

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

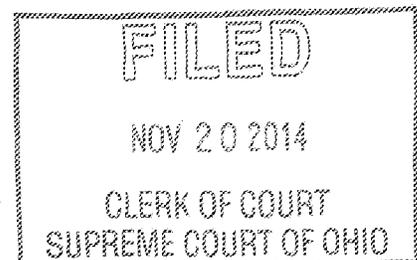
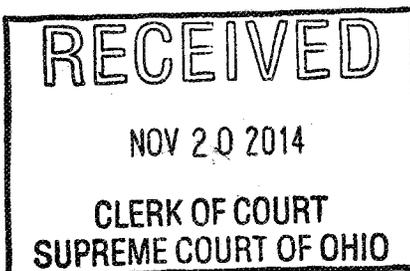
---

**RELATOR'S REPLY BRIEF**

---

EMILIE DIFRANCO  
Pro se Relator  
3867 W. 226<sup>th</sup> St.  
Fairview Park, Ohio 44126  
(440) 777- 6865  
[emdifranco@sbcglobal.net](mailto: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](mailto: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](mailto:feudo@nicola.com)  
[cicero@nicola.com](mailto: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

REPLY BRIEF.....5

STATEMENT OF FACTS.....5

LAW AND ARGUMENT.....6

CONCLUSION.....10

CERTIFICATE OF SERVICE.....12

Table of Authorities Cited

*State ex rel DiFranco v. S. Euclid*, 138 Ohio St.3d 36, 2014-Ohio.....5, 7

R.C. 140.43(B)(3).....9

*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....10

*Mutimedia, Inc. v. Whalen*, 48 Ohio St.3d 41, 42 (1990)  
(overruled on other grounds).....8

*State of Ohio ex rel. Emilie DiFranco v City of South Euclid, Ohio and  
Keith A. Benjamin and Michael P. Lograsso*, case No. 14-1761.....6

### Statement of Facts

This case is about citizen access to public records and the perpetual abuse of power and malfeasance by the City of South Euclid and Respondents counsel, Law Director Michael Lograsso. Respondents for the third time have failed to produce responsive records until such time Relator filed a mandamus action. On each occasion, Respondents have offered a variety of excuses as to why the information was not provided 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 20<sup>th</sup> 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...” (Relator’s Evidence 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.

The fact remains, on three separate occasions starting in 2011, Respondents, the City of South Euclid did not produce responsive records in a reasonable period of time. In each instance, Respondents contend that Relator, Emilie DiFranco is at fault for failing to prod City officials into providing the information. Further, they falsely present to this Court with regard to Relator's previous public records requests: "Most of the time past requests were done by Relator through face to face conversation with City personnel, at a public meeting or through an e-mail communication." Relator vehemently refutes that assertion. That is flat out wrong. Relator would be eager to provide overwhelming evidence in the form of certified mail receipts to disprove Respondents false claims.: "In each and every past instance that the Relator made a public records request, if she felt the City either had not fulfilled her request or she thought there was some delay in the response, she would immediately contact him to inquire about the matter." This is also not true. Respondents have misrepresented the truth to this Court and would not be able to produce evidence to support their concocted allegations.

Respondents, the City of South Euclid and their counsel, Law Director Michael Lograsso are currently being scrutinized before this Court in *State of Ohio ex rel Emilie DiFranco v. City of South Euclid, Ohio and Keith a. Benjamin and Michael P. Lograsso*, case No. 14-1761.

### 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.

Relator absolutely has a long history of making public records requests from the City of South Euclid as is her legal right. Respondents, the City of South Euclid and their counsel, Law Director Michael Lograsso do not recognize the merits of Relator’s efforts to obtain and report public information. Their flouting of the Public Records Act is punctuated by the timing of this very mandamus action. Relator tendered her public records request letter to Respondents on September 04, 2013, at the same time this Court was deciding *State ex rel DiFranco v. S. Euclid*, 138 Ohio St.3d 36, 2014-Ohio. Respondents hilariously attempt to argue that Relator “sandbagged” Respondents, not once, not twice, but three times over several years, by not calling or e-mailing them to remind them to comply with the law, which somehow caused them not to produce responsive records. Respondents then falsely accuse Relator of filing this mandamus action for the purpose of obtaining statutory damages and attorney’s fees. Relator is

not an attorney. Preparing this mandamus action *pro se* was not an easy task. Relator is gainfully employed and can't imagine enduring this mentally exhaustive exercise to procure a minimal reward of statutory damages (respectfully). Respondents argue against the award of attorney's fees and Relator is *pro se*. Relator does not seek the reward of attorney's fees in the instant case.

