

ORIGINAL

Case No. 14 – 0831

**SUPREME COURT
OF THE STATE OF OHIO**

STATE OF OHIO ex rel. EMILIE DIFRANCO,

Relator

v.

CITY OF SOUTH EUCLID, OHIO, et al.,

Respondents

ORIGINAL ACTION IN MANDAMUS

RELATOR'S MERIT BRIEF

EMILIE DIFRANCO
Pro se Relator
3867 W. 226th St.
Fairview Park, Ohio 44126
(440) 777- 6865
emdifranco@sbcglobal.net

MICHAEL P. LOGRASSO (0058557) *
*Counsel of Record
Director of Law, City of South Euclid
1349 South Green Road
South Euclid, Ohio 44121
(216) 381 – 0400
(216) 381 – 0364 – Fax
MLograsso@seuclid.com

RECEIVED
OCT 24 2014
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
OCT 24 2014
CLERK OF COURT
SUPREME COURT OF OHIO

VINCENT A. FEUDO (0019733)
MICHAEL E. CICERO (0058610)
Nicola, Gudbranson & Cooper, LLC
1400 Republic Building
25 West Prospect Avenue
Cleveland, Ohio 44115
(216) 621 – 7227
(216) 621 – 3999 – Fax
feudo@nicola.com
cicero@nicola.com

COUNSEL FOR RESPONDENTS,
THE CITY OF SOUTH EUCLID AND
LEE WILLIAMS, EXECUTIVE
ASSISTANT AND PURCHASING
AGENT

TABLE OF CONTENTS

TABLE OF CONTENTS.....3

TABLE OF AUTHORITIES CITED.....4

MERIT BRIEF.....5

STATEMENT OF FACTS.....5

LAW AND ARGUMENT.....11

CONCLUSION.....14

CERTIFICATE OF SERVICE.....16

Table of Authorities Cited

State ex rel DiFranco v. S. Euclid, 138 Ohio St.3d 36, 2014-Ohio.7

State ex rel. Patterson v. Ayers, 171 Ohio St. 369, 371, 171 NE.2d
508(1960).....14

Michael P. Lograsso v. Robert Frey, et al.;
Cuyahoga County C.P. case No. CV-12-798334;10

Michael P. Lograsso v. Robert Frey, et al.; case No. CA-13-100104.11

R.C. 149.43.....6

Case No. 14 - 0831

**SUPREME COURT
OF THE STATE OF OHIO**

STATE OF OHIO ex rel. EMILIE DIFRANCO,

Relator

v.

CITY OF SOUTH EUCLID, OHIO, et al.,

Respondents

RELATOR'S MERIT BRIEF

In support of the Complaint for Writ of Mandamus and based upon the evidence tendered to the Court, Emilie DiFranco ("Relator") hereby submits the following Merit Brief:

STATEMENT OF FACTS

On September 04, 2013, Relator tendered a public records request to the City of South Euclid and Lee Williams, Executive Assistant and Purchasing Agent, ("Respondents"). Respondent Lee Williams is the designated "person responsible" (as that phrase is used in R.C. 149.43) for the public

records at issue in this case. (Exhibit A) This public records request was tendered via certified mail, (Complaint ¶8; Answer ¶15), and received by Respondents the next day, i.e., September 05, 2013. (Exhibit C), (Complaint ¶9; Answer ¶15.) On September 05, 2013, at 4:14 p.m., Respondent sent an email to Relator acknowledging the public records request and stated the request would be forwarded to Law Director, Michael Lograsso for review and handling, (Exhibit D).

On October 24, 2013, seven weeks after Relator's public records request letter was received by Respondents, they initially transmitted to Relator some, but not all, of the public records which she had sought. Respondents advised Relator the "departmental RC-03" records would be delivered as a separate email. The responsive records produced and delivered electronically to Relator on October 24, 2013, did not contain the following items as requested in the original public records request letter of September 04, 2013, (Exhibit B):

"All bids submitted by those seeking to obtain the contract for demolition and restoration." ("Greenvale Bids), records of costs incurred for "sidewalk snow removal" of the Greenvale properties. There was no production of records of "all legal spending." Records of departmental overtime

payments were not produced or provided. A proposed tax levy, a “safety levy” was on the November 05, 2013, ballot in the City of South Euclid.

(Exhibit G) By denying the public records request, Respondents negated Relator’s ability to illuminate overtime spending in departments supported by the proposed tax levy prior to the election. (Exhibit F) Yet Respondents claim, “At all times the Respondents have acted in good faith in responding to Relator’s request for records.” (Answer ¶16)

On November 01, 2013, Respondents transmitted to Relator some, but not all of the public records, which she had sought, specifically, Certificate of Records Disposal (RC-03) forms from the time period: January 1, 2004 to August 31, 2013. Respondents did not provide *any* Certificate of Records Disposal (RC-03) forms to Relator from the years 2004 or 2005.

