



TABLE OF CONTENTS

Table of Authorities ..... iii

Statement of Facts..... 1

Argument .....2

    A. Mandamus cannot compel the inspection or release of investigatory records compiled pursuant to R.C. §2151.421 .....2

    B. Mandamus cannot compel an agency to comply with internal policies and procedures. ....3

    C. Revised Code §1347.01, et seq. does not mandate disclosure of investigatory records compiled in compliance with R.C. §2151.421.....4

Conclusion .....5

TABLE OF AUTHORITIES

**Cases**

*Davis v. The State ex rel. Pecsok* (1936), 130 Ohio St. 411 ..... 4

*Johnson v. Johnson*, 134 Ohio App.3d 579 (1989)..... 3

*State ex rel. Governor v. Taft* (1994), 71 Ohio St.3d 1 ..... 4

*State ex rel. Hodges v. Taft* (1992) 64 Ohio St.3d 1 ..... 4

*State ex rel. Renfro Cuyahoga Cty. Dept. of Human Serv.* (1990), 54 Ohio St.3d 25 ..... 2, 3, 5

*State ex rel. Strothers v. Colon.* (Ohio Ct. App. Feb. 12, 1999) 1999 WL 125847, *cause dismissed* 86 Ohio St. 3d 1413 (1999) ..... 4

*Swartzentruber v. Orrville Grace Bretheren Church*, 163 Ohio App.3d 96, 2005-Ohio-4264..... 3

*Wiley v. Summit Cty. Children Serv.*, Summit App. No. 23372, 2007-Ohio-1476..... 3

**Statutes**

R.C. §1347.01 ..... 4

R.C. §1347.08(A)(2)..... 5

R.C. §2151.421 ..... 1, 2, 3, 4, 5

R.C. §5153.17 ..... 1, 2, 5

## STATEMENT OF FACTS

On April 22, 2014, Relator, through an authorized agent, made a verbal public records request to review the files maintain by FCCS pertaining to Relator's minor daughter. (Complaint ¶7). On April 28, 2014, Respondent O'Leary, as chief legal counsel for FCCS, replied in writing to Respondent's agent and explained that the requested records constituted investigatory records of the agency, and thus were confidential pursuant to R.C. §§2151.421 and 5153.17 (Exhibit B to Complaint; Affidavit of Anne O'Leary, ¶¶2, 6). Relator's agent submitted a clarifying request to review the contents of the FCCS file pertaining to Relator's daughter and to perhaps seek the release of certain documents. In this communication, Relator's agent also relied upon the Grievance Procedure and Consumer Rights pamphlet as justification to review the file. (Exhibit C to Complaint). In response to this request, Respondent O'Leary again replied in writing and clarified that the only records in the possession of FCCS relating to Relator's minor child were investigatory records, and that no case file was opened or created after the investigation; therefore, the only records possessed by FCCS were investigatory. (Exhibit D to Complaint; Affidavit of Anne O'Leary, ¶7).

Further, Ms. O'Leary explained that the Grievance Procedure and Consumer Rights pamphlet recognizes that access to certain records was restricted where such access was prohibited by law, and since the FCCS file relating to Relator's daughter was confidential pursuant to R.C. §§2151.421 and 5153.17, they were not subject to inspection or release absent written consent from the Executive Director, which he had not found good cause to give. (Exhibit D to Complaint; Affidavit of Anne O'Leary, ¶¶7-10). Dissatisfied with the response, Relator brought this action.

## ARGUMENT

- A. Mandamus cannot compel the inspection or release of investigatory records compiled pursuant to R.C. §2151.421

Contrary to the unsupported allegations in Relator's brief, the Respondents herein specifically informed the Relator, in writing, of the reasons for the denial of the public records request, *on two separate occasions*. Indeed, the written explanations were attached to Relator's Complaint. (Exhibits B & D, attached to Relator's Complaint; Affidavit of Anne O'Leary, ¶¶6, 7).

Ohio Revised Code §2151.421(H)(1) expressly provides "[e]xcept as provided in divisions (H)(4) and (N) of this section, a report made under this section is confidential." A plain reading of the statute is dispositive of this matter; inasmuch as the only record possessed by FCCS is an investigatory record compiled pursuant to R.C. §2151.421 (Affidavit of Anne O'Leary, ¶7; Exhibit D to Complaint), such record is confidential and its inspection or release is prohibited by state law. See, *State ex rel. Renfro Cuyahoga Cty. Dept. of Human Serv.* (1990), 54 Ohio St.3d 25 (holding that R.C. §2151.421(H)(1) excepted investigation reports from R.C. §149.43(B), and thus are not considered public records).

To the extent Relator's complaint may be construed to seek access to any other record that may exist that relates to Relator's child, such records are also confidential by operation of R.C. §5153.17. That section provides:

The public children services agency shall prepare and keep written records of investigations of families, children, and foster homes, and of the care, training, and treatment afforded children, and shall prepare and keep such other records as are required by the department of job and family services. Such records shall be confidential, but, except as provided by division (B) of section 3107.17 of the Revised Code, shall be open to inspection by the agency, the director of job and family services, and the director of the county department of job and family services, and by other persons upon the written permission of the executive director.

