

IN THE SUPREME COURT OF OHIO

STATE ex rel. Joseph Mead,

Relator

v.

City of Dayton, Ohio

Respondent.

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:

Original Action in
Mandamus

Complaint for Alternative and Peremptory Writs of Mandamus

Joseph Mead
2121 Euclid Avenue, UR 317
Cleveland, OH 44115

Relator

City of Dayton
C/O Shelley Dickstein, City Manager
101 W. 3rd St.
Dayton, OH 45402

Respondent

Drew S. Dennis (0089752)
Freda J. Levenson (0045916)
ACLU of Ohio Foundation, Inc.
4506 Chester Avenue
Cleveland, Ohio 44103
Tel: 216-472-2220
Fax: 216-472-2210
ddennis@acluohio.org
flevenson@acluohio.org

Attorneys for Relator

INTRODUCTION

1. Relator Joseph Mead brings this action to compel Respondent City of Dayton to comply with Ohio law and provide him the public records he requested nearly three months ago. Ohio's public records law grants individuals the right to request public records and requires government agencies to transmit copies of those records "within a reasonable period of time." R.C. 149.43(B)(7). Pursuant to this law, on October 27, 2015, Relator Mead submitted sixteen requests for public records to Respondent. Respondent, however, has not only flouted its clearly defined duty to provide the requested records, but it has also failed even to respond to or acknowledge Relator Mead's requests, and instead has completely ignored them. Therefore, Relator Mead respectfully submits this complaint for alternative and peremptory writs of mandamus to require Respondent City of Dayton to provide him the records he seeks.

JURISDICTION

2. This Court has jurisdiction to hear this case pursuant to Article IV Section 2(B)(1)(b) of the Ohio Constitution. " 'Mandamus is the appropriate remedy to compel compliance with R.C. 149.43, Ohio's Public Records Act.' " *State ex rel. DiFranco v. S. Euclid*, Slip Opinion No. 2015-Ohio-4914, ¶ 10, quoting *State ex rel. Physicians Comm. For Responsible Medicine v. Ohio State Univ. Bd. Of Trustees*, 108 Ohio St.3d 288, 2006-Ohio-903, 843 N.E.2d 174, ¶ 6.

PARTIES

3. Relator Joseph Mead is a resident of Summit County, Ohio and works as a faculty member at an Ohio university.

4. Respondent City of Dayton is a public entity that is charged with maintaining its records and making copies of them available within a reasonable period of time after they have been requested. R.C. 149.43.

FACTS

5. As part of his personal and professional interest in municipal regulations on charitable solicitations, Relator Mead seeks public records pertaining to Respondent City of Dayton's panhandling ordinance.

6. In pursuit of these records, on October 27, 2015, Relator Mead transmitted via email (Exhibit 1) a letter containing sixteen requests for public records (Exhibit 2). He sent the email to the address that Respondent City of Dayton designates on its website to be the appropriate address for the submission of requests for public records, cityhall@daytonohio.gov (Exhibit 3).

7. Four weeks after making his requests, on November 25, 2015, having received no response, Relator Mead sent the requests again, this time via certified mail. (Exhibit 4). In addition, this time, Relator Mead also included a letter asking that Respondent reply by December 8, 2015. (Exhibit 5). Relator Mead also sent the requests again by email to the Respondent's designated email address, and included a copy of the certified letter. (Exhibit 6). Relator Mead received confirmation that his certified letter reached its destination on December 1, 2015. (Exhibit 7).

8. This Court should issue a writ of mandamus because Relator Mead has a clear legal right to the records he requested, and Respondent has a clear legal duty to provide them within a reasonable period of time. Ohio's Public Records Act, R.C. 149.43(B)(7), requires that public entities, "[u]pon request . . . transmit a copy of a public record to any person by United

States mail or by any other means of delivery or transmission within a reasonable period of time after receiving the request for the copy.” Relator Mead twice submitted his sixteen requests for records held by Respondent, including one submission that was transmitted via certified mail. Respondent has ignored his requests for three months, contrary to Ohio law that requires delivery of requested records within a reasonable period. Indeed “the absence of *any* response over a *two-month period* constitutes a violation” of Ohio’s public records laws. *State ex rel. DiFranco v. S. Euclid*, 138 Ohio St.3d. 367, 2014-Ohi-538, 7 N.E.3d 136, ¶ 21.