Relator filed the action in mandamus with this Court on May 21, 2014, as Respondents had once again failed to produce responsive records within a reasonable period of time. At the time Relator tendered her original Public Records Request Letter to Respondents on September 04, 2014, this Court was deciding *State ex rel DiFranco v. S. Euclid*, 138 Ohio St.3d 36, 2014-Ohio. (Combined case citation for two individual public records cases

before this court.)

On May 30, 2014, at 12:40 p.m., Respondent Lee Williams sent an email to Relator stating that she was “resending” the responsive records, (Exhibit E).

The attachment to that email finally provided responsive records that for the first time included records of departmental overtime payments (Exhibit F) and records of “all legal spending.” (Exhibit H)

At 12:46 p.m. the same day Respondent sent another email containing departmental RC-03 forms as per Relator’s original public records request letter, however, as with the first transmittal of responsive records delivered to Relator on November 01, 2013, there were no departmental RC-03 forms produced or provided for the years 2004 and 2005. (Exhibit I) A third and final email was sent to Relator by Respondents on May 30, 2014 at 1:37 p.m. (Exhibit J). The attachment contained responsive records from Relator’s original public records request of September 04, 2013, “Greenvale Bids.” Respondents had not produced or provided Relator with this specific information prior to the email received on May 30, 2014 at 1:37 p.m.

Relator preferred the Court’s ruling and respectfully declined the Court’s mediation process on June 25, 2014, (Exhibit K). On June 27, 2014, two days after declining mediation, Relator was contacted by Nicole DiCuccio of

the Mediation Counsel. Ms. DiCuccio advised Relator that Respondent's counsel, Michael Lograsso communicated the desire to "settle," and if there was concern with regard to the statutory damages that would be "no problem." Relator is not motivated by statutory damages and was surprised by such an offer after Relator had requested the case be returned to the regular docket. Relator seeks the Court's remedy to a continued pattern of abuse and malfeasance by Respondents lack of compliance with the Public Records Act.

On June 26, 2014, South Euclid Law Director Michael Lograsso was quoted by the Sun Messenger, Sun News: "Ms. DiFranco never notified the city during the next seven months, by mail, email or telephone that she failed to receive all of her requested documents and the city was unaware of this until it received Ms. DiFranco's mandamus action." "Lograsso said Executive Assistant Lee Williams forgot to send the spending and overtime documents, but submitted the Greenvale documents to DiFranco in their entirety." That statement is false as the Greenvale documents had clearly not been delivered to Relator in their "entirety." (Exhibit L)

On October 01, 2014, Northeast Ohio Media Group quoted Lograsso as

saying, "So she waited several months before filing the action, and a simple phone call or email would have prevented that," Lograsso said (Exhibit M).

There has been a long-standing hostile and adversarial relationship negating Relator's ability to have reasonable communications with Respondents and Respondent's counsel, Law Director Michael Lograsso. Mr. Lograsso has taken extraordinary measures in an attempt to thwart Relator's abilities to illuminate the conduct in the municipal operations of the City of South Euclid. An email sent to Respondent by Mr. Lograsso on March 31, 2011 stated: "...I will no longer engage you in conversation, whether in person, through email or at any public meeting. If you have a public records request, submit it. Otherwise I will not have any further communication with you or Mr. Furri from this point forward. Any response from you regarding this email will NOT be answered." (Exhibit N)

Relator's response to the Law Director, Michael Lograsso is (Exhibit O).

Further, Mr. Lograsso filed a (S.L.A.P.P) strategic lawsuit against public participation (Exhibit P) against Relator to censor, intimidate and silence any additional criticism. *See, e.g., Michael P. Lograsso v. Robert Frey, et al.*; Cuyahoga County C.P. case No. CV-12-798334; *Michael P. Lograsso v. Robert Frey, et al.*; case No. CA-13-100104.

LAW AND ARGUMENT

Proposition of Law No. 1

“The 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.”

Proposition of Law No. 2

If an office denies a request in part or in whole, the public office must “provide the requester with an explanation, including legal authority, setting forth why the request was denied.” If the requester made the initial request in writing, then the office must also provide its explanation for the denial in writing

Proposition of Law No. 3

When an official responsible for records has denied a public records request, no administrative appeal to the official’s supervisor is necessary before filing a mandamus action in court.

