filed on October 14, 2014, Affidavit of Deputy D. Paul Soprek, ¶ 3.)

Deputy Soprek has more than 500 hours of specialized training in law enforcement and security management subjects. In addition to conducting multiple trainings, he has contributed content to *Principal Protection; Lessons Learned* (Colliver, 2011), as reflected in the Acknowledgments. This is the text book used for the principal protection training at the Ohio Peace Officer Training Academy (OPOTA) and many other venues. (Respondents' Evidence filed on October 14, 2014, Affidavit of Deputy D. Paul Soprek, ¶ 4-5.)

The need for a principal protection unit at the Cuyahoga County Sheriff's Department became acute in the aftermath of a number of tragedies occurring throughout the United States, such as the shooting of Congresswoman Gabrielle ("Gabby") Giffords. Deputy Soprek was tasked with the responsibility of establishing and leading the unit. (Respondents' Evidence filed on October 14, 2014, Affidavit of Deputy D. Paul Soprek, ¶ 6.)

The Principal Protection Unit is charged with the responsibility of protecting public officials in Cuyahoga County, including the County Executive, Council, judges, and visiting dignitaries. The Unit is also responsible for ensuring the safety of County employees in cases of threats and retaliation. (Respondents' Evidence filed on October 14, 2014, Affidavit of Deputy D. Paul Soprek, ¶ 7.)

Detectives assigned to the Principal Protection Unit undergo extensive training and are certified by the Sheriff's Department using the OPOTA program. In fulfilling their security responsibilities, the detectives in the Principal Protection Unit regularly interact and exchange information with their counterparts in other law enforcement agencies, including the U.S. Secret Service, the Federal Bureau of Investigation, the United States Marshall Service, the Fusion Center, and local law enforcement agencies. (Respondents' Evidence filed on October 14, 2014, Affidavit of Deputy D. Paul Soprek, ¶¶ 8-9.)

The Principal Protection Unit, under Deputy Soprek's direction, is directly responsible for the protection of Cuyahoga County Executive Edward FitzGerald and have had this responsibility since 2011. Since the Executive won the primary as a major party candidate for the Office of Governor of the State of Ohio, Deputy Soprek has been coordinating security details and efforts for his protection with the Ohio Department of Public Safety, Division of Highway Patrol. (Respondents' Evidence filed on October 14, 2014, Affidavit of Deputy D. Paul Soprek, ¶ 10.)

C. Security Threats to the Position of County Executive Generally and Specific Threats against Executive FitzGerald.

The Cuyahoga County Executive is the highest official in the executive branch of Cuyahoga County, Ohio's largest county. By virtue of this position, the Executive is inherently vulnerable to threats and harm. In addition, as a former criminal prosecutor and FBI agent,

Executive FitzGerald requires a heightened level of security protection based upon his law enforcement background. (Respondents' Evidence filed on October 14, 2014, Affidavit of Deputy D. Paul Soprek, ¶ 11.)

In the realm of protecting public officials, it is critical to protect the manner and pattern of travel, ingress and egress, and timing. This is precisely the kind of information that the County's security key-card data reveals. Release of the security key-card data for the County Executive diminishes the effectiveness of the Principal Protection Unit and its ability to protect the County Executive. (Respondents' Evidence filed on October 14, 2014, Affidavit of Deputy D. Paul Soprek, ¶ 12.)

The Sheriff's Department Principal Protection Unit is investigating a number of verified threats and menacing against Executive FitzGerald—some of which were transmitted to the Sheriff's Department through other law enforcement agencies. This is highly confidential and extremely sensitive information the release of which jeopardizes the Sheriff's Department's investigations and the Executive's security. (Respondents' Evidence filed on October 14, 2014, Affidavit of Deputy D. Paul Soprek, ¶ 13.)

As repeated local tragedies around the country demonstrate, the Principal Protection Unit cannot disregard or minimize the seriousness of any threats against public officials. This is especially true when it comes to high level individuals who are recognized by the general public like Executive FitzGerald. (Respondents' Evidence filed on October 14, 2014, Affidavit of Deputy D. Paul Soprek, ¶ 14.)

