

[Cite as *Sinclair Media III, Inc. v. Cincinnati*, 2019-Ohio-2624.]

SINCLAIR MEDIA III, Inc. D/B/A  
WKRC-TV

Requester

v.

CITY OF CINCINNATI

Respondent

Case No. 2018-01357PQ

Special Master Jeffery W. Clark

REPORT AND RECOMMENDATION

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{¶1} On May 6, 2018, Reporter Angenette Levy made a public records request on behalf of requester Sinclair Media III, Inc. d/b/a WKRC-TV (Sinclair Media) to respondent City of Cincinnati’s City Solicitor Paula Boggs-Muething:

This is an open records request for all text messages from Cincinnati city council members, Mayor John Cranley and Harry Black in which Black’s employment status is discussed. \* \* \*

We are also requesting any messages in which votes on Black’s employment are discussed and attempts to sway other members of council. I am also requesting any text messages involving the so-called “Gang of 5” in which Harry Black’s employment is discussed – including any text messages in which race is discussed.

The text messages we are requesting are between March 1 and April 12, 2018.

(Complaint, Exh. A.) On May 25, 2018, Levy re-sent the request to the City Solicitor’s Chief Counsel, Roshani Hardin. Hardin responded, “We will get that item assigned and provide you with the responsive documents.” (*Id.*) On July 17, 2018, Levy sent a follow-up inquiry. (*Id.* at 1.) The City did not respond further.

{¶2} On October 11, 2018, Sinclair Media filed this action under R.C. 2743.75, alleging denial of access to public records in violation of R.C. 149.43(B). Following unsuccessful mediation, the City filed a combined response and motion to dismiss (Response) on December 17, 2018. On February 13, 2018, the City filed a supplemental response and documents. On February 19, 2019, Sinclair Media filed a

reply. On March 22, 2019, the City filed a second supplemental response. The City has filed 132 pages of withheld text messages under seal.

### **Purpose of the Public Records Act**

{¶3} The purpose of the Public Records Act “is to expose government activity to public scrutiny, which is absolutely necessary to the proper working of a democracy.” *State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St.3d 350, 355, 673 N.E.2d 1360 (1997). “Public records are one portal through which the people observe their government, ensuring its accountability, integrity, and equity while minimizing sovereign mischief and malfeasance.” *Kish v. Akron*, 109 Ohio St.3d 162, 2006-Ohio-1244, 846 N.E.2d 811, ¶ 16. Further,

the people’s right to know includes ‘not merely the right to know a governmental body’s final decision on a matter, but the ways by which those decisions were reached.’ See *State ex rel. Gannett Satellite Information Network v. Shirey* (1997), 78 Ohio St.3d 400, 404, 1997 Ohio 206, 678 N.E.2d 557, citing *White*, 76 Ohio St.3d at 419, 667 N.E.2d 1223.

*Id.* at ¶ 26. The public’s right to access records of public officials is construed broadly:

The broad language used in R.C. 149.43 manifests the General Assembly’s intent to jealously protect the right of the people to access public records. We are acutely aware of the importance of the right provided by the act and the vulnerability of that right when the records are in the hands of public officials who are reluctant to release them.

*Rhodes v. New Phila.*, 129 Ohio St.3d 304, 2011-Ohio-3279, 951 N.E.2d 782, ¶ 21. Therefore, the Act is construed liberally in favor of broad access, and any doubt is resolved in favor of disclosure of public records. *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 13.

### **Motion to Dismiss**

{¶4} The City moves to dismiss on the grounds that, 1) text messages of council members on personal, privately-paid cell phones are not records of the City and are not kept by the City, and, 2) the request is in part overly broad and therefore improper.