Again, this statute mandates that all files relating to families and to the care, training and treatment of children is required to be kept confidential. *Renfro*, 54 Ohio St.3d at 29. While such confidentiality is not absolute, no relevant exception exists in this case. As to the contention that the executive director may grant permission to review the confidential records, the person seeking the records must first demonstrate “good cause” that outweighs any need to keep the records confidential. *Wiley v. Summit Cty. Children Serv.*, Summit App. No. 23372, 2007-Ohio-1476, at ¶10. In this context, “good cause” means “when it is in the best interests of the child or when the due process rights of other subjects of the record are implicated.” *Swartzentruber v. Orrville Grace Bretheren Church*, 163 Ohio App.3d 96, 2005-Ohio-4264, at ¶9 (quoting *Johnson v. Johnson*, 134 Ohio App.3d 579, 585 (1989)). In this matter, Relator has not attempted to articulate any good cause consistent with the above standard that would provide a basis for the executive director to allow access to any confidential record. Therefore, to the extent Relator’s complaint seeks a writ of mandamus to compel access to investigatory records compiled pursuant to R.C. §2151.421, it must be denied.

B. Mandamus cannot compel an agency to comply with internal policies and procedures.

As indicated above, it would appear that Relator’s complaint ostensibly seeks to compel FCCS to comply with its internal policies and procedures as outlined in the excerpted portion that is attached to the Affidavit of Anne O’Leary as Exhibit 2. These Franklin County Children Services Board policies provide guidance to families who interact with FCCS. As it pertains to the instant matter, the relevant policy provides that adults and children who are clients of FCCS shall have the right to “review their case record, subject to applicable federal and state statutes and regulations. Please be aware that specific provisions in the law prohibit the release of referral

source information and investigatory records.” (Exhibit 2 to Affidavit of Anne O’Leary, §III(D)(4)). It is difficult to comprehend how Relator can maintain that the actions of Respondents in denying her requested access to confidential records is not completely consistent with existing FCCS board policies and procedures. The internal policies of the agency clearly provide that access to any record is always subject to state law prohibition. As described above, state law specifically prohibits the examination and/or release of the specific records Relator seeks.

Notwithstanding the foregoing, mandamus should not issue in situations where the relator is merely seeking compliance with internal policies and procedures as opposed to specific obligations imposed by statute. The creation of a duty that can be compelled by mandamus is the distinct function of the legislative branch of government. *State ex rel. Hodges v. Taft* (1992) 64 Ohio St.3d 1, *State ex rel. Governor v. Taft* (1994), 71 Ohio St.3d 1 and *Davis v. The State ex rel. Pecsok* (1936), 130 Ohio St. 411, paragraph one of the syllabus. As the policies and procedures at issue herein were not the mandate of the legislature, but rather the internal guidelines of an agency, mandamus cannot lie to compel compliance with such policies and procedures, especially where compliance (allowing access to confidential records) would violate state law. See also, *State ex rel. Strothers v. Colon*. (Ohio Ct. App. Feb. 12, 1999) 1999 WL 125847, *cause dismissed* 86 Ohio St. 3d 1413 (1999) (refusing to hold that an internal policy memorandum could create a clear legal right and a commensurate clear legal duty enforceable by mandamus). Notwithstanding the above, it is clear from the record that FCCS followed its policies. (Affidavit of Anne O’Leary, ¶ 11)

- C. Revised Code §1347.01, et seq. does not mandate disclosure of investigatory records compiled in compliance with R.C. §2151.421.

In her last argument, Relator contends that she should be entitled to review the contents of her case file as maintained by FCCS by operation of R.C. §1347.08(A)(2). As a part of her argument, Relator asserts, for the first time, that she requests records related to her grievance hearings held on December 15, 2009 and March 2, 2010.

It is important to note that the only request Relator has made upon FCCS was for a copy of the agency's investigatory files relating to her minor daughter. (Complaint, Exhibit C). There is no allegation, nor any evidence to support her contention that she is entitled to a writ of mandamus to compel the disclosure of records that she had not asked for prior to the filing of the complaint. It is therefore inappropriate for this Court to consider the requests for these records as a part of this action.

Notwithstanding the foregoing, it is clear that any and all records actually requested by Relator and maintained regarding the child abuse allegations involving Relator's daughter are investigatory records compiled pursuant to the agency's obligations under R.C. §2151.421, and thus are not subject to R.C. §1347.08(A)(2). *Renfro*, 54 Ohio St.3d at 28. Inasmuch as the records that were actually requested pertain to an investigation that was initiated and conducted pursuant to R.C. §2151.421 (Affidavit of O'Leary, ¶6), these records are specifically exempted from the provisions of R.C. §1347.08(A)(2). *Renfro*, 54 Ohio St.3d at 29.

#### CONCLUSION

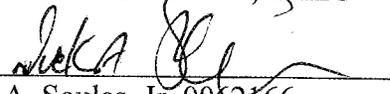
In light of the foregoing, it is clear that Relator cannot establish that she had a clear legal right to the relief she seeks, whether such relief is the disclosure of confidential investigatory records, or the relief is to force Franklin County Children Services to comply with internal policies and procedures. As set forth above, the provisions of R.C. §§2151.421 and 5153.17 specifically provide that the records sought by Relator are confidential, and no applicable

exception can be found in the statutes. Additionally, to the extent Relator seeks to compel compliance with the internal policies and procedures of the agency, that argument fails for two reasons: (1) Respondents have complied with the policies of FCCS as the policies specifically recognize the prohibitions regarding the release of confidential records; and (2) Relator cannot establish that she has a clear legal right to the requested relief.

Therefore, Respondents respectfully request this Court to dismiss Relator's complaint.

Respectfully submitted,

**RON O'BRIEN**  
**PROSECUTING ATTORNEY**  
**FRANKLIN COUNTY, OHIO**



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**CERTIFICATE OF SERVICE**

I hereby certify that on December 11, 2014, I served the foregoing upon all parties via regular U.S. mail:



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