9. Because Respondent has failed to fulfill its duty by failing to provide records - or even responding - within a reasonable period of time, Relator Mead is an aggrieved person under the law. Therefore, this Court should issue a writ of mandamus compelling Respondent to provide Relator Mead copies of the public records he requested.

CLAIMS FOR RELIEF

10. WHEREFORE, Relator Mead prays for a peremptory writ and/or an alternative writ of mandamus compelling Respondent City of Dayton to provide the records that Relator Mead sought on October 27, 2015, in conjunction with statutory damages, attorney fees, costs and all other relief permitted by law.

Respectfully submitted,

/s Drew S. Dennis

Drew S. Dennis (0089752)

Freda J. Levenson (0045916)

ACLU of Ohio Foundation, Inc.

4506 Chester Avenue

Cleveland, Ohio 44103

Tel: 216-472-2220

Fax: 216-472-2210

ddennis@acluohio.org

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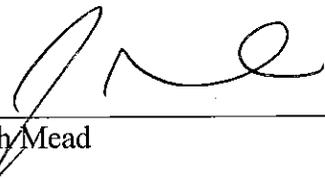
Attorneys for Relator

STATE OF OHIO)
COUNTY OF CUYAHOGA) ss:

AFFIDAVIT OF JOSEPH MEAD

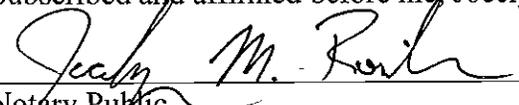
I, Joseph Mead, the relator in this action, have read the foregoing complaint and have personal knowledge of the allegations and facts within it. To the best of my knowledge, the facts contained in the complaint are true, and each exhibit attached to it is a true and accurate copy of the original.

The undersigned hereby affirms that the statements made in the foregoing affidavit are true, under penalty of perjury.



Joseph Mead

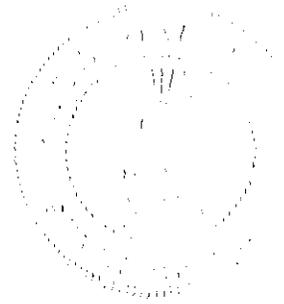
Subscribed and affirmed before me, Jocelyn M. Rosnick, this 20 day of January, 2016.



Notary Public

Notary Public - State of Ohio
My Commission Has No Expiration Date
My Commission Expires: _____ ORC 147.03

Seal:



Public records request

Joseph W Mead

Tue 10/27/2015 8:35 PM

To: cityhall@daytonohio.gov <cityhall@daytonohio.gov>;

Bcc: Vera D Vogelsang-Coombs <v.vogelsang-coombs@csuohio.edu>; jmead@umich.edu <jmead@umich.edu>;

1 attachment (317 KB)

Mead Dayton Public Records Request.pdf;

Dear Public Records Officer,

Please respond to the various public records requests made in the attached document.

All my best,
Joe

Joseph W. Mead
Assistant Professor
Cleveland State University
Maxine Goodman Levin College of Urban Affairs
Cleveland-Marshall College of Law





Maxine Goodman Levin
College of Urban Affairs
CM LAW
Cleveland-Marshall
College of Law

Joseph Mead, Esq.
Assistant Professor
2121 Euclid Ave., UR 317
Cleveland, OH 44115
j.mead@csuohio.edu

October 27, 2015

By Email and Certified Mail
Public Records Officer (cityhall@daytonohio.gov)
City of Dayton
101 W. Third Street
Dayton, OH 45402

Dear Public Records Official,

I write to request several categories of public records regarding the adoption and implementation of Dayton's constitutionally-questionable restrictions on the solicitation of funds, which are set forth in Dayton Ordinance Sections 137.14 through 137.99. Specifically, please provide the following public records:

Request No. 1: Fundraising appeals made by Dayton's elected officials as part of their election or re-election efforts from January 1, 2009, until the present.

Request No. 2: Any charitable or other fundraising carried out by any member of the City Commission using their official title or City email address from January 1, 2009, until the present.

Request No. 3: Records reflecting efforts to raise funds through donations conducted by the Dayton police or fire departments from January 1, 2009, until the present

Request No. 4: The text of panhandling or fund solicitation ordinances proposed to the Commission between 1990 and 2015.

Request No. 5: Any written comments, statements, social media, reports, or other communications provided by the public (including community members, businesses, organizations, etc.) to the City or Commission on panhandling and solicitation of funds.



