

ORIGINAL

IN THE SUPREME COURT OF OHIO

DONALD CASTER :  
Relator, : Case No. 14-1621  
v. :  
CITY OF COLUMBUS, OHIO, et al., : ORIGINAL ACTION  
Respondents : IN MANDAMUS (Public Records)

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RESPONDENTS' ANSWER TO COMPLAINT  
FOR ORIGINAL WRIT OF MANDAMUS

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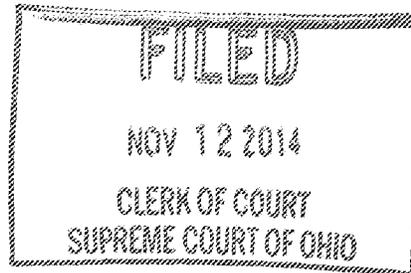
RICHARD C. PFEIFFER, JR., CITY ATTORNEY

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Chief Jacobs

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(614) 222-4735/Fax (614) 221-9655

Attorneys for Relator Donald Caster



## RESPONDENTS' ANSWER

In response to Relator's Complaint, Respondents City of Columbus and Chief of Police Kimberley Jacobs ("Respondents") admit, deny, and aver as follows:

As a preliminary matter, Respondents submit Relator failed to properly caption his petition. An application for the writ of mandamus must be by petition in the name of the state on the relation of the person applying. R.C. 2731.04 and *Johns v. Allen*, 11th Dist. No. 2013-T-0007, 2013-Ohio-2045.

1. In response to Paragraph 1, Respondents admit Relator has filed an original action for a writ of mandamus, pursuant to the Ohio Public Records Act, R.C. 149.43(C), to compel the Columbus Division of Police to produce its investigative file related to the 2005 murder of Julie Popovich. Respondents aver that Adam Saleh was prosecuted and convicted of the murder, kidnapping, and attempted rape of Ms. Popovich as well as tampering with the evidence. Respondents deny that Saleh is "innocent." Respondents admit Relator is assessing whether he and his employer, the Ohio Innocence Project ("OIP") should represent Saleh in postconviction proceedings to argue that he was wrongfully convicted. Respondents admit representatives from the OIP requested the Division of Police investigative file on September 5, 2013. Respondents admit they have not provided police investigative records, but deny they have violated R.C. 149.43. Respondents aver the requested investigatory records are "confidential law enforcement investigatory records," which are exempt from disclosure. Respondents admit jurisdiction.
2. Respondents admit the allegations of Paragraph 2.

3. Respondents admit the allegations of Paragraph 3.
4. Respondents admit the allegations of Paragraph 4.
5. In response to Paragraph 5, Respondents admit Adam Saleh was convicted of the murder of Julie Popovich in 2007 and aver he was also convicted of kidnapping, attempted rape, and tampering with the evidence. Respondents admit he received a sentence of 38 years to life in prison. As to the remaining allegations of Paragraph 5, Respondents lack knowledge and information as to what "Mr. Saleh and his family contend" at the present time.
6. Respondents admit the allegations of Paragraph 6.
7. In response to the allegations of Paragraph 7, Respondents admit the Division of Police responded to the OIP representatives' public records request by letter, dated September 9, 2013, and that a copy of this letter is attached to Relator's affidavit in this matter. Respondents aver that the letter speaks for itself.
8. In response to the allegations of Paragraph 8, Respondents aver that the judgment of the Franklin County Court of Common Pleas, which convicted Saleh of murder, attempted rape, kidnapping, and tampering with the evidence was affirmed by the Tenth District Court on March 31, 2009. Respondents admit this Court refused to accept jurisdiction over Saleh's appeal on July 1, 2009. Respondents aver they are not aware of any pending proceedings, but that Relator alleges he is assessing whether to represent Saleh in postconviction proceedings.
9. In response to the allegations of Paragraph 9, Respondents deny that Relator Caster's request was the second request for the investigative file at issue and aver that OIP representatives made a second public records request for the same records by letter of

October 31, 2013, to which Respondents replied by letter of October 31, 2013. (Exhib. A, attached). Relator made a third public records request for the same records by letter of November 20, 2013 and this letter is attached to Relator's affidavit in this matter.

Respondents aver the letter speaks for itself.

10. In response to the allegations of Paragraph 10, Respondents admit they are not aware of communications with Relator between the November 20, 2013 letter and the filing of the instant mandamus action. Respondents aver that subsequent to the filing of this action, Respondents' counsel has communicated with Relator's counsel and that copies of public records included in the investigative file were provided to Relator. Respondents aver that on October 21, 2014, they voluntarily provided the missing person preliminary investigation forms, the Franklin County Coroner's report (with Social Security number redacted), newspaper articles, a press release, and subpoenas.

11. In response to the allegations of Paragraph 11, Respondents restate their responses to Paragraphs 1 through 10.

12. Respondents deny the allegations of Paragraph 12.

13. Respondents deny the allegations of Paragraph 13. Respondents aver that where a public office denies a request, and the requester sends a follow-up letter reiterating a request for essentially the same records, the public office is not required to provide an additional response. *State ex rel. Laborers International v. Summerville*, 122 Ohio St. 3d 1234 (2009).

