

ORIGINAL

BEFORE THE SUPREME COURT OF OHIO

THOMAS J. HAWKINS
P.O. Box 1145
Worthington, Ohio 43085
Relator

-v-

Case No. 15-1020

Iris L. Darst, Clerk and Chief Fiscal Officer
The Village of South Bloomfield, Ohio
5023 S. Union Street
South Bloomfield, Ohio 43103

Respondent

Matt Pettibone, Acting Mayor and Council Member
The Village of South Bloomfield, Ohio
5023 S. Union Street
South Bloomfield, Ohio 43103

Respondent

Jill Roese, Council Member
The Village of South Bloomfield, Ohio
5023 S. Union Street
South Bloomfield, Ohio 43103

Respondent

Stephen Nicklas, Council Member
The Village of South Bloomfield, Ohio
5023 S. Union Street
South Bloomfield, Ohio 43103

Respondent

Roger Hopkins, Council Member
The Village of South Bloomfield, Ohio
5023 S. Union Street
South Bloomfield, Ohio 43103

Respondent

Douglas Burke, Council Member
The Village of South Bloomfield, Ohio

FILED
JUN 19 2015
CLERK OF COURT
SUPREME COURT OF OHIO

5023 S. Union Street
South Bloomfield, Ohio 43103

Respondent

Rick Sowers, Council Member
The Village of South Bloomfield, Ohio
5023 S. Union Street
South Bloomfield, Ohio 43103

Respondent

Dan Gwinn, BPA President
The Village of South Bloomfield, Ohio
5023 S. Union Street
South Bloomfield, Ohio 43103

Respondent

John Serio, BPA Member
The Village of South Bloomfield, Ohio
5023 S. Union Street
South Bloomfield, Ohio 43103

Respondent

Shawn Costlow, BPA Member
The Village of South Bloomfield, Ohio
5023 S. Union Street
South Bloomfield, Ohio 43103

Respondent

COMPLAINT FOR WRIT OF MANDAMUS

Relator, Thomas J. Hawkins, alleges:

1. Relator, Thomas J. Hawkins, is a resident of the State of Ohio and a property owner of real estate situated in South Bloomfield, Pickaway County, Ohio, acquired in 2003.
2. The Village of South Bloomfield, Ohio at all times mentioned, has been, and still is, a village, operating pursuant to the laws of Ohio.

3. At all times mentioned, the Village has been and still is governed by, and acting under the Ohio Revised Code, Title 7, which authority at all times mentioned has been adopted by the village.

4. The Village operates with a Mayor, Council and various Boards and Departments, including the Board of Public Affairs (BPA).

5. At all times, respondents, Pettibone; Roese; Nicklas; Hopkins; Burke; Sowers; Gwinn; Serio and Costlow, have been and still are the appointed, qualified, and acting as Mayor, and Commissioners and Board members of Village of South Bloomfield, and also the Board of Public Affairs for South Bloomfield. Respondent Darst is the Clerk of the Council

6. The Village has appointed Iris L. Darst as its Clerk and Chief Fiscal Officer of the Village, and clerk for the Village Council.

7. At all times mentioned, respondent Darst has been and still is the Clerk and Chief Fiscal Officer of the Village of South Bloomfield appointed by the Village Council under the authority of the Ohio Revised Code.

8. Section 149.43 of the Ohio Revised Code provides that elected officials must keep all "public records" available for inspection and copying. This would include, but not be limited to of all its proceeding and copies of all plans, specifications, reports, contracts, estimates, certificates, receipts, surveys, field notes, maps, plats, profiles and all other papers pertaining to the transactions of the board, and that all books and records of every office and department of the Village are to be open to the inspection of any citizen at any time during the business hours, except that records of the police department shall not be subject to inspection, except where permission is given by the police commissioners or by the chief of police.

9. That these records would include records pertaining to billing practices and rates charged for public utilities maintained by the Village.

10. The Village of South Bloomfield has been and still is engaged in the providing a municipal water supply, including a sewer system and the regulation of the access to such water and sewer system by means of licensing the tap ins of such public water and sewer and other engineering works located in the Village.

