

ORIGINAL

In the
Supreme Court of Ohio

STATE OF OHIO, *ex rel.*
CINCINNATI ENQUIRER
A Division of Gannett Satellite
Information Network, Inc.
312 Elm Street
Cincinnati, Ohio 45202

Case No.

15-0390

Relator,

vs.

COMPLAINT FOR
WRIT OF MANDAMUS

OHIO DEPARTMENT OF
PUBLIC SAFETY
1970 West Broad Street
Columbus, Ohio 43223

and

JOHN BORN, in his
Official Capacity as Director
OHIO DEPARTMENT OF
PUBLIC SAFETY
1970 West Broad Street
Columbus, Ohio 43223

Respondents.

JOHN C. GREINER (0005551)*
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FILED
MAR 09 2015
CLERK OF COURT
SUPREME COURT OF OHIO

COUNSEL FOR RELATOR CINCINNATI ENQUIRER

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SUPREME COURT OF OHIO

For its Complaint for Writ of Mandamus, Relator Cincinnati Enquirer, a Division of Gannett Satellite Information Network, Inc. (the “Enquirer”) states as follows:

1. Petitioner operates and does business as the Cincinnati Enquirer, a newspaper of general circulation in Cincinnati, Ohio.

2. Respondent John Born is the Director of Respondent Ohio Department of Public Safety (“ODPS”) (collectively, “Respondents”).

3. Mr. Born is a public official in the state of Ohio. His official duties include responsibility for the custody and maintenance of certain records pertaining to matters in which the ODPS is involved (the “Records”).

4. The ODPS is a “public office” as defined at R.C. 149.011(A). Records maintained by the ODPS are “public records” pursuant to R.C. 149.43(A)(1).

5. On January 29, 2015, Keith BieryGolick (“BieryGolick”) an Enquirer reporter, contacted the ODPS and requested a copy of the dashboard camera video, incident/arrest report, and any 911 radio communications from a chase on Interstate 71 that started in Warren County before preceding into Hamilton County on January 22, 2015 (“the Records”). (A true and correct copy of Mr. BieryGolick’s request for the Records is attached as Exhibit 1 to the Affidavit of Keith BieryGolick.)

6. That same morning, Bradley Shaw, an employee of the ODPS, contacted Mr. BieryGolick on behalf of ODPS released portions of the requested Records but denied Mr. BieryGolick’s request to inspect the dashboard camera video (the “Dashboard Camera Video”) as requested. Mr. Shaw stated that “The Prosecutor has asked that we don’t release the video as this time.” (A true and correct copy of Mr. Shaw’s response is attached as Exhibit 1 to the Affidavit of Keith BieryGolick.)

7. Mr. BieryGolick requested that Mr. Shaw conform to the legal requirements of the Ohio Public Records Act when denying his access to the requested Dashboard Camera Video. (A true and correct copy of Mr. BieryGolick's response is attached as Exhibit 1 to the Affidavit of Keith BieryGolick.)

8. The next day, on January 30, 2015, Mr. Shaw responded to Mr. BieryGolick's request that the ODPS comply with the Ohio Public Records Act and stated "[The Dashboard Camera Video] would fall under – **Confidential Law Enforcement Investigation Records** ORC 149.43(A)(1)(h) and ORC 149.43(A)(2)." (A true and correct copy of Mr. Shaw's response is attached as Exhibit 1 to the Affidavit of Keith BieryGolick.)

9. On February 11, 2015, Eric S. Richmond, Assistant Public Records Manager, Ohio Department of Public Safety, sent a letter to Mr. BieryGolick that released the requested arrest/incident report but alleged that the Dashboard Camera Video is "a part of an open criminal case that pertains to a law enforcement matter of criminal, quasi-criminal, civil, or administrative nature and whose release would create a high probability of disclosure of specific investigatory work product." (A true and correct copy of that letter is attached as Exhibit 2 to the Affidavit of Keith BieryGolick.)

10. Respondents violated ORC 149.43 by failing to allege or prove that the Dashboard Camera Video squarely fits within the Confidential Law Enforcement Investigatory Record "Specific Investigatory Work Product" exception from public disclosure. Respondents also violated ORC 149.43 by refusing to make the Dashboard Camera Video footage available for inspection and copying.

11. The Enquirer has a clear legal right to inspect and copy the Records and Respondents have a clear legal duty to promptly make the Records available to the Enquirer for inspection and copying.

12. The Enquirer has no adequate alternative remedy in the ordinary course of the law.

13. Respondents have no valid excuse for refusing to permit the Enquirer and the public to inspect and copy the records in their entirety, and no valid excuse for failing to comply with Ohio law when identifying the alleged exemption from disclosure or promptly making the Records available for inspection.

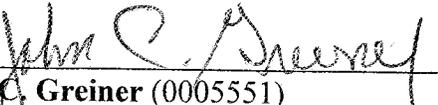
14. For instituting this Mandamus action commanding Respondents to comply with its obligations under R.C. 149.43(B), the Enquirer requests that the Court award it all court costs, reasonable attorney's, and, if applicable, statutory damages as provided in R.C. 149.43(C). Based on the ordinary application of the statutory law and case law as it existed at the time the Enquirer requested access to the Records, Respondents could not have reasonably believed that their refusal to grant access to the Records complied with R.C. 149.43(B), nor could they have reasonably believed that their refusal would serve the public policy underlying the Ohio Public Records Act.

WHEREFORE, Relator seeks a Peremptory Writ of Mandamus or, in the alternative, an Alternative Writ of Mandamus commanding Respondents to make available the Records for inspection and copying in accordance with R.C. 149.43(B), for statutory damages as provided by R.C. 149.43(C)(1), and for any other relief deemed just and proper by the court, including but not limited to an award of attorney's fees.

Respectfully submitted,

Of Counsel:

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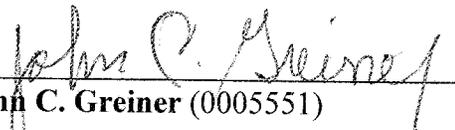


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PRAECIPE FOR SERVICE

TO THE CLERK:

Please issue a Summons along with a copy of this *COMPLAINT* to the Respondents identified in the caption on page one via Certified Mail, return receipt requested.



John C. Greiner (0005551)