

COMPLAINT

Now comes Relator, Dario David Hunter (hereinafter “Dario Hunter”) and for his Complaint against Respondent, the Ohio Department of Education states as follows:

1. This is a mandamus action brought under the Ohio Public Records Act (hereinafter “the Act”), R.C. 149.43, for a writ compelling the Respondent, the Ohio Department of Education (hereinafter “ODE”) to provide Relator Dario Hunter with copies of public records in Respondent’s possession requested by Relator on August 29, 2018 by email for which ODE has acknowledged receipt as well as for for civil penalties and court costs as provided by the Act.
2. As of the date of the filing of this Complaint, Respondent ODE has failed to comply with Dario Hunter’s public records request in violation of the Act by not supplying any of the requested records to Relator.
3. In support of this Complaint, the Relator, Dario Hunter has included his affidavit affirming his personal knowledge of the matters averred therein.
4. This Court has jurisdiction over this original action pursuant to R.C. 149.43(C)(1)(b) and Section 2(B)(1)(b) of Article IV of the Ohio Constitution.
5. Relator Dario Hunter is an Ohio citizen residing at 439 Pasadena Ave., Youngstown, Ohio 44507 in Mahoning County. Dario Hunter is a member of the Youngstown City School District Board of Education (hereinafter “the Board”).
6. Respondent ODE is an Ohio state agency headquartered in Columbus, Franklin County, Ohio. ODE has possession and control of the records that Dario Hunter seeks and is a public office, as defined in R.C. 149.011(A).

7. The records sought by Dario Hunter are public records, defined as any “document, device, or item” that documents “the organization, functions, policies, decisions, procedures, operations; or other activities of the office.” R.C. 149.011(G). The records sought pertain to Respondent ODE’s educational oversight functions and its procedures, operations and decisions in investigating allegations against Youngstown City School District CEO Krish Mohip.
8. The Ohio Public Records Act requires public offices of the State of Ohio, upon request, to release information in their possession to the public unless one of the specific statutory exemptions in R.C. 149.43(A)(1)(a-ff),(B)(1) applies to the information. None of the statutory exemptions is applicable to Dario Hunter’s records request and ODE’s failure to comply with Relator’s request is in violation of this requirement.
9. If a public records request is denied, in part or in whole, the Act requires the responsible agency to provide the requester with “an explanation, including legal authority, setting forth why the request was denied.” R.C. 149.43(B)(3). The Act also requires that any explanation of denial be “provided to the requester in writing” if the initial request was provided in writing. *Id.* ODE has never provided Dario Hunter with an explanation for why it has failed to fulfill his request, let alone a written explanation or one including legal authority, in violation of this requirement.
10. Respondent ODE’s Public Records Policy, maintained on its website at <http://education.ohio.gov/Miscellaneous/Privacy/Public-Records-Policy>, last accessed on September 28, 2018, states in Section 2.4, “Each request should be evaluated for

an estimated length of time required to gather the records. Routine requests for records should be satisfied within a reasonable amount of time.”

11. ODE policy states further, “If a request is deemed significantly beyond “routine,” such as seeking a voluminous number of copies or requiring extensive research, the acknowledgement must include the following: Section 2.4a – An estimated number of business days it will take to satisfy the request.”
12. Respondent ODE failed to comply with its own Public Records Policy, in violation of R.C. 149.43(B)(7)(b), by failing to respond to Relator’s request within a reasonable period of time.
13. ODE has not informed the Relator that his request has been deemed other than routine under its policy. However, should ODE claim in defense that the request is non-routine, then ODE has failed to comply with its own Public Records Policy, in violation of R.C. 149.43(B)(7)(b), by failing to provide the estimated number of business days it will take to satisfy the request in its acknowledgement of receipt.

FACTS GIVING RISE TO RELATOR’S
CLAIMS FOR RELIEF

14. On August 29, 2018, Relator Dario Hunter served a public records request on Respondent ODE by electronic mail (hereinafter, “the records request”). The request was sent to Diane Lease, ODE Chief Legal Counsel, and Brittany Halpin, ODE Associate Director for Media Relations. A true and exact copy of the electronic mail is attached hereto as Exhibit A. Dario Hunter’s electronic mail specifically stated that it was a public records request.

15. The records request sought records about “the ODE investigation related to former Academic Distress Commission Chair Brian Benyo’s complaint that Youngstown CSD CEO Krish Mohip may have engaged in inappropriate conduct with a female attorney for the District and a job applicant.” It asked “[H]as ODE taken any investigative steps on this issue or requested that any third parties (e.g. law firms) do so on its behalf? If so, please provide copies of any communication, reports and any other documentation related to such an investigation.”
16. The records request also asked for “copies of any communication and any other documentation related to the ODE’s handling of this issue since April 5, 2018 - regardless of whether or not said handling included further investigation of the complaint.”
17. On August 30, 2018, Dario Hunter received an electronic mail communication from Sherry Worstell, ODE’s Compliance Officer, acknowledging the receipt of his records request. This message stated: “ Please consider this an acknowledgment of receipt of your public records request dated August 29, 2018. ODE will locate any responsive public records and provide them in a reasonable amount of time and in accordance with Ohio Public Records law.” A true and exact copy of this message is attached hereto as Exhibit B.
18. This was the only communication from the Respondent ever received by Relator in regards to the records request.
19. As of the date of the filing of this Complaint, no documents have been provided to Relator by Respondent in response to his public records request of August 29, 2018, and no other communications regarding that request have been received by Relator from

Respondent.