11. In connection with the access to such public water works, the Village also charges for such water and sewer usage and continues to make such charges, including the charging of interest on late payments and the levying of liens on real property for non payment of such charges and interest.

12. Prior to the making of the demand alleged in this petition, the Village of

South Bloomfield had in its possession, custody, and control, a large number of plans, specifications, reports, contracts, estimates, certificates, receipts, surveys, field notes, maps, plats, profiles and other papers relating to providing water and sewer services to the public, which includes the Relator herein, including specifically the following records:

Records pertaining to the sewer tap application and fees for the property located at 5046 W. Main Street, South Bloomfield, Ohio [Parcel No. D1400010005100], from the time of construction in 1973 to the present.

Records pertaining to the Water tap application and fees for the property located at 5046 W. Main Street, South Bloomfield, Ohio [Parcel No. D1400010005100], from the time of construction in 1973 to the present.

Records pertaining to the maintenance, repair or replacement of any sewer or water lines from any public property and servicing 5046 W. Main Street, South Bloomfield, Ohio [Parcel No. D1400010005100], from November 7, 2003 to the present.

Records of all bills or statements for water and sewer service to 5046 W. Main Street, South Bloomfield, Ohio [Parcel No. D1400010005100], from November 7, 2003 to the present. In lieu of the individual billings or statements, an accounting of the same is acceptable.

Records pertaining to your account number 1807

Records and reports relative to any water meter or metering system used at 5046 W. Main Street, South Bloomfield, Ohio [Parcel No. D1400010005100], from November 7, 2003 to the present. These records would include the specific meter readings for each period that readings were collected at this location and the original meter reading when installed.

A description of the meter installed at 5046 W. Main Street, South Bloomfield, Ohio, including any serial numbers together with the date the meter was installed and the name of the installer.

Records that reflect the actual water usage for 5046 W. Main Street, South Bloomfield, Ohio from January 19, 2010 to the present.

Records that reflect the actual water usage for 5046 W. Main Street, South Bloomfield, Ohio between November 7, 2003 and January 18, 2010.

The formula used to calculate the sewer charges on South Bloomfield, Ohio properties that do not have city water taps but utilize well water, however do have sewer taps.

Building permit, together with any drawings or surveys for the real estate located at 5046 W. Main Street, South Bloomfield, Ohio. As well as the approvals and final occupancy permit.

Records pertaining to Resolution No. 2010-09, dated August 17, 2010, as it pertains to parcel D1400010005100, Michael Denton, and the amount of \$867.25, to include all records of official notification of the property owner.

Records pertaining to notice provided to the property owner of 5046 W. Main Street, South Bloomfield, Ohio, for the action taken in the August 17, 2010 Resolution referred to in inquiry no. 12 above.

13. Relator is unable to give a more detailed description of the records although the Respondents have charged him for such water services and have levied upon his real estate for such services, interest and late fees, and in fact the Relator disputes that public water service is being supplied to his real estate.

14. Respondents have provided the following records:

Email coversheet

Copy of the Freedom of Information Request from Relator

Sanitary Sewer Tap Fee Account dated Nov. 30, 1991

Water Tap-in Fee Form dated April 16, 1998

Letter to prior owner on tap fees dated January 11, 1999

Letter to prior owner on Tap fees dated May 12, 1999

Letter to prior owner on balance of water account dated July 10, 2002

Letter to prior owner on balance of water account dated July 7, 2005

Delinquent Notice Letter to prior owner dated July 10, 2006

Aged Balance sheet dated March 19, 2015

Customer History dated 3/19/2015 for period 11/21/2012 thru 11/27/2014

Same Customer History sheet with handwritten notations

Usage History dated 3/19/2015 reflecting no water usage from 1/27/12
thru 2/27/2015

15. All of the charges and billing has been done under the immediate direction and control of respondent Village and its Council members and Board members.

16. All of the records have been compiled and collected under the immediate direction and control of respondent Clerk of the Village. These records have been and are in the possession, custody and control of the Village Council.

17. Relator is unable to give a more detailed description of the records and work, because the respondents have refused and still refuse to Relator and Relator's representatives and agents access to the all of the records.