Request No. 6: Any video or audio recordings of Commission or committee meetings where panhandling or charitable solicitation restrictions were discussed, including Commission meetings on November 13, 1991, December 27, 2000, June 15, 2011, and June 22, 2011.

Request No. 7: Any public statements, emails, or social media statements made by any member of the City Commission regarding panhandling or fund solicitation in the City.

Request No. 8: Any notes, minutes, video or audio recording, or transcript of any hearings conducted by the Commission, individual Commissioners, or a committee on the topic of panhandling or solicitation.

Request No. 9: All police reports or other records reflecting or relating to the citation, ticketing, charging, detention, or arrest, of any individual for a violation of Ordinances 137.14 through 137.20.

Request No. 10: Any reports or summary statistics on number of tickets for panhandling/solicitation aggregated by time or location

Request No. 11: Police reports reflecting, constituting, or relating to any police officer response to any complaint of begging or panhandling, or about people who are homeless.

Request No. 12: All records (including but not limited to training materials, forms, and policy or procedure manuals) describing, implementing, reflecting, or consisting of the policies, protocols or procedures employed or prescribed by Dayton law enforcement to enforce Ordinances 137.14 through 137.20.

Request No. 13: All applications for registration received by the Dayton Police Department from January 1, 2010 through the present, and all documents relating to all such applications.

Request No. 14: All solicitation registrations issued by the Dayton Police Department from January 1, 2010 through the present.

Request No. 15: All records showing, discussing, or relating to the denial of any application for a solicitation registration that was received by the Dayton Police Department from January 1, 2010 through the present.

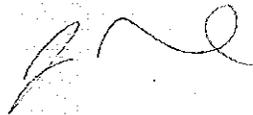
Request No. 16: Records reflecting the City of Dayton's designation of times for trick-or-treating, "beggar's night" or similar events in the City around the end of October, from 2009 until the present.

Although these requests are being submitted in a single letter for your convenience, please treat them as separate requests, and respond to each as expeditiously as possible. If you are unable to find any records for one or more of the requests, please let me know. If any portion of a responsive record is exempted from disclosure by the Ohio Revised Code, please specify the basis for redaction and release all non-exempt portions of the record. Additionally, please respond to each request on a rolling basis as records are available.

Please provide all electronic records in the format in which they are normally kept. Please provide all paper records in electronic, Portable Document Format (PDF) format. I consent for you to send records to me electronically by email (JMead@umich.edu) or, if email is impractical, by postal mail (to the address at the top of this letter).

Please feel free to contact me with any questions, requests for clarification, or other issues. I look forward to working with you to resolve this public record request quickly and amicably.

Sincerely,

A handwritten signature in black ink, appearing to read 'J Mead', with a stylized flourish at the end.

Joseph Mead

City of Dayton Public Information Request Form

Request edit access

The following information is requested on a voluntary basis to help City of Dayton staff respond to your public information request more efficiently. According to the State of Ohio's Public Records Act, you are not required to provide the following information to submit a Public Information Request. However, providing the information may help staff gather your documents in a more accurate and timely manner. You can also submit a public information request by emailing cityhall@daytonohio.gov, faxing 937-333-4269, or visiting 101 W. Third Street, 45402. For more information, call 937-333-3616.

Date of Request

Subject of Request

Your Name (optional)

Your Phone Number (optional)

Your Fax Number (optional)

Your Email Address (optional)

Your Mailing Address (optional)

Documents Requested

Please identify the documents/records being requested. Please be as specific as possible. The more specific your request, the better City staff can locate and retrieve the information in a timely manner.



Receiving Public Documents

How would you like to receive the information you are requesting?

- I will pick up copies at the designated City office.
- I wish to review the information only; no copies necessary at this time.
- Call the phone number listed above to notify me when information is available.
- Mail copies to the mailing address listed above.
- E-Mail copies to the e-mail address listed above (as practical).
- Fax copies to the fax number listed above (as practical).
- I will call the City (937-333-3616) to determine when records are available.

Cost

The cost to obtain documents through a public information request is \$.06 cents per impression plus the actual cost of the medium in which the information is provided (i.e., CD, DVD, videotape, audiotape, etc.). Unless otherwise agreed, payment is due before or at the time the documents are provided. Checks should be made payable to the City of Dayton.

- I understand there is a cost for receiving public records.