D. Relator's Repeated Attempts to Discover Highly Confidential and Extremely Sensitive Security Threat Information the Release of Which Jeopardizes Law Enforcement Investigations and the Executive's Security.

On July 14, 2014, Relator's counsel submitted a public records request to the Sheriff's Department seeking "all offense or incident reports in which Edward FitzGerald was identified in any of the following capacities: (i) reportee; (ii) complainant; or (iii) victim." (Exhibit 1.)

Relator's request confused how the Sheriff Department's Principal Protection Unit operates. The Principal Protection Unit is not like a traditional police department where citizens come to file and obtain copies of complaints and incident reports. The Principal Protection Unit continually monitors, investigates, and assesses risks against the individuals it is charged with protecting. Its records contain highly confidential and sensitive security information necessary for it to carry its security protection functions.

Since the requested records contain information directly used for protecting and maintaining the security of a public office, the County denied Relator's request in accordance with *Plunderbund v. Born*, 2014-Ohio-3670. (Exhibit 2).

Relator then served a subpoena to the Sheriff's Department two days later seeking the very same highly confidential and sensitive information. (Exhibit 3.)

The County's counsel explained to Relator's counsel that, without regard to the County's objections to the production of the subject information, the proper vehicle for serving discovery on a County entity is through a document request under Civil Rule 34 and not a subpoena, and agreed to accommodate Relator by treating the subpoena as a document request. The County responded to Relator's document requests on September 8, 2014, and objected to the document requests, including his request for what Relator incorrectly termed "incident reports," which contain highly confidential and sensitive security information.

The County directed Relator to this Court's decision in *Plunderbund* wherein the Court declined to review the security threats *in camera*. (Exhibit 4.) The County further explained that if production of such threats were somehow to be proper, the County would produce such documents upon mutually agreed upon procedures and protections. (*Id.*)

E. Notice of Deposition and Efforts to Resolve Discovery Dispute.

The County submitted its Evidence on October 14, 2014, in accordance with the deadline for the submission of evidence established in the Court's alternative writ—i.e., upon expiration of the discovery period. (*See* Respondents' Evidence, filed October 14, 2014.) Late on the same day, the Court granted Relator's request to extend the deadline in which to submit the evidence to October 24, 2014.

In the afternoon of Thursday, October 16, 2014, Relator's counsel called Respondents' counsel and requested to depose Deputy D. Paul Soprek on Monday October 20, or the latest, Tuesday, October 21, 2014. Respondents' counsel called him back and explained that while the County strongly believes that Soprek's deposition does not aid in the resolution of the legal question before the Court, the County was nonetheless willing to produce him for deposition provided that it had protections in place with regard to inquiry as to the substance of the security threats.

Relator's counsel confirmed to Respondents' counsel that he fully understood the County's legal position that the security key-card data is by itself a security and infrastructure record without regard to the existence of security threats and that the County assesses the existence of security threats in determining how to exercise a discretionary act. He nonetheless wanted to depose Deputy Soprek about the security threats.

Relator's counsel stated that he not intend to "get into the minutia" of the security threats, but that the solution was for the parties to go through the theatrical performance of Relator's counsel asking Deputy Soprek questions about highly confidential, sensitive security threat information, and the County's lawyers objecting and instructing the witness not to answer.

On Friday, October 17, 2014, Relator served a Notice of Deposition Duces Tecum seeking the deposition of Deputy Soprek on Monday, October 20, 2014, and instructing Deputy Soprek to produce highly confidential and sensitive security threat information at his deposition. (Exhibit 5.)

The County, therefore, was left with no option but to seek the Court's intervention to put a stop Relator's continued harassment tactics.

ARGUMENT

Ohio Civil Rule 26(C) provides that the court in which the action is pending may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including that discovery not be had. Ohio R. Civ. P. 26(C)(1). Pursuant to Ohio R. Civ. P. 26, (made applicable to this original action pursuant to Rule 12.01(A)(2)(b) of the Supreme Court Rules of Practice), parties to an action may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. It is only if the information sought appears reasonably calculated to lead to the discovery of admissible evidence that discovery may be had. Id.