18. Respondents have provided some records, but they are not complete and are at times contradictory to the facts.

19. Relator is a citizen of the State of Ohio and a property owner of real estate located in the Village of South Bloomfield, Ohio, and the desires to be informed concerning the charges and rates for water and sewer use on his property and the work done and to be done in connection with the creation of such water usage, and the method and manner of the calculation of such charges, interest and penalties.

20. All other facts, matters, data, and information, when acquired, will be used by Relator for the benefit of, and will be communicated to, other citizens of the Village of South Bloomfield who are or may be interested in investigating the municipal affairs of the city, including the charges and interest rates for the use of the Village water services, as well as for the personal information of Relator as a citizen of the city.

21. On March 11, 2015 the Relator mailed a letter to the Clerk of the Village, which included a Freedom of Information Request pursuant to the Ohio Revised Code.

22. Attached to that letter was a specific list of records being sought by the Relator herein. [See Attachment A].

23. The Clerk responded with some documents, identified in averment 15 above.

24. The Relator again contacted the Village Chief Financial Officer, Iris L. Darst, on March 26, 2015, indicating receipt of those documents, however informing her that there were other records and documents that they failed to provide. [See

Attachment B].

25. The Respondents have failed to provide any further information or records, which they are required to maintain in accordance with the Ohio Sunshine Laws, nor have they communicated in any manner as to how Relator might be able to obtain the records.

26. On May 22, 2015 the Relator again requested this information by letter and requesting a response by June 3, 2015. [See Attachment C].

27. The Respondents received such letter and signed a return receipt on May 26, 2015. [See Attachment D].

28. It is clear that the Respondents, and each of them, have refused and still refuse to comply in part with such demands.

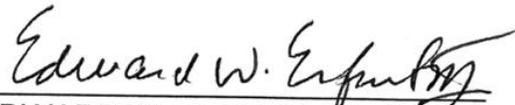
29. Relator has no plain, speedy or adequate remedy in the ordinary course of law.

WHEREFORE, Relator requests that:

1. A writ of mandamus be issued, requiring respondents, and each of them, to give to Relator from time to time, during business hours, and to all Relator's agents and representatives, access to and inspection of all the records referred to in this petition with the privilege of making such copies, notes and other data as Relator and Relator's agents and representatives may desire from time to time; and

2. That the Relator receive from the Respondents, jointly and severally, expense money for the necessity of preparing this action, including legal fees of counsel and all court costs herein.

3. Relator may have such other and further relief as the court may seem just and proper.

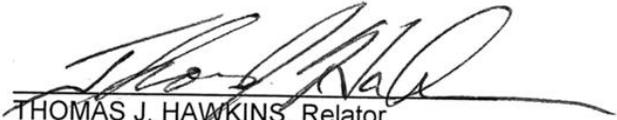


EDWARD W. ERFURT, III (0003108)
Attorney for the Relator
3442 Riverside Drive
Columbus, Ohio 43221
614-326-0400
Edward@erfurtlaw.com

VERIFICATION BY Relator

STATE OF OHIO
COUNTY OF FRANKLIN: ss:

Be It Remembered, That on this 17 day of June, 2015, before me, the subscriber, a notary public for the State of Ohio, personally came the above named Thomas J. Hawkins, the Relator herein, who acknowledged that the statements contained herein are true and correct to the best of his knowledge and belief and the signing of this document as His voluntary act and deed, for the uses and purposes therein mentioned.


THOMAS J. HAWKINS, Relator

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal, on the day and year last aforesaid.


EDWARD W. ERFURT, III, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration date.
Section 147.03 R. C.

EDWARD W. ERFURT, III
ATTORNEY AT LAW
3442 RIVERSIDE DRIVE
COLUMBUS, OHIO 43221-1752

TELEPHONE
(614) 326-0400
EMAIL
ewe33@msn.com

Note: New Email Address
Edward@Erfurtlaw.com

March 11, 2015

SARA SOPHER, Clerk
Village of South Bloomfield
5023 S. Union Street
South Bloomfield, OH 43103

RE: FREEDOM OF INFORMATION REQUEST
Pursuant to Ohio Revised Code §149.43, et seq.