Through the enactment of the Public Records Act, the General Assembly has sought to ensure and to vindicate the rights of the public to their records. “The 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.” When a public office or person responsible for public records fails to promptly make such records available for inspection or copying, the availability of the people to be fully informed of their government’s operations are impeded. *See, e.g., State ex rel. Patterson v. Ayers*, 171 Ohio St. 369, 371, 171 NE.2d 508 (1960).

If an office denies a request in part or in whole, the public office must “provide the requester with an explanation, including legal authority, setting forth why the request was denied.” If the requester made the initial request in writing, then the office must also provide its explanation for the denial in writing R.C. 149.43(B)(3).

When an official responsible for records has denied a public records request, no administrative appeal to the official’s supervisor is necessary before filing a mandamus action in court. *See, e.g., State ex rel. Multimedia, Inc. v. Whalen*, 48 Ohio St.3d 41, 42 (1990) (overruled on other grounds).

Respondents excuses for not providing public records to Relator in a reasonable amount of time:

“The certified letter was signed for by a new student intern who was manning the front reception desk where all city hall mail is delivered. Due

to an unknown breakdown in the delivery of internal mail at City Hall, the clerk never received a copy of Appellant's public records request." *See, e.g., State ex rel DiFranco v. S. Euclid*, 138 Ohio St.3d 36, 2014-Ohio.

"Subsequently there was a breakdown in communication between the Finance Department and Mr. Benjamin regarding Appellant's July 20th public records request. This communication breakdown led to the request submitted on July 20, 2011 by Appellant to go unanswered." *See, e.g., State ex rel DiFranco v. S. Euclid*, 138 Ohio St.3d 36, 2014-Ohio.

"Lograsso said Executive Assistant Lee Williams forgot to send the spending and overtime documents, but submitted the Greenvale documents to DiFranco in their entirety." (Exhibit L)

"Due to the document volume and the need to gather same from various City Departments, I inadvertently omitted to send the remaining documents to Relator until May 30, 2014." Affidavit of Respondent, Lee Williams, October 13, 2014.

"At no time after my November 1, 2013, email I sent to Relator did she ever attempt to contact me via email, telephone or in person to finalize procurement of the public records she requested, until the this lawsuit in

mandamus was filed on May 27, 2014.” Affidavit of Respondent, Lee Williams, October 13, 2014. (Incorrect date indicated on affidavit of Lee Williams. Date of mandamus filing was May 21, 2014.)

“So she waited several months before filing the action, and a simple phone call or email would have prevented that,” Lograsso said (Exhibit M).

It is not incumbent upon the person making the request to repeatedly chase after a public office to obtain access to these records. Respondents, the City of South Euclid, and Respondents counsel, City of South Euclid Law Director, Michael Lograsso are eager to claim Relator is unreasonable and somehow responsible for their own lack of compliance with the law.

However, these claims are not supported by law. When an official responsible for records has denied a public records request, no administrative appeal to the official’s supervisor is necessary before filing a mandamus action in court. *State ex rel. Multimedia, Inc. v. Whalen*, 48 Ohio St.3d 41, 42 (1990) (overruled on other grounds).

Conclusion

The City of South Euclid does not merely ignore the Public Records Act, they obliterate the intent of the law.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Emilie DiFranco", written over a horizontal line. The signature is stylized and cursive.

EMILIE DIFRANCO
Pro se Relator
3867 W. 226th St.
Fairview Park, Ohio 44126
(440) 777-6865
emdifranco@sbcglobal.net

CERTIFICATE OF SERVICE

I hereby certify that Relator's Evidence was served via email only this

23rd day of October 2014 upon the following counsel:

MICHAEL P. LOGRASSO (0058557) *
*Counsel of Record
Director of Law, City of South Euclid
1349 South Green Road
South Euclid, Ohio 44121
(216) 381 - 0400
(216) 381 - 0364 - Fax
MLograsso@seuclid.com

VINCENT A. FEUDO (0019733)
MICHAEL E. CICERO (0058610)
Nicola, Gudbranson & Cooper, LLC
1400 Republic Building
25 West Prospect Avenue
Cleveland, Ohio 44115
(216) 621 - 7227
(216) 621 - 3999 - Fax
feudo@nicola.com
cicero@nicola.com



EMILIE DIFRANCO
Pro se Relator
3867 W. 226th St.
Fairview Park, Ohio 44126
(440) 777 - 6865
emdifranco@sbcglobal.net

APPENDIX

Notice of Appeal, Ohio Supreme Court, October 9, 2014

Notice of Appeal, Ohio Supreme Court, November 8, 2012

Journal Entries, Eighth District Court of Appeals, October 22, 2012

Journal Entry & Opinion, Eighth District Court of Appeals, October 22, 2012

Public Records Act, R.C. § 149.43