(Response at 2.) In order to dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt that the claimant can prove no set of facts warranting relief, after all factual allegations of the complaint are presumed true and all reasonable inferences are made in claimant's favor. *State ex rel. Findlay Publ. Co. v. Schroeder*, 76 Ohio St.3d 580, 581, 669 N.E.2d 835 (1996). As long as there is a set of facts consistent with the complaint that would allow the claimant to recover, dismissal for failure to state a claim is not proper. *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 145, 573 N.E.2d 1063 (1991). However, a party does not state a claim under the Public Records Act when the request is for documents that are not public records. *State ex rel. Steffen v. Kraft*, 67 Ohio St.3d 439, 619 N.E.2d 688 (1993).

### **Text Messages as Public Records**

As used in the Public Records Act:

“Records” includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

R.C. 149.011(G). This definition of records includes “an electronic record” as defined in section 1306.01 of the Revised Code:

“Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.

R.C. 1306.01(G). Text messages – “a short message sent electronically usually from one cell phone to another”<sup>1</sup> – easily meet the first part of the three-part definition, as an “electronic record.” The second part of the definition is met whenever the message is created or received by or comes under the jurisdiction of any public office. Since “a public office cannot function without the employees and agents who work in that office,”

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<sup>1</sup> *Merriam-Webster Online Dictionary* (2019), [https://www.merriam-webster.com/dictionary/text\\_message](https://www.merriam-webster.com/dictionary/text_message) (accessed Apr. 12, 2019).

*State ex rel. Plunderbund Media, L.L.C. v. Born*, 141 Ohio St.3d 422, 2014-Ohio-3679, 25 N.E.3d 988, ¶ 20, this includes text messages created or received by a public employee in their official capacity. A text message completes the definition of “records” if it satisfies the third requirement – to document the organization, functions, etc. of the office. Finally, a “record” is a “public record” where it is “kept by” a public office.<sup>2</sup>

{¶5} The City asserts that text messages on personal, privately-paid cell phones are categorically excluded from the definitions of records and public records. Sinclair Media asserts that text messages, like other text media, are records and public records whenever they satisfy the terms of the statutory definitions. Ohio case law uniformly accepts text messages as potential records. In *Glasgow*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, at ¶ 20, the Supreme Court stated:

The requested e-mail messages, *text messages*, and correspondence are “records” subject to the Public Records Act if they are “(1) documents, devices, or items, (2) created or received by or coming under the jurisdiction of the state agencies, (3) which serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.” *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005 Ohio 4384, 833 N.E.2d 274, P 19; R.C. 149.011(G).

(Emphasis added.) The Court resolved the status of the particular text messages in *Glasgow* on their failure to meet the third part of the definition:

The evidence is uncontroverted that Jones’s text messages do not document work-related matters. They are therefore not records subject to R.C. 149.43. *Johnson*, 106 Ohio St.3d 160, 2005 Ohio 4384, 833 N.E.2d 274, P 25. In so holding, we need not decide the issue of whether text messages could generally constitute items subject to disclosure under the Public Records Act.

*Id.* at ¶ 25. In all subsequent reported decisions, requests for text messages have been reviewed without any question that they are public records if they meet the statutory

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<sup>2</sup> “Public record” means records kept by any public office. R.C. 149.43(A)(1).

definitions: *State ex rel. Kesterson v. Kent State Univ.*, Slip Opinion No. 2018-Ohio-5110; *State ex rel. Parisi v. Dayton Bar Assn. Certified Griev. Comm.*, 2017-Ohio-9394, 103 N.E.3d 179 (2nd Dist.); *State ex rel. Philbin v. Cleveland*, 8th Dist. Cuyahoga No. 104106, 2017-Ohio-1031; *State ex rel. Cmty. Journal v. Reed*, 2014-Ohio-5745, 26 N.E.3d 286, ¶ 4 (12th Dist.); *State ex rel. Davis v. Metzger*, 5th Dist. Licking No. 12-CA-36, 2013-Ohio-1699; *State ex rel. Sinchak v. Chardon Local Sch. Dist.*, 11th Dist. Geauga No. 2012-G-3078, 2013-Ohio-1098, ¶ 6; *Narciso v. Powell Police Dept.*, Ct. of Cl. No. 2018-01195PQ, 2018-Ohio-4590, ¶ 32-33. Thus, as with paper, voicemail, fax, email, or any other means by which office communications are recorded, employee text messages can be public records. *Cincinnati Enquirer v. Cincinnati*, Ct. of Cl. No. 2018-01339PQ, 2019-Ohio-969, ¶ 6-8, including text messages on personal accounts and devices. *Id.* at ¶ 10-15. The City cites no case to the contrary.