Dear Ms. Sopher;

As the official records keeper for the Village of South Bloomfield, Ohio, and in accordance with the Ohio Open Records Law §149.43, et seq., I am requesting an opportunity to inspect or obtain copies of the public records that are attached hereto as Attachment 1.

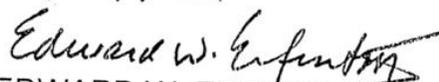
If there are any fees for searching or copying these records, please inform me what those costs will be, in advance of completing the work. I would ask that a waiver of all fees be granted, since the information is in the public interest and will contribute significantly to the public's understanding of how utility charges are determined. This information is not being sought for commercial purposes.

I would request a prompt response to this request. If you expect a significant delay in responding to or in fulfilling this request, I would ask that you contact my office with information about when I might expect copies or the ability to inspect the requested records. You can reach me at the phone number above.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

I appreciate your prompt attention to this matter.

Very truly yours,


EDWARD W. ERFURT, III

A

ATTACHMENT TO FREEDOM OF INFORMATION REQUEST

Please provide the following:

1. All records pertaining to the sewer tap application and fees for the property located at 5046 W. Main Street, South Bloomfield, Ohio [Parcel No. D1400010005100], from the time of construction in 1973 to the present.
2. All records pertaining to the Water tap application and fees for the property located at 5046 W. Main Street, South Bloomfield, Ohio [Parcel No. D1400010005100], from the time of construction in 1973 to the present.
3. Any and all records pertaining to the maintenance, repair or replacement of any sewer or water lines from any public property and servicing 5046 W. Main Street, South Bloomfield, Ohio [Parcel No. D1400010005100], from November 7, 2003 to the present.
4. Copy of all bills or statements for water and sewer service to 5046 W. Main Street, South Bloomfield, Ohio [Parcel No. D1400010005100], from November 7, 2003 to the present. In lieu of the individual billings or statements, an accounting of the same is acceptable.
5. Copy of all records pertaining to your account number 1807, if different from the records being sought in request 4 above.
6. Copies of all records and reports relative to any water meter or metering system used at 5046 W. Main Street, South Bloomfield, Ohio [Parcel No. D1400010005100], from November 7, 2003 to the present. These records would include the specific meter readings for each period that readings were collected at this location and the original meter reading when installed.
7. A description of the meter installed at 5046 W. Main Street, South Bloomfield, Ohio, including any serial numbers together with the date the meter was installed and the name of the installer.
8. Any and all records that reflect the actual water usage for 5046 W. Main Street, South Bloomfield, Ohio from January 19, 2010 to the present.
9. Any and all records that reflect the actual water usage for 5046 W. Main Street, South Bloomfield, Ohio between November 7, 2003 and January 18, 2010.
10. The formula used to calculate the sewer charges on South Bloomfield, Ohio properties that do not have city water taps but utilize well water, however do have sewer taps.

11. Copy of the original building permit, together with any drawings or surveys for the real estate located at 5046 W. Main Street, South Bloomfield, Ohio. As well as the approvals and final occupancy permit.
12. All records pertaining to Resolution No. 2010-09, dated August 17, 2010, as it pertains to parcel D1400010005100, Michael Denton, and the amount of \$867.25, to include all records of official notification of the property owner.
13. All records pertaining to notice provided to the property owner of 5046 W. Main Street, South Bloomfield, Ohio, for the action taken in the August 17, 2010 Resolution referred to in inquiry no. 12 above.

EDWARD W. ERFURT, III
ATTORNEY AT LAW
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COLUMBUS, OHIO 43221-1752

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EMAIL
ewe33@msn.com

Note: New Email Address
Edward@Erfurtlaw.com

March 26, 2015

Iris L. Darst, MBA
Chief Fiscal Officer
Village of South Bloomfield
5023 S. Union Street
South Bloomfield, OH 43103

RE: FREEDOM OF INFORMATION REQUEST
Pursuant to Ohio Revised Code §149.43, et seq.

Dear Ms. Darst;

I am in receipt of your response to the FOIA request of Tom Hawkins. Thank you for your rapid response.

There are, however, items that we believe we are entitled to which were not included in your responses.