14. Respondents deny each allegation not expressly admitted herein.

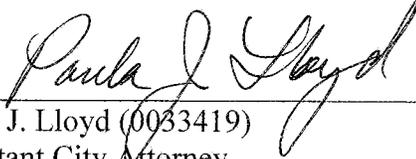
### **AFFIRMATIVE DEFENSES**

1. Respondents complied with their obligations under R.C. 149.43.

2. The requested investigative records are excepted from disclosure as public records pursuant to R.C. 149.43(A)(1) and (A)(2)(a)-(d) and as held in *Steckman v. Jackson*, 70 Ohio St.3d 420, 639 N.E.2d 83 (1994) and progeny, including *The State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St.3d 350, 673 N.E. 2d 1360 (1997).
3. Respondents' reliance on existing law is reasonable and in the public interest, and there is no basis for an award of attorney's fees under R.C. 149.43 (C)(2).

Respectfully submitted,

CITY OF COLUMBUS, DEPARTMENT OF LAW  
RICHARD C. PFEIFFER, JR., CITY ATTORNEY



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Paula J. Lloyd (0033419)

Assistant City Attorney

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Columbus, Ohio 43215

(614) 645-0808

Attorney for Respondents City of Columbus and  
Chief Jacobs

#### **CERTIFICATE OF SERVICE**

A copy of the foregoing Respondents' Answer to Complaint for Original Writ of Mandamus was served by regular U.S. Mail on Frederick M. Gittes and Jeffrey P. Vardaro, THE GITTES LAW GROUP, 723 Oak Street, Columbus, Ohio 43205, this 12th day of November, 2014.



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Paula J. Lloyd

*PUBLIC RECORDS #13-2716  
OFFICE ASSIGNED: CUNNINGHAM*

# THE OHIO INNOCENCE PROJECT

University of Cincinnati College of Law  
P.O. Box 210040  
Cincinnati, OH 45221-0040

*Resp's Answer  
Exhib. A*

Columbus Division of Police  
Attn: Public Records Dept.  
120 Marconi Boulevard  
Columbus, Ohio 43215

October 31, 2013

Re: State v. Adam Saleh, Case No. 05-CR-006183 (Defendant's DOB 12/09/1986), Offense  
Date: May 5th, 2005

To Whom It May Concern:

As per Ohio Public Records Law (R.C. 149.43) and Senate Bill 77 (O.R.C. 2933.82), the Ohio Innocence Project requests a copy of any police records related to the arrest and subsequent investigation of Mr. Adam Saleh in the aforementioned case. The related crimes occurred in May of 2005. The Ohio Innocence Project would like to inspect medical records, police reports, investigation notes, evidence reports, and any other materials compiled by the Columbus Division of Police.

If the evidence is still in your possession, we would like to place a preservation request for all of that evidence pursuant to the aforementioned O.R.C. Section 2933.82 of Senate Bill 77, which provides information on Ohio's new policy on the retention of biological evidence. (Specifically, O.R.C. Section 2933.82 (B)(1)(b) requires that any biological evidence must be retained for a period of thirty years.) If the evidence was at one time in your possession and has since been destroyed or transferred, please provide a date of destruction/transfer along with an explanation.

At your earliest convenience, please call or forward to our office by mail or fax, whichever is most convenient to you, your response to our request. In your response, please let us know the costs associated with producing the requested documents so that we may enclose that amount to you as soon as possible.

If you have any questions regarding this request, we can be reached at (513) 556-0752. Our fax number is (513) 556-0702. Please address any correspondence to our attention at the Ohio Innocence Project. Thank you again for your cooperation in this matter.

Thank you again for your assistance in this matter.

Sincerely,

Courtney DiVincenzo & Rachel Hensley

2013 OCT 31 AM 11:07  
COLUMBUS POLICE  
PUBLIC RECORDS UNIT



THE CITY OF  
**COLUMBUS**  
MICHAEL B. COLEMAN, MAYOR

DIVISION OF POLICE  
KIM JACOBS  
CHIEF OF POLICE

October 31, 2013

The Ohio Innocence Project  
Ms. Courtney DiVincenzor/ Ms. Rachel Hensley  
University of Cincinnati - College of Law  
P.O. Box 210040  
Cincinnati OH 45221-0040

Ms. DioVincezo/Hensley,

This letter is in response to your request for records. Your letter received October 31, 2013 has been forwarded to our offices, for review and assigned public record request # 13-2716.

Section 149.43 (1)(h) of the Ohio Revised Code, which states:

**CLEIRS Exception:** A Public Office may withhold any records that pertain to a Law Enforcement matter of a criminal, quasi-criminal, civil, or administrative nature and that, if released, would create a high probability of disclosing any of the following types of information: 1.) Identity of an uncharged suspect, 2.) Identity of a confidential source, 3.) Investigatory techniques or procedures, 4.) Investigatory work product or 5.) Information that would endanger the life or physical safety of Law Enforcement personnel, a crime victim, a witness, or a confidential information source. Ohio St. 3d 54 State ex rel. Steckman v. Jackson, 70 Ohio St. 3d 420

In accordance with this section the Columbus Division of Police; in co-operation with the Franklin County Prosecutor's Office will supply copies of records from this case, upon competition of the criminal case. Please contact Franklin County Prosecutor Kim Bond at (614) 525-6639 if you have further questions. Your current request for public record(s) has been closed and cleared in our files. Please feel free to re-file your request after the criminal investigation and all appeals have been exhausted.

Cordially,

Officer J. J. Cunningham # 881  
Public Record Unit (614) 645-4875

JJ/jac