{¶6} The implicit acceptance by Ohio courts of text messages as potential public records is consistent with express holdings in other states. See *Toensing v. A.G.*, 2017 Vt. 99, 206 Vt. 1, 178 A.3d 1000 (public records in private text messaging accounts); *City of San Jose v. Superior Court*, 2 Cal.5th 608, 389 P.3d 848 (2017) (text messages on private electronic devices used by city officials); *Nissen v. Pierce Cty.*, 183 Wn.2d 863, 357 P.3d 45, ¶ 11-34 (2015) (text messages on employee's cell phone); *Denver Publ. Co. v. Bd. of Cty. Commrs.*, 121 P.3d 190 (Colo.2005) (text messages on county system); *O'Boyle v. Town of Gulf Stream*, 257 So.3d 1036 (Fla.App.2018) (elected official's use of private cell phone to conduct public business via text messaging); *City of Champaign v. Madigan*, 992 N.E.2d 629 (Ill.App.2013) (text messages between city council members' personal electronic devices during public meetings).

{¶7} The Ohio Public Records Act provides that “[i]n adopting a public records policy under this division, a public office may obtain guidance from the model public records policy developed and provided to the public office by the attorney general under

section 109.43 of the Revised Code.” R.C. 149.43(E)(2). The Model Public Records Policy provided to public offices by the Attorney General states, in part:

#### ELECTRONIC RECORDS

Records in the form of e-mail, text messaging, and instant messaging, including those sent and received via a hand-held communications device, are to be treated in the same fashion as records in other formats, such as paper or audiotape.

Public record content transmitted to or from private accounts or personal devices is subject to disclosure. All employees or representatives of this office are required to retain their e-mail records and other electronic records in accordance with applicable records retention schedules.<sup>3</sup>

{¶8} As to the sufficiency of Sinclair Media’s complaint in setting forth a claim for items that meet the definitions of “records” and “public record,” the City concedes that the responsive text messages meet the first and third parts of the definition of “records” as 1) “electronic records” that 3) “serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.” R.C. 149.011(G); (Response at 4; Second Supp. Response.) The City argues only that text messages residing on a public official’s personally owned device cannot meet the second part of the definition as “created or received by or coming under the jurisdiction of any public office.”<sup>4</sup> The City makes the related argument that text messages on a personal device are not “kept by” the public office as required by R.C. 149.43(A)(1). *Id.*

#### **A Public Office Creates, Receives, and Maintains Records Through Its Employees and Officers**

{¶9} The City first asserts that text messages between city councilpersons cannot be records because items created, received, or kept by a *public official* are not thereby

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<sup>3</sup> <https://www.ohioattorneygeneral.gov/Files/Government-Entities/Model-Public-Records-Policy.aspx> (accessed Apr. 12, 2019). See R.C. 149.351(A) for records retention requirements.

<sup>4</sup> Although the City offers only the bare assertion that the devices used were “personal, privately-paid cell phones,” Sinclair Media offers no persuasive argument to the contrary.

created, received, or kept by the *public office*. However, it is individual human beings in an office who create, receive, and maintain the office's records of its official actions.

We have held and it is well recognized that a political subdivision acts through its employees. In *Spires v. Lancaster* (1986), 28 Ohio St.3d 76, 28 OBR 173, 502 N.E.2d 614, we stated, "It is undeniable that the state can only act through its employees and officers." *Id.* at 79, 28 OBR 173, 502 N.E.2d 614, quoting *Drain v. Kosydar* (1978), 54 Ohio St.2d 49, 56, 8 O.O.3d 65, 374 N.E.2d 1253.