1. The first request sought all records regarding the tap in of the sewer. You have provided a single sheet reflecting the sanitary sewer tap account but this record does not establish or prove that a tap in actually was installed. There must be records for the drawings and plans of such tap in as well as approvals for the final tap in. We would request all of these documents as well, especially in light of request number two where you have provided us with the water tap in fee application.
2. From your record on the water tap in fee it would appear that a water tap in is in existence for this location. However, from your records it is evident that a water tap in does not actually exist. Therefore I have questions about the validity of this document evidencing a tap in. I want a clarification with regard to this water tap in; it either exists or does not.
3. With regard to request number three; I see no records that have been provided to us reflecting any repairs or maintenance on either waterline or sewer line. If no such records were generated or exist then please state so.
4. You have included what appeared to be bills and statements for these services which include charges for both water and sewer. If there is no water tap in then

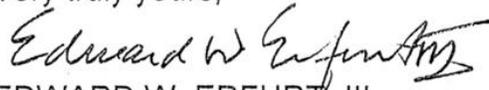
B

your charges have not been proper. We are requesting copies of all records pertaining to this account which would include credits given for your improper accounting of water and charges for late fees for the water charges.

5. Request number five asks whether or not account number 1807 is different from the previous records and I have no indication as to whether that is a separate account or not.
6. You also have not indicated any records pertaining to a water meter at this location. I need clarification as to whether or not there has ever been a water meter on this parcel.
7. Item number seven is self descriptive and is not been responded to.
8. Item number eight has not been responded to as far as actual water usage.
9. Item number nine has asked for water usage for a specific period of time and we had no response to that request.
10. Your response also fails to give any indication as to how sewer charges are calculated as well as the charges for city water. I do note from your response that late fees are calculated on 10% of the remaining balance compounded monthly. Can you give me some indication as to where the authority exists for such late fees and charges being compounded monthly. I would presume that there must be an ordinance or regulation pertaining to your authority to make these charges and I would like a copy of that ordinance/statute or the citation where that information can be located.
11. Item number 11 requested the building permit and drawings which you must have in your records and we would appreciate a copy of those as well.
12. Item number 12 pertains to your resolution in order to place a lien on the property. Certainly there must be more in your records pertaining to this particular action that occurred in August 2010.
13. Item number 13 requests proof of notice to the property owner for the actions taken on August 17, 2010. I would anticipate certified return receipts or other proof of service.

As I indicated in my earlier correspondence I would request a prompt response to these items which are not been fully complied with and if you expect a significant delay please advise my office.

Very truly yours,


EDWARD W. ERFURT, III

EDWARD W. ERFURT, III
ATTORNEY AT LAW
3442 RIVERSIDE DRIVE
COLUMBUS, OHIO 43221-1752

TELEPHONE
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ewe33@msn.com

May 22, 2015

Iris L. Darst, MBA
Chief Fiscal Officer
Village of South Bloomfield
5023 S. Union Street
South Bloomfield, OH 43103

RE: FREEDOM OF INFORMATION REQUEST
Pursuant to Ohio Revised Code §149.43, et seq.

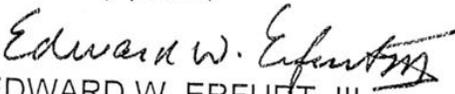
Dear Ms. Darst;

Following up on my client's Freedom of Information Request and my correspondence dated March 26, 2015, I am again writing to you concerning this request. As indicated in my letter of March 26, you only partially responded to my client's request. I have asked that you inform my office when the balance of the documents will be made available to my client and myself for inspection and copying.

We have not heard back from you since the March 26 letter. If you are not going to honor this request, then I would ask that you inform me in writing of that decision. If you are assembling that information, then I would ask that you inform me of an approximate date when the documents will be available for review and copying. If there are costs involved please advise me and we will send you a check.

I would anticipate a response not later than June 3, 2015.

Very truly yours,


EDWARD W. ERFURT, III

C

HAWKINS

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Eric L. Darst, MBA
Chief Fiscal Officer
Village of South Bloomfield
5023 S. Union St
South Bloomfield, OH 43103

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
Florie Talbot

B. Received by (Printed Name) C. Date of Delivery
G. Talbot *5-26-15*

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number
(Transfer from service label)

7011 0470 0002 4195 5800

D