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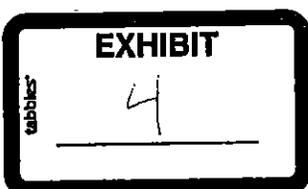
7015 0640 0006 2861 7720

Certified Mail Fee	\$3.45
\$	
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$ 0.00
<input type="checkbox"/> Return Receipt (electronic)	\$ 0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$ 0.00
<input type="checkbox"/> Adult Signature Required	\$ N/A
<input type="checkbox"/> Adult Signature Restricted Delivery	\$ N/A
Postage	\$0.49
\$	
Total Postage and Fees	\$3.94
\$	

0210
 06 Postmark
 Here
 11/25/2015

Sent To
 Street and Apt. No., or PO Box No.
 City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions





Maxine Goodman Levin
College of Urban Affairs



Joseph Mead, Esq.
Assistant Professor
2121 Euclid Ave., UR 317
Cleveland, OH 44115
jmead@csuohio.edu

November 25, 2015

By Email and Certified Mail
Public Records Officer (cityhall@daytonohio.gov)
City of Dayton
101 W. Third Street
Dayton, OH 45402

Dear Public Records Official,

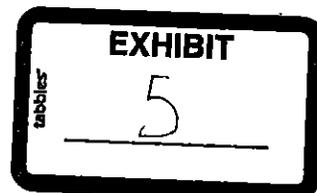
I am writing to follow-up on the enclosed letter, which contains several public record requests and was sent on October 27, 2015. Nearly one month has passed, but I have yet to receive a *single* record or even an acknowledgment that this letter was received. *See State ex rel. Consumer News Serv., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St. 3d 58, 65, 776 N.E.2d 82, 89 (2002) (holding that school district violated Public Records Act by failing to respond to provide records within four business days). This was despite my attempt to make response easier by permitting delivery by email and by offering the option of a rolling production.

Please confirm that you have received these requests and intend to respond promptly. I hope to hear from you by December 8, 2015.

Sincerely,



Joseph Mead



Reply | Delete Junk | ...



Public Records request

JW Joseph W Mead

To: cityhall@daytonohio.gov; Cc: jmead@umich.edu;

Reply |

Wed 11/25/2015 6:39 PM

Sent Items

You forwarded this message on 1/11/2016 3:56 PM

2015.10.27 Dayton Orig...
317 KB

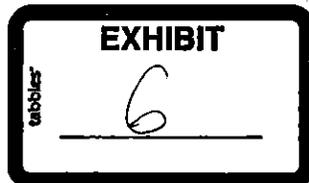
2015.11.25 Dayton lette...
26 KB

Show all 2 attachments (343 KB) Download all Save all to OneDrive - Cleveland State University

Dear Public Records Official,

I'm attaching a copy of a letter sent today following up on public record requests sent on October 27. I look forward to your response.

Best,
Joe



English

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USPS Mobile

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Tracking Number: 70150640000628617720

Updated Delivery Day: Tuesday, December 1, 2015

Product & Tracking Information

Available Actions

Postal Product:
First-Class Mail®

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
December 1, 2015, 7:34 am	Delivered	DAYTON, OH 45401
Your item was delivered at 7:34 am on December 1, 2015 in DAYTON, OH 45401.		
December 1, 2015, 7:04 am	Arrived at Unit	DAYTON, OH 45401
November 27, 2015, 9:52 am	Forwarded	DAYTON, OH
November 27, 2015, 9:37 am	Out for Delivery	DAYTON, OH 45402
November 27, 2015, 9:27 am	Sorting Complete	DAYTON, OH 45402
November 27, 2015, 9:17 am	Arrived at Unit	DAYTON, OH 45406
November 27, 2015, 3:18 am	Departed USPS Destination Facility	DAYTON, OH 45401
November 26, 2015, 8:52 pm	Arrived at USPS Destination Facility	DAYTON, OH 45401
November 25, 2015, 10:43 pm	Departed USPS Facility	CLEVELAND, OH 44101
November 25, 2015, 10:14 pm	Arrived at USPS Origin Facility	CLEVELAND, OH 44101
November 25, 2015, 11:51 am	Departed Post Office	BATH, OH 44210
November 25, 2015, 9:29 am	Acceptance	BATH, OH 44210

Track Another Package

Tracking (or receipt) number



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70150640000628817720



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