As this Court held in *Plunderbund v. Born*, security threats are not a public record pursuant to R.C. 149.433. *Plunderbund*, 2014-Ohio-3679, ¶30. Indeed, in *Plunderbund*, the Court recognized the sensitivity of this issue and refused to review the threats *in camera*. *Id.* at ¶ 31.

This is precisely the kind of information that Relator seeks to discover in a public setting through its noticed deposition and requested documents from Deputy Soprek. As Deputy Soprek testified in his Affidavit, this is highly confidential and extremely sensitive information the release of which jeopardizes the Sheriff's Department's investigations and the Executive's security. (Respondents' Evidence filed on October 14, 2014, Affidavit of Deputy D. Paul Soprek, ¶ 13.)

The question before the Court is whether the security key-card data is a public record. R.C. 149.433 (A) (2)-(3) provides that security and infrastructure records are not public records and are not subject to mandatory disclosure, and defines both as follows:

"Infrastructure record" means any record that discloses the configuration of a public office's or chartered nonpublic school's critical systems including, but not limited to, communication, computer, electrical, mechanical, ventilation, water, and plumbing systems, security codes, or the infrastructure or structural configuration of the building in which a public office or chartered nonpublic school is located.

A security record means any of the following:

- (a) Any record that contains information directly used for protecting or maintain the security of a public office against attack, interference, or sabotage;
- (b) Any record assembled, prepared, or maintained by a public office or public body to prevent, mitigate or respond to acts of terrorism ...

R.C. 149.433(B) further provides that "[a] record kept by a public office that is a security record or an infrastructure record is **not** a public record under section 149.43 of the Revised Code and is not subject to mandatory release or disclosure under that section. (Emphasis added.)

The Court need not extrapolate any inferences from the statute to resolve this case. The security key-card data requested by Relator in this case are security and infrastructure records based upon the most basic and plain reading of the text of R.C. 149.433. (Respondents'

Evidence filed on October 14, 2014, Affidavit of David DeGrandis.) No amount of depositions of Cuyahoga County officials would change the language of the statute.

R.C. 149.433 provides Cuyahoga County with the discretion on whether to release such security data. In exercising this discretion, the County assesses the associated risks, including verification of security threats and whether the data may reveal nonpublic entryways and other infrastructure. To be entitled to a writ of mandamus, however, Relator must establish a clear legal right to the requested relief and a **clear legal duty** on the part of Cuyahoga County to produce the requested security and infrastructure records. *Plunderbund*, 2014-Ohio-3679, ¶ 17. Depositions regarding the County's deliberative process as to how it exercises a discretionary act will not aid the Court in resolving this mandamus action.

Security threats are serious matters; they are not a political football. Indeed, the very existence of the Sheriff's Department's Principal Protection Unit headed by Deputy Soprek was triggered by a number of local tragedies around the United States, including the shooting of Congresswoman Gabby Giffords.

As Deputy Soprek explains in his affidavit, the shooting of Congresswoman Giffords and the many other local tragedies around the country demonstrate that the County cannot ignore such threats or reveal information about them.

The deposition of Deputy Soprek will only produce political theater and potentially harm the Sheriff's Department's security operations, but it will not aid the Court in resolving this case.

CONCLUSION

For the foregoing reasons, the Court should grant Respondents' Motion for Protective Order and bar the taking of Deputy D. Paul Soprek's deposition.

