Supreme Court of Ohio Clerk of Court - Filed August 28, 2015 - Case No. 2015-1222

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel. **THE CINCINNATI ENQUIRER**	:	Case No. 2015-1222
STATE OF OHIO, ex rel. **SCRIPPS MEDIA INC. D/B/A WCPO-TV**	:	
STATE OF OHIO, ex rel. **THE ASSOCIATED PRESS**	:	**Original Action in Mandamus**
STATE OF OHIO, ex rel. **RAYCOM MEDIA D/B/A WXIX-TV**	:	
STATE OF OHIO, ex rel. **HEARST CORPORATION D/B/A WLWT-TV**	:	
STATE OF OHIO, ex rel. **SINCLAIR MEDIA III, INC. D/B/A WKRC-TV**	:	
Relators,	:	
v.	:	
JOSEPH T. DETERS, HAMILTON COUNTY PROSECUTING ATTORNEY	:	
Respondent.	:	

ANSWER OF RESPONDENT JOSEPH T. DETERS, HAMILTON COUNTY PROSECUTING ATTORNEY

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. THE CINCINNATI ENQUIRER ET AL.	:	Case No. 2015-1222
Relators,	:	**Original Action in Mandamus**
vs.	:	
JOSEPH T. DETERS, PROSECUTING ATTORNEY OF HAMILTON COUNTY, OHIO	:	**RESPONDENT'S ANSWER**
Respondent.	:	

Comes now the Respondent, Joseph T. Deters, Prosecuting Attorney of Hamilton County, Ohio, by and through counsel and for his Answer to the Complaint for Writ of Mandamus states as follows:

RESPONDENT'S FIRST DEFENSE

1. Respondent admits the allegations of paragraph 1 of the Complaint for Writ of Mandamus.

2. Respondent admits the allegations of paragraph 2 of the Complaint for Writ of Mandamus.

3. Respondent admits the allegations of paragraph 3 of the Complaint for Writ of Mandamus.

4. Respondent admits the allegations of paragraph 4 of the Complaint for Writ of Mandamus.

5. Respondent admits the allegations of paragraph 5 of the Complaint for Writ of Mandamus.

6. Respondent admits the allegations of paragraph 6 of the Complaint for Writ of Mandamus.

7. Respondent admits the allegations of paragraph 7 of the Complaint for Writ of Mandamus.

8. Respondent admits that the Hamilton County Prosecutor's Office is a Public Office as defined by *R.C.149.011(A)* as alleged in paragraph 8 of the Complaint for Writ of Mandamus. Respondent denies the remaining allegations of paragraph 8 of the Complaint for Writ of Mandamus that all records maintained by the Hamilton County Prosecutor's Office are public records, because:

A. *R.C. 149.011(G)* defines a record as a document, device, or item that "serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office." The video sought by Relators does not serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office of the Respondent Hamilton County Prosecutor.

B. *R.C. 149.43(A)(1)(h)* excepts "confidential law enforcement records" from the definition of public records. The video sought by Relators is a confidential law enforcement record.

C. *R.C. 149.43(A)(1)(g)* excepts "trial preparation records" from the definition of public records. The video sought by Relators is a "trial preparation record."

D. The most recent reported Ohio case law, *State ex rel. Miller v. Ohio State Patrol*, 14 N.E. 396, 2014-Ohio-2244, {¶38}(12 Dist.) defines a cruiser camera video as a "confidential law enforcement record" and unavailable as a "public record." A body camera video is the functional equivalent of a cruiser camera video.

9. Respondent denies the allegations of paragraph 9 of the Complaint for Writ of Mandamus because he is without sufficient knowledge of the communications between Rebecca Butts and other persons or entities.

10. Respondent denies the allegations of paragraph 10 of the Complaint for Writ of Mandamus because he is without sufficient knowledge of the communications between Rebecca Butts and other persons or entities.

11. Respondent denies the allegations of paragraph 11 of the Complaint for Writ of Mandamus because he is without sufficient knowledge of the communications between Rebecca Butts and other persons or entities.

12. Respondent admits the allegations of paragraph 12 of the Complaint for Writ of Mandamus that Julie Wilson sent an email to all Relators which is recited in paragraph 12 of the Complaint for Writ of Mandamus. The contents of the email sent to all Relators included an additional opening sentence that is omitted from the allegations of Paragraph 12 of the Complaint for Writ of Mandamus.

13. Respondent denies the allegations of paragraph 13 of the Complaint for Writ of Mandamus because he is without sufficient knowledge of the communications between Jill Parrish and other persons or entities.

14. Respondent admits the allegation of paragraph 14 of the Complaint for Writ of Mandamus that Julie Wilson sent an email to all Relators as recited in paragraph 14 of the Complaint for Mandamus. The contents of the email sent to all Relators included additional opening sentences that are omitted from the allegations of Paragraph 14 of the Complaint for Writ of Mandamus.

15. Respondent admits the allegations of paragraph 15 of the Complaint for Writ of Mandamus.

16. Respondent admits the allegations of paragraph 16 of the Complaint for Writ of Mandamus that Julie Wilson sent an email to all Relators as recited in paragraph 16 of the Complaint for Mandamus. The contents of the email sent to all Relators included additional opening sentences that are omitted from the allegations of Paragraph 16 of the Complaint for Writ of Mandamus.

17. Respondent admits the allegation of paragraph 17 of the Complaint for Writ of Mandamus describing Dan Sewell's communication to Julie Wilson.