20. Respondent ODE has failed to provide the public documents requested by Relator Dario Hunter within a reasonable period of time as required by R.C. 149.43(B)(1).
21. Respondent ODE has constructively denied Relator Dario Hunter's public records request by failing to provide Relator with the documents requested within a reasonable period of time. As of the filing date of this Complaint, Respondent ODE has still not complied with Relator Dario Hunter's public records request.
22. Moreover, Respondent ODE has failed to provide Relator with a "written [...] explanation, including legal authority, setting forth why the request was denied" as required by R.C. 149.43(B)(3).
23. In light of ODE's failure to produce the requested records without any explanation and its failure to comply with its duties under Ohio's Public Records Act, Dario Hunter is filing this Complaint for a writ of mandamus.

RELATOR'S CLAIM

24. ODE has possession of the records requested by Dario Hunter in his public records requests identified above.
25. These records are public records under the Public Records Act.
26. Dario Hunter has a statutory right to the records he seeks under the Public Records Act and no legal basis exists for ODE's refusal to provide the records.

WHEREFORE, Relator Dario Hunter respectfully requests that this Court

- (1) Issue a Peremptory Writ in Mandamus ordering Respondent ODE to immediately provide the requested records to Relator; and
- (2) Award Relator court costs in this action; and
- (3) Award Relator Dario Hunter all statutory damages applicable under R.C. 149.43(C)(1); and
- (4) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s Dario David Hunter

Dario David Hunter
Relator
439 Pasadena Ave.
Youngstown, OH 44507
Tel: (330) 519-5969
yisroelhunter@yahoo.com

STATE OF OHIO)
) SS:
COUNTY OF WAYNE)

VERIFYING AFFIDAVIT
FOR WRIT OF MANDAMUS

I, DARIO DAVID HUNTER, being duly sworn, state under penalty of law that the following is true:

1. I have reviewed each and every line in the foregoing complaint for writ of mandamus and the exhibits attached thereto.
2. I am personally familiar with all of the matters alleged in the complaint.
3. The facts and allegations contained in the foregoing complaint are true.
4. The exhibits attached to the complaint are true and exact copies of the originals and are what they purport to be.
5. I have a good faith belief that Respondent, the Ohio Department of Education, has failed to comply with Ohio's Public Records Act for the reasons stated in the complaint

Dario D. Hunter
Signature of Affiant

DARIO DAVID HUNTER
Printed Name

SWORN TO before me and subscribed in my presence this 28 day of September 2018.

Holly E. Arnold
Notary Public
Holly E. Arnold
My Commission Expires May 27, 2021.

From: **Dario Hunter** d_hunter@alumni.princeton.edu
Subject: ODE Investigation - Benyo's Complaint Against CEO Mohip
Date: August 29, 2018 at 1:20 PM
To: diane.lease@education.ohio.gov, brittany.halpin@education.ohio.gov



Re: Follow up on ODE Investigation - Benyo's Complaint Against CEO Mohip

I am writing to follow up on the ODE investigation related to former Academic Distress Commission Chair Brian Benyo's complaint that Youngstown CSD CEO Krish Mohip may have engaged in inappropriate conduct with a female attorney for the District and a job applicant. My questions and public records requests are as follows:

On April 5, 2018, the ODE requested that Atty. Lebowitz of Baker & Hostetler interview Benyo and supplement the response with the results of that interview and any additional interviews. Since that date, has ODE taken any investigative steps on this issue or requested that any third parties (e.g. law firms) do so on its behalf? If so, please provide copies of any communication, reports and any other documentation related to such an investigation.

Additionally, please provide copies of any communication and any other documentation related to the ODE's handling of this issue since April 5, 2018 - regardless of whether or not said handling included further investigation of the complaint.

I would like the public records requested to be provided via email. Please reply to confirm that you have received this request.

Thanks,
Dario D. Hunter
Board Member, Youngstown Bd. of Ed.

EXHIBIT (A)

From: Sherry.Worstell@education.ohio.gov
Subject: ODE Investigation - Benyo's Complaint Against CEO Mohip
Date: August 30, 2018 at 10:49 AM
To: d_hunter@alumni.princeton.edu



Please consider this an acknowledgment of receipt of your public records request dated August 29, 2018. ODE will locate any responsive public records and provide them in a reasonable amount of time and in accordance with Ohio Public Records law.

Sherry Worstell

Compliance Officer

Ohio Department of Education

25 South Front Street, MS 607| Columbus, Ohio 43215-4183

(614) 995-9934

Sherry.Worstell@education.ohio.gov

education.ohio.gov



From: Dario Hunter [mailto:d_hunter@alumni.princeton.edu]

Sent: Wednesday, August 29, 2018 1:21 PM

To: Lease, Diane <Diane.Lease@education.ohio.gov>; Halpin, Brittany <Brittany.Halpin@education.ohio.gov>

Subject: ODE Investigation - Benyo's Complaint Against CEO Mohip

Re: Follow up on ODE Investigation - Benyo's Complaint Against CEO Mohip

I am writing to follow up on the ODE investigation related to former Academic Distress Commission Chair Brian Benyo's complaint that Youngstown CSD CEO Krish Mohip may have engaged in inappropriate conduct with a female attorney for the District and a job applicant. My questions and public records requests are as follows:

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Additionally, please provide copies of any communication and any other documentation related to the ODE's handling of this issue since April 5, 2018 - regardless of whether or not said handling included further investigation of the complaint.

I would like the public records requested to be provided via email. Please reply to confirm that you have received this request.

Thanks,
Dario D. Hunter

EXHIBIT (B)

Board Member, Youngstown Bd. of Ed.

EXHIBIT (B)