Respectfully submitted,

CUYAHOGA COUNTY DEPARTMENT OF LAW
Majeed G. Makhlouf, Director



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County of Cuyahoga, Ohio;

County Executive Edward FitzGerald; and

Koula Celebrezze

[Representation pursuant to August 27, 2013
Agreement governing the division of
duties between the Cuyahoga
County Prosecutor's Office and
Department of Law]

CERTIFICATION OF REASONABLE EFFORTS
TO RESOLVE THIS DISCOVERY DISPUTE

- 1) I am the Director of Law for the County of Cuyahoga, and also Counsel of Record in the matter of *State ex rel. Ohio Republican Party v. FitzGerald, et al.*, Ohio Supreme Court Case No. 14-1141.
- 2) This is to certify that the County engaged in good faith efforts to resolve the discovery dispute over Deputy Soprek's deposition as explained in the Statement of Facts herein.
- 3) Furthermore, on Friday, October 20, 2014, Respondents' counsel notified Relator's counsel that, in addition to the unavailability of Respondents' counsel for a deposition on Monday, the County is seeking a protective order from the Court, and thus Deputy Soprek will not be appearing for his deposition as noticed by Relator.


Majeed G. Makhlouf

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on all parties of record by regular U.S. mail and electronic transmission this 20th day of October, 2014, to:

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Counsel for Relator



Counsel for Respondents

Exhibit 1

The Law Firm of Curt C. Hartman

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hartmanlawfirm@fuse.net

July 14, 2014

Via e-mail (jblatnik@cuyahogacounty.us)

Frank Bova

Cuyahoga County Sheriff

% Judy Blatnik

1215 West 3rd Street

Cleveland, OH 45113

Re: Public Records Request

Ms. Blatnik:

Pursuant to the Ohio Public Records Act and on behalf of a client, I request copies of the following public records:

- all offense or incident reports in which Edward FitzGerald was identified in any of the following capacities: (i) reportee; (ii) complainant; or (iii) victim.

Pursuant to the Public Records Act, I request that responsive records be produced in an electronic medium (specifically, a pdf-file) to the extent such records may reasonably be duplicated in that medium. The records in the electronic medium may be sent to me at the e-mail address in the header of this letter. If such records are not reasonably capable of being produced in such a medium, then please advise me and provide me an estimate of the costs of copying.

I thank you, in advance, for your attention in providing the prompt production of the requested records.

Sincerely,

/s/ Curt C. Hartman

Curt C. Hartman

Received July 17, 2014

7-24-14 Being reviewed by legal per Atty. Sopark

Exhibit 2

Public Records Request

From Nora Hurley
To 'hartmanlawfirm@fuse.net'

Date 08/14/2014 11:30 AM

Dear Mr. Hartman,

Pursuant to your public records request dated July 14, 2014 directed to Frank Bova, the Cuyahoga County Sheriff, requesting copies of all offense or incident reports in which Edward FitzGerald was identified as the reportee, complainant, or victim, please see the following response:

As you are aware, your request asks for sensitive security information the release of which would compromise safety and security. As the Ohio Attorney General—the state official charged with defending the constitutionality of Ohio's Sunshine laws and teaching them to local governments—explained in *State ex rel. Plunderbund Media LLC v. John Born*, Ohio Supreme Court Case No. 2013-0596:

- (1) "At a time of increased security threats to public officials, it is vitally important to safeguard security records concerning threats made against [such] officials. These types of security records by their very nature contain information that [both the County Sheriff and] the Ohio State Highway Patrol ("OSHP") uses for protecting or maintaining the security of a public office and the safety and security of the public official against attack, interference, or sabotage."
- (2) "In addition, public disclosure of security records of threats made against the [County Executive] increases the risk to his personal security and safety, contrary to the decisions in *Kallstrom v. Columbus*, 136 F.3d 1055, 1062 (6th Cir. 1998), and *State ex rel. Cincinnati Enquirer v. Craig*, 132 Ohio St.3d 68, 2012-Ohio-1999, 969 N.E.2d 243."
- (3) The "decision to withhold the records is consistent with the clearly established and fundamental right to personal security and bodily integrity guaranteed by the Fourteenth Amendment to the United States Constitution." The Supreme Court of Ohio has held that, under the Ohio's Public Records Act, release of records that would undermine this right is prohibited by law."
- (4) "Because disclosure of threat investigation records, even if redacted, presents an unacceptable risk of compromising the [County Executive's] safety and security, the [Sheriff's] Department's investigation records concerning threats to public officials are not subject to disclosure."