Respondents, the City of South Euclid regurgitate the same tired legally insufficient argument that has already been rejected by this Court two times. And while they try again to misrepresent the facts and portray Relator as uncooperative and devious for not hounding after city officials when they intentionally delay or deny access to public information, Law Director Michael Lograsso made a grand proclamation on March 31, 2011 stating that he would no longer communicate with Relator (Relator's Evidence Exhibit N). Numerous requests by Relator to meet with Mr. Lograsso have been flatly denied, and captured on video. Respondents mantra that Relator is at fault because a "simple e-mail or phone call" would have provoked city officials to produce responsive records is absurd, disingenuous, and without legal merit. 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). Further of note, in the original e-mail response confirming receipt of Relator's public records request letter, Respondent Lee Williams stated she "...forwarded it to Mr. Lograsso for review and handling by the appropriate departments." (Relator's Evidence Exhibit D). If Mr. Lograsso reviews all incoming public records requests it is logical to

conclude that he would inspect and redact the information being distributed to the public records requester. Respondent Lee Williams' Affidavit, submitted with Respondents Evidence is contradictory as she stated in #6, "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." Additionally, Respondents have never produced any responsive records relating to the cost for sidewalk snow removal of the 9 Greenvale Drive city-owned properties. 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).

Respondents the City of South Euclid and their counsel, Law Director Michael Lograsso have intentionally withheld public information when the release of those records interfered with their agenda. Relator's request for information on September 04, 2013 included records of departmental overtime paid (Relator's Evidence Exhibit F).

Respondents did not produce those records in a reasonable amount of time. Due to an impending election on November 05, 2013 that included a controversial safety levy as a ballot issue, Relator contends it was not coincidental that departmental overtime payments were not produced or provided by Respondents (Relator's Evidence 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. This was not the first time Respondents abused the power entrusted to

them. The City of South Euclid and Law Director Michael Lograsso have created a hostile environment for Relator in an attempt to silence any citizen driven analysis of some controversial and nefarious activities that take place behind tightly closed doors. In fact, Respondents were so desperate to keep Relator quiet, Law Director Michael Lograsso filed a strategic lawsuit against public participation (SLAPP) to censor, intimidate and silence any additional criticism from Relator (Relator's Evidence Exhibit P). Cuyahoga County Common Pleas Court would not hear his case yet Mr. Lograsso appealed to the 8<sup>th</sup> District Court of Appeals for the sole purpose of inflicting financial hardship. *See, e.g., Michael P. Lograsso v. Robert Frey, et al., Cuyahoga County C.P. case no. CV-12-798334 and Michael P. Lograsso v. Robert Frey, et al., case no. CA-13-100104.*

#### CONCLUSION

Relator seeks costs in accordance with the Public Records Act, as well as all other relief to which Relator may be entitled in law or in equity. The City of South Euclid for the third time, and by their own admission, is liable for statutory damages for lack of compliance with the Public Records Act. Most importantly, Relator seeks reasonable access to public information without having to file a mandamus action to obtain those records. The City of South Euclid and their counsel, Law Director Michael Lograsso have gone to extraordinary lengths to withhold public information. This Court has rejected Respondents argument on two previous cases, yet the City of South Euclid in their reply brief claimed, "At all times the Respondents have acted in good faith in responding to Relator's request for records." To sustain the integrity of the Open Records Act,

behavior such as this must not be condoned. Either public records are open or they are not.

"The liberties of a people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them...To cover with the veil of secrecy the common routine of business, is an abomination in the eyes of every intelligent man." - Patrick Henry

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Emilie DiFranco", written over a horizontal line.

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

CERTIFICATE OF SERVICE

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

19th day of November 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. 226<sup>th</sup> St.

Fairview Park, Ohio 44126

(440) 777 – 6865

emdifranco@sbcglobal.net