

ORIGINAL

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO, on relation of :
DONALD CASTER :
University of Cincinnati College of Law :
P.O. Box 210040 :
Cincinnati, OH 45221 :

CASE NO. 2014-1621

Relator, :

vs. :

CITY OF COLUMBUS, OHIO :
90 West Broad Street :
Columbus, OH 43215, :

ORIGINAL ACTION IN
MANDAMUS (Public Records)

and :

KIMBERLEY JACOBS, CHIEF, :
COLUMBUS DIVISION OF POLICE :
120 Marconi Boulevard, :
Columbus, OH 43215 :

Respondents :

FIRST AMENDED COMPLAINT FOR ORIGINAL WRIT OF MANDAMUS

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NOV 12 2014
CLERK OF COURT
SUPREME COURT OF OHIO

I. JURISDICTION

1. This is an original action for a writ of mandamus, as well as for ancillary relief, compelling the respondents to comply with their obligations under the Ohio Public Records Act, Ohio Revised Code Section 149.43(B), to make available to the Relator public records in Respondents' files. The records at issue consist of materials collected and created by the City of Columbus Division of Police in the course of investigating and prosecuting Adam Saleh for the 2005 murder of Julie Popovich—a prosecution the Relator and his employer, the Ohio Innocence Project, are investigating to determine whether Mr. Saleh may be innocent, as part of their ongoing effort to identify cases in Ohio in which individuals have been wrongfully convicted of serious crimes. In violation of their obligations under the Act, the Respondents have failed and refused to promptly make the records available notwithstanding repeated requests by Relator that they do so, beginning on September 5, 2013, and continuing to the present. This Court has jurisdiction of the action under Article IV, section 2, of the Constitution of Ohio, and under Ohio Revised Code Sections 149.43(C) and 2731.02.

II. PARTIES

2. Respondent Donald Caster is an attorney licensed to practice in the state of Ohio and engaged by the Ohio Innocence Project, a program of the University of Cincinnati College of Law, located in Cincinnati, Ohio. The mission of the Innocence Project, in which Relator participates, is to identify, investigate, and litigate cases in which individuals may have been wrongfully convicted of serious crimes.

3. Respondent Kimberley Jacobs is Chief of the City of Columbus Division of Police. Her agency has custody of the public records in question. Through her subordinates, she

has refused to provide copies of these records to the Relator. Respondent Jacobs is a “public official” within the meaning of Revised Code § 149.011(D) and a duly authorized agent of a “public office” within the meaning of Revised Code § 149.011(A).

4. Respondent City of Columbus, Ohio, as a municipal corporation and a political subdivision of the State of Ohio. Respondent City of Columbus is a “public office” within the meaning of Revised Code § 149.011(A).

III. FACTS

5. In 2007, Adam Saleh was convicted of the murder of Julie Popovich and received a sentence of 38 years to life in prison. Mr. Saleh and his family contend that he is innocent of Ms. Popovich’s murder and was wrongfully convicted.

6. On or about September 5, 2013, as part of an independent investigation into Mr. Saleh’s conviction, at the direction of Relator Donald Caster, two law student fellows of the Ohio Innocence Project made a public records request to Respondents for “a copy of any police records related to the arrest and subsequent investigation of Mr. Adam Saleh in [the murder case of Julie Popovich],” including “medical records, police reports, investigation notes, evidence reports, and any other materials compiled by the Columbus Division of Police.” A true and accurate copy of this request is attached to the Affidavit of Donald Caster, filed with this complaint.

7. In response to this request, the Division of Police submitted a blanket rejection letter. The letter cited the case of *State ex rel. Steckman v. Jackson*, 70 Ohio St. 3d 420, claiming that no such records would be produced until “completion of the criminal case.” The rejection

letter, a true and accurate copy of which is attached to Mr. Caster's affidavit, also stated that the request could be re-filed "after the criminal investigation and all appeals have been exhausted."

8. At the time of the September 2013 request, there were no pending appeals related to Mr. Saleh's conviction, nor are there at present. The Ohio Supreme Court refused to accept jurisdiction over Mr. Saleh's direct appeal as of July 1, 2009, and no further proceedings have been initiated to my knowledge.

9. On or about November 20, 2013, Relator Caster personally submitted a second request for the records to the Respondents by certified mail, explaining that no proceedings were ongoing, contrary to the Respondents' previous claims. The Respondents refused to respond to this request in any way and did not provide copies of any of the records.

10. As of the filing of this action, no further communications have been received from Respondents.

V. CLAIM FOR RELIEF

11. The above paragraphs are realleged and incorporated herein.

12. The failure and refusal of Respondents to provide the requested public records violates their duties under Revised Code Section 149.43, entitling the Relator to the issuance of a Writ of Mandamus to compel Respondents to comply with the Ohio Public Records Act.

13. In addition, the failure of Respondents to respond promptly or in writing to the Relator's second public record request in November 2013 violated Revised Code Section 149.43(B)(3), entitling Relator to the issuance of a Writ of Mandamus to compel Respondents to comply with the Ohio Public Records Act.

WHEREFORE, the Relator requests that this Court issue a peremptory writ of mandamus directing the Respondents to make the requested records available for inspection and copying without further delay. In the alternative, the Relator requests that this Court issue an alternative writ requiring the Respondents to show cause why the peremptory writ requested above should not be issued. The Relator further requests the costs of this action, including reasonable attorneys' fees, pursuant to Ohio Revised Code Section 149.43(C)(2). The Relator further requests statutory damages pursuant to Ohio Revised Code Section 149.43(C)(1) in the amount of one hundred dollars (\$100.00) for each day during which the Respondents failed to comply with the statute, beginning on the date of this action.

Respectfully submitted,



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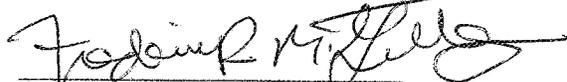
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Attorneys for Relator Donald Caster

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing First Amended Complaint for Original Writ of Mandamus was served by regular U.S. Mail upon Paula J. Lloyd, Assistant City Attorney, Office of Richard C. Pfeiffer, Jr., City Attorney, 77 N. Front Street, Columbus, OH 43215, Attorneys for Respondents, on this 12th day of November 2014.



Frederick M. Gittes (0031444)