These records are not public records and are not subject to disclosure. On behalf of the Cuyahoga County Sheriff, the request is denied pursuant to ORC 149.433.

Nora L. Hurley, Deputy Chief Director
Cuyahoga County Department of Law
2079 E. 9th Street
Cleveland, Ohio 44115
Tel: (216) 698-7929
Fax: (216) 698-2744
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Exhibit 3

**SUPREME COURT
OF THE STATE OF OHIO**

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

Relator,

v.

EDWARD FITZGERALD, *et al.*,

Respondents.

: Case No. 2014-1141

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SUBPOENA DUCES TECUM

To: FRANK BOVA
Cuyahoga County Sheriff
1215 West 3rd Street
Cleveland, OH 44113

PURSUANT TO RULE 45 of the Ohio Rules of Civil Procedure (made applicable to this original action pursuant to Rule 12.01(A)(2)(b) of the Supreme Court Rules of Practice), **YOU ARE HEREBY COMMANDED** to produce and permit inspection and copying of the following documents or tangible things at the place, date and time specified below:

1. All offense or incident reports in your possession, custody or control in which Edward FitzGerald (DOB: July 10, 1968) was identified in any of the following capacities: (i) reportee; (ii) complainant; or (iii) victim.
2. All records (regardless of medium or format) in your possession, custody or control that address or reference the above-captioned lawsuit currently pending in the Ohio Supreme Court.
3. All records (regardless of medium or format) in your possession, custody or control that address or reference any public records request since January 1, 2014, which sought key card swipe data for accessing county buildings or facilities relative to County Executive Edward FitzGerald.
4. All records (regardless of medium or format) in your possession, custody or control that address or reference security concerns relating to the disclosure of key card swipe data for accessing county buildings or facilities relative to County Executive Edward Fitzgerald.

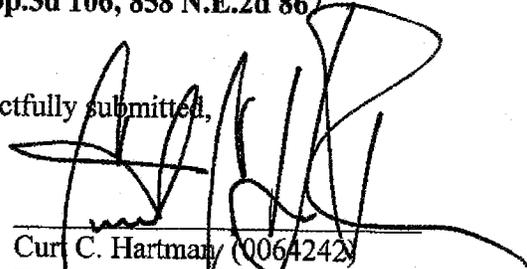
Date / Time / Location:

Friday, August 22, 2014, at 11:30 a.m., at the Law Offices of Daniel P. Carter, 1400 West Sixth Street, Suite 300, Cleveland, OH 44113

IN LIEU OF APPEARING ON THE FOREGOING DATE, PRODUCTION OF THE RECORDS DEMANDED HEREIN MAY BE PROVIDED FOR OR ARRANGED IN ADVANCE OF THE FOREGOING DATE WITH UNDERSIGNED COUNSEL.

See Ohio R. Civ. P. 45(C)(2)(a); GZK, Inc. v. Schumaker Ltd. Ptrnshp., 2006-Ohio-3744, 168 Ohio App.3d 106, 858 N.E.2d 867

Respectfully submitted,



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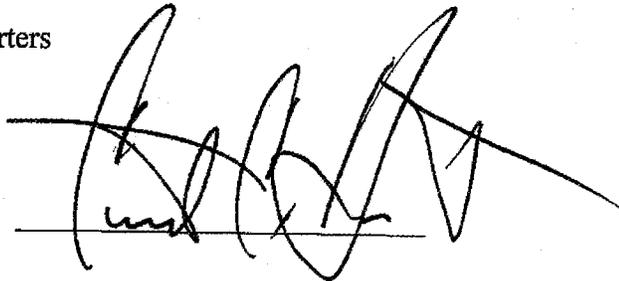
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dpc@dpcarterlaw.com

Attorneys for Relator

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing will be served via regular mail, on the 22nd day of August 2014, upon:

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



Rule 45 Excerpt

(C) Protection of persons subject to subpoenas

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow reasonable time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ.R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

(D) Duties in responding to subpoena

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ.R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(3) Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed in contempt of court from which the subpoena issued. A subpoenaed person or that person's attorney who frivolously resist discovery under this rule may be required by the court to pay the expenses including reasonable attorney's fees, of a party seeking the discovery.