18. Respondent admits the allegation of paragraph 18 of the Complaint for Writ of Mandamus and further states that Dan Sewell was sent the emails referenced in paragraphs 12, 14, and 16 of the Complaint for Writ of Mandamus.

19. Respondent denies the statement of paragraph 19 of the Complaint for Writ of Mandamus because he is without sufficient knowledge of the communications between Teresa Weaver and other persons or entities.

20. Respondent admits the allegation of paragraph 20 of the Complaint for Writ of Mandamus that Julie Wilson sent an email to all Relators as recited in paragraph 20 of the Complaint for Writ of Mandamus. The contents of the email sent to all Relators included an additional opening sentence that is omitted from the allegation of Paragraph 20 of the Complaint for Writ of Mandamus. In addition, the designation of the letters is not accurate.

21. Respondent admits the allegations of paragraph 21 of the Complaint for Writ of Mandamus.

22. Respondent admits the allegations of paragraph 22 of the Complaint for Writ of Mandamus.

23. Respondent denies for lack of knowledge what information, documents, or exhibits that were released by Ms. Miefert as alleged in paragraph 23 of the Complaint for Writ of Mandamus.

24. Respondent denies the allegations of paragraph 24 of the Complaint for Writ of Mandamus. In addition, Respondent has no duty to "prove" his reasons for denial of Relators' demands.

25. Respondent denies the allegations of paragraph 25 of the Complaint for Writ of Mandamus.

26. Respondent denies the allegations of paragraph 26 of the Complaint for Writ of Mandamus as "no adequate alternative remedy" is not an element of Writ of Mandamus in public records cases.

27. Respondent denies the allegations of paragraph 27 of the Complaint for Writ of Mandamus.

28. Respondent denies the allegations of paragraph 28 of the Complaint for Writ of Mandamus.

SECOND DEFENSE

29. Respondent denies all allegations of the Complaint not specifically admitted to be true.

THIRD DEFENSE

30. Respondent, on July 29, 2015, shortly after 1:00 p.m., released the body camera video requested by Relators immediately after the Grand Jury concluded its deliberations and returned indictment B-1503961. Respondent did so within a "reasonable time" (within eight business

days) as set forth in *R.C. 149.43(B)(7)*, notwithstanding, and Respondent asserts, that the video sought by Relators was not and is not a "record" of the Hamilton County Prosecutor's Office as provided for in *R.C. 149.011(G)* and, presently, is not a "public record."

31. The pending case is moot but Respondent concedes that it is a matter capable of repetition but evading review and, accordingly, Respondent would make no objection if the Court decided to entertain the matter and decide the case on the merits.

FOURTH DEFENSE

32. This Court should not award attorney fees or any penalty against Respondent, because the Respondent correctly applied the reported case law interpreting the exceptions to the definition of "public record" contained in *R.C. 149.43(A)(1)(h)* "confidential law enforcement records" and *R.C. 149.43(A)(1)(g)* "trial preparation records" and because the information sought was not a "record," as defined in *R.C. 149.011(G)*, of the Hamilton County Prosecutor's Office.

FIFTH DEFENSE

33. The "common sense" referred to by Assistant Prosecuting Attorney Julie Wilson is a reference to the harm that premature release of the body camera video could have caused.

34. The first problem relates to potential witnesses. If they view the body camera video before giving testimony before the Grand Jury, it becomes impossible to differentiate whether the witness's testimony is actually what the witness is able to perceive, remember and relate, or merely an interpretation of the portions of the body camera video the various media choose to broadcast or the witness chooses to view.

35. Where allegations of police misconduct are involved, the fact that the officers involved have given internal affairs statements about the events, does not remove the potential taint of the officers' testimony. Internal affairs statements are coerced

statements and inadmissible in any criminal trial against police officers under *Garrity v. New Jersey*, 385 U.S. 493, 87 S. Ct. 616 (1967).

36. Where there is great public interest in a case, such as this one, it is likely that the media outlets will consult "experts" to render opinions about the contents of the body camera video, and witnesses may consciously or unconsciously alter their testimony based upon the "expert" opinions broadcast about the video.

37. Where there is great public interest in a case and the body camera video is broadcast to the public at large before an investigation is completed, persons seeking publicity or with political motives may come forward claiming to be witnesses and fabricating firsthand knowledge of the events, when in fact they are merely rendering an opinion about the content of the video. If the body camera video is not broadcast, it is unlikely that such persons will have sufficient detailed information to fabricate testimony.

38. The premature release of the body camera video will interfere with the right of all involved to a full, fair and accurate determination of the facts.

39. Relator The Cincinnati Enquirer specifically acknowledged in an editorial that Respondent Deters had acted responsibly.

40. Respondent responded to the demands of Relators within a reasonable time.

SIXTH DEFENSE

41. Relators The Cincinnati Enquirer, Scripps Media Inc. D/B/A WCPO-TV and Raycom Media D/B/A WXIX-TV lack standing to bring this action because none of them ever made a request to the Hamilton County Prosecutor's Office for release of the body camera video.

WHEREFORE, Respondent having fully answered the Complaint for Writ of Mandamus, respectfully prays that Relators' Complaint for Mandamus against Respondent be

denied, at Relators' cost and expense, and that the Court grant Respondent such further relief as it deems just and proper under the circumstances of the cause.

Respectfully submitted,

JOSEPH T. DETERS
PROSECUTING ATTORNEY
HAMILTON COUNTY, OHIO

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Attorneys for Respondent, Joseph T. Deters, Prosecuting Attorney of Hamilton County, Ohio

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served via regular U.S. mail on the 28th day of August, 2015, upon:

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