Exhibit 4

RE: State of Ohio ex rel. Ohio Republican Party v. Edward FitzGerald, et al.

From Robin Wilson

Date 09/08/2014 04:41 PM

To 'The Law Firm of Curt C. Hartman'; chris@finneylawfirm.com; dpc@dpcarterlaw.com

 [Responses to Relator's Document Requests.pdf](#)

Counsel:

Attached, please find Respondents' Response to Relator's Document Requests in connection with the above matter.

Robin

Robin M. Wilson, Asst. Law Director
Cuyahoga County Department of Law
County Administrative Headquarters
2079 East 9th Street, 7th Floor
Cleveland OH, 44115
Tel: (216) 698-6464 / Fax: (216) 698-2744
Direct: (216) 443-7042
Cell: (216) 902-1661
Email: rwilson@cuyahogacounty.us

This email and any attachments to it may be privileged, confidential, or contain trade secret information. If this email was sent to you in error, please notify me immediately by reply email and please immediately delete and do not use, disseminate, retain, print, or copy the email or its attachments.

2. Respondents object to the document requests to the extent they seek information protected by the attorney-client privilege, the work-product doctrine, and any other applicable privilege against disclosure. All responses are made without waiver of any privilege or protection against disclosure and the inadvertent production of any privileged document shall not be deemed to be a waiver of any applicable privilege with respect to such information or document.
3. Respondents object to the document requests to the extent they seek confidential information having nothing to do with the substance of this litigation.
4. Respondents object to the document requests to the extent they seek information that is not within the custody or control of Respondents or that is otherwise within the public domain or is otherwise equally available to Relator as to Respondents.
5. Respondents object to the document requests to the extent they assume the truth of the allegations which are in dispute in this litigation and/or make incorrect and/or untrue assertions, assert and/or assume unproven conclusions as established facts.
6. Respondents object to the document requests to the extent they require Respondents to provide information other than that which may be obtained through a reasonably diligent search of their records and/or to the extent that the requests purport to create and/or impose obligations upon Respondents beyond those contemplated by the Ohio Rules of Civil Procedure.
7. Respondents object to the document requests in that they are not defined in scope and time.
8. Respondents object to the document requests in that they are premature and untimely in light of the fact that there is pending a Motion to Dismiss filed by Respondents.
9. In *Plunderbund Media v. Born, Slip Opinion*, No. 2014-Ohio-3679, the Court did not permit production of the security threats and even declined to conduct an in camera inspection of the records. *Id.* at ¶ 31 (*the Court declining to conduct an in camera review of the security threats*). The same applies in this case with respect to the documents requested by Relator in this document request.
10. If any confidential or proprietary information exists in documents that are deemed relevant, responsive, and subject to production, Respondents will require a properly entered Protective Order prior to making any such documents available for inspection in accordance with Rule 34.
11. The above-stated objections are hereby incorporated into each of Respondents' responses as though set forth in full.

12. Respondents reserve the right to amend and/or supplement these Objections and Responses as warranted.

Document Requests

1. All offense or incident reports in your possession, custody or control in which Edward FitzGerald (DOB: July 10, 1968) was identified in any of the following capacities: (i) reportee; (ii) complainant; or (iii) victim.

Respondents object to this document request to the extent that it seeks irrelevant documents not calculated to lead to the discovery of admissible evidence and on the grounds that the reports requested are security records exempt from disclosure pursuant to the Ohio Public Records Act, and specifically Ohio Rev. Code §§ 149.433 (A)(3)(a) and 140.433 (B); see, also State ex rel. Plunderbund Media v. Born, Slip Opinion, No. 2014-Ohio-3679, ¶ 28. Respondents further object on the grounds that the records requested are not public records pursuant to Ohio Rev. Code §§ 149.43 (A)(1)(p) and 149.43 (A)(7), and are therefore not subject to being produced in that they may include residential and familial information pertaining to Mr. FitzGerald.

Subject to and without waiving any of the foregoing general and specific objections, should the case survive the pending Motion to Dismiss and if production is deemed appropriate despite the Supreme Court's guidance in paragraph 31 of *Plunderbund*, if relevant, responsive, non-privileged documents exist, they will be made available for inspection at Respondent Cuyahoga County's Administrative Headquarters in accordance with Rule 34 pursuant to mutually agreed upon procedures and at a mutually agreed upon date and time subsequent to the Court's denial of the Motion to Dismiss.

2. All Records (regardless of medium or format) in your [the County Sheriff's] possession, custody or control that address or reference the above-captioned lawsuit currently pending in the Ohio Supreme Court.

Respondents object to this Request on the grounds that the records requested include privileged attorney/client communications and/or work product materials that are not subject to production. Respondents further object in that the Request is ill-defined, overbroad, and on the grounds that any

non-privileged records requested are in the public domain and equally accessible to Relator as to Respondents.

Subject to and without waiving any of the foregoing general and specific objections, should the case survive the pending Motion to Dismiss and if production is deemed appropriate despite the Supreme Court's guidance in paragraph 31 of *Plunderbund*, if relevant, responsive, non-privileged documents exist, they will be made available for inspection at Respondent Cuyahoga County's Administrative Headquarters in accordance with Rule 34 pursuant to mutually agreed upon procedures and at a mutually agreed upon date and time subsequent to the Court's denial of the Motion to Dismiss.

3. All records (regardless of medium or format) in your possession, custody or control that address or reference any public records request since January 1, 2014, which sought key card swipe data for accessing county buildings or facilities relative to County Executive Edward FitzGerald.

Respondents object to this request on the grounds that it is unclear, overbroad, undefined, and indecipherable as to what records Relator seeks. Respondents further object on the grounds that the Request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Respondents further object in that some or all of the records requested include privileged attorney/client communications and seek documents equally accessible to Relator as to Respondents.

Subject to and without waiving any of the foregoing general and specific objections, should the case survive the pending Motion to Dismiss and if production is deemed appropriate despite the Supreme Court's guidance in paragraph 31 of *Plunderbund*, if relevant, responsive, non-privileged documents exist, they will be made available for inspection at Respondent Cuyahoga County's Administrative Headquarters in accordance with Rule 34 pursuant to mutually agreed upon procedures and at a mutually agreed upon date and time subsequent to the Court's denial of the Motion to Dismiss.

4. All records (regardless of medium or format) in your possession, custody or control that address or reference security concerns relating to the disclosure of key card swipe data for accessing county buildings or facilities relative to County Executive Edward FitzGerald.

Respondents object to this document request on the grounds that the reports requested are security records exempt from disclosure pursuant to the Ohio Public Records Act, and specifically Ohio Rev. Code §§ 149.433 (A)(3)(a) and 140.433 (B); see, also State ex rel. Plunderbund Media v. Born, Slip Opinion, No. 2014-Ohio-3679, ¶ 28. Respondents further object to the extent that the request seeks irrelevant documents not calculated to lead to the discovery of admissible evidence and on the grounds that the records requested are not public records pursuant to Ohio Rev. Code §§ 149.43 (A)(1)(p) and 149.43 (A)(7) to the extent they include residential and familial information pertaining to Mr. FitzGerald. Lastly, Respondents object on the grounds that the records sought include privileged and/or proprietary information.

Subject to and without waiving any of the foregoing general and specific objections, should the case survive the pending Motion to Dismiss and if production is deemed appropriate despite the Supreme Court's guidance in paragraph 31 of *Plunderbund*, if relevant, responsive, non-privileged documents exist, they will be made available for inspection at Respondent Cuyahoga County's Administrative Headquarters in accordance with Rule 34 pursuant to mutually agreed upon procedures and at a mutually agreed upon date and time subsequent to the Court's denial of the Motion to Dismiss.

Respectfully submitted,

CUYAHOGA COUNTY DEPARTMENT OF LAW
Majeed G. Makhoulf, Director

s/ Robin M. Wilson

Majeed G. Makhoulf (0073853)

mmakhoulf@cuyahogacounty.us

Robin M. Wilson (0066604)

rwilson@cuyahogacounty.us

County Administrative Headquarters

2079 East 9th Street

Cleveland, Ohio 44115

Tel: (216) 698-6464

Fax: (216) 698-2747

Counsel for Respondents

County of Cuyahoga, Ohio;

County Executive Edward FitzGerald; and

Koula Celebrezze

[Representation pursuant to 8/27/13
Agreement governing the division of
duties between the Cuyahoga
County Prosecutor's Office and
Department of Law]

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on all parties of record by electronic transmission and regular U.S. mail this 8th day of September, 2014 to:

Curt C. Hartman
The Law Firm of Curt C. Hartman
7394 Ridgepoint Drive, Suite 8
Cincinnati, OH 45230
(513) 752-2878
hartmanlawfirm@fuse.net

Daniel P. Carter
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Christopher P. Finney (0038998)
Finney Law Firm LLC
4270 Ivy Pointe Blvd., Suite 225
Cincinnati, OH 45245
(513) 943-6655
chris@finneylawfirm.com

Counsel for Relator

Lst Robin M. Wilson

Counsel for Respondents

Exhibit 5

State ex rel ORP v. FitzGerald

From hartmanlawfirm@fuse.net
To Majeed G. Makhlof; Robin Wilson
CC Christopher P. Finney; Dan Carter

Date 10/17/2014 10:05 AM

 [Notice of Deposition_Soprek.pdf](#)

Counsel -

Pursuant to our telephone discussion yesterday, please find attached a Notice of Deposition for Paul Soprek. As I indicated during our conversation, I have noticed it for this coming Monday at 1PM but if Mr. Soprek.

Sincerely,
Curt Hartman

**SUPREME COURT
OF THE STATE OF OHIO**

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

Relator,

v.

EDWARD FITZGERALD, *et al.*,

Respondents.

: Case No. 2014-1141
:
:
:
:
:
: NOTICE OF DEPOSITION
: OF D. PAUL SOPREK
:
:

PLEASE TAKE NOTICE that pursuant to Rule 30(B)(1) of the Ohio Rules of Civil Procedure (made applicable to this original action pursuant to Rule 12.01(A)(2)(b) of the Supreme Court Rules of Practice), Relator will take the deposition of **D. PAUL SOPREK**, Office of the Cuyahoga County Sheriff, 1215 West 3rd Street, Cleveland, OH 44113, before a notary public and person authorized to administer oaths, as set forth herein:

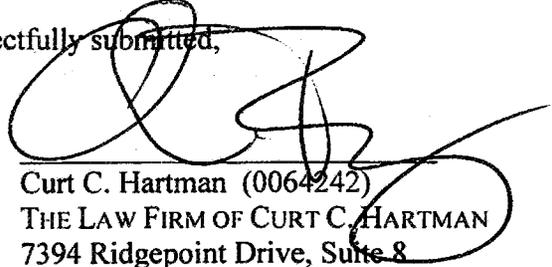
Date /Time / Location:

Monday, , October 20, 2014, at 1:00 *p.m.*, at the Law Offices of Daniel P. Carter, 1400 West Sixth Street, Suite 300, Cleveland, OH 44113

Further pursuant to Rule 30(B)(4) of the Ohio Rules of Civil Procedure, **D. PAUL SOPREK** is **HEREBY COMMANDED** to produce and permit inspection and copying of the following documents or tangible things at the foregoing place, date and time:

1. All offense or incident reports in the possession, custody or control of the Office of the Cuyahoga County Sherrif in which Edward FitzGerald (DOB: July 10, 1968) was identified in any of the following capacities: (i) reportee; (ii) complainant; or (iii) victim.

Respectfully submitted,



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Attorneys for Relator

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing will be served via e-mail and regular mail, on the 17th day of October 2014, upon:

Majeed G. Makhoulf
Robin M. Wilson
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Cuyahoga County Administrative Headquarters
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rwilson@cuyahogacounty.us