*Elston v. Howland Local Sch.*, 113 Ohio St.3d 314, 2007-Ohio-2070, 865 N.E.2d 845, ¶ 19. Records may be obtained from the public office or from a "person responsible for public records." R.C. 149.43(B)(1). The "person responsible" may be a person within the public office, *State ex rel. Consumer News Servs. v. Worthington City Bd. of Educ.*, 97 Ohio St.3d 58, 2002-Ohio-5311, 776 N.E.2d 82, ¶ 40, or, under some circumstances, a private entity. *State ex rel. Cincinnati Enquirer v. Krings*, 93 Ohio St.3d 654, 657, 758 N.E.2d 1135 (2001). I find that in requesting "text messages from Cincinnati city council members [and other officials] in which [an official]'s employment status is discussed" (Complaint at 1; Exh. A, p. 2) the complaint asserts a claim for items created, received by, or coming under the jurisdiction of the City of Cincinnati.

### **Public Records Can Exist on Private Accounts and Personal Devices**

{¶10} The City next asserts that text messages on personal, privately-paid-for cell phones are not "created or received by" or "kept by" the City. (Response at 3.) However, the ownership of a transmission device or storage location does not by itself exclude stored items as records. As conceded by the public official in *Glasgow*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, at ¶ 23:

[E]-mail messages created or received by her in her capacity as state representative that document her work-related activities constitute records subject to disclosure under R.C. 149.43 regardless of whether it was her public or her private e-mail account that received or sent the e-mail messages.

*Accord Enquirer v. Cincinnati*, Ct. of Cl. No. 2018-01339PQ, 2019-Ohio-969, ¶ 13-15. The special master is aware of no Ohio holding to the contrary.

{¶11} The City's proposed exclusion of all personal account/device content from the definition of "public record" would undermine the purposes of the Public Records Act, allowing public officials to conceal office correspondence with impunity. Official documents sent from a home fax machine, email exchanged through private accounts or devices, files created on a personal computer, and documents typed on personal stationary would be excluded from the definition under this reasoning. If private storage created a categorical exclusion, public records located in an official's home office, personal laptop, personal email account, car trunk, briefcase, or other privately-paid-for information receptacle could be concealed from public scrutiny. However, I find instead that the statutory definition of public records is broadly inclusive and does not categorically exclude any physical locations, custodians, or storage devices, regardless of ownership, as places where public records may be found or "kept." The Supreme Court has ruled repeatedly that mere possession of otherwise public records by a third party does not prevent disclosure of the records under R.C. 149.43. See *State ex rel. Carr v. Akron*, 112 Ohio St.3d 351, 2006-Ohio-6714, 859 N.E.2d 948, ¶ 36-37 and cases cited therein, where the Court contrasts the potential quasi-agency of private third parties holding public records with the implicit responsibility of "employees and agents" over office records in their possession. I find that in requesting text messages from Cincinnati city council members that discuss a city official's employment status the complaint sufficiently asserts that the records were presumptively "kept by" officials for the City of Cincinnati.

{¶12} I conclude that in seeking enforcement of a public records request for the withheld text messages the complaint states a claim under R.C. 149.43 and R.C. 2743.75 upon which relief may be granted. I recommend that the motion to dismiss on this ground be denied.



### **Ambiguous and Overly Broad Request**

{¶13} The City asks the court to dismiss the complaint, in part, as overly broad. It is “the responsibility of the person who wishes to inspect and/or copy records to identify with reasonable clarity the records at issue.” *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861, ¶ 21. A request that is ambiguous or overly broad may be denied. R.C. 149.43(B)(2) provides:

If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request.

Determination of whether an office has properly denied a request as ambiguous or overly broad is based on the facts and circumstances in each case, *Id.* at ¶ 26.

Sinclair Media’s request is for:

all text messages from Cincinnati city council members, Mayor John Cranley and Harry Black in which Black’s employment status is discussed.  
\* \* \*

We are also requesting any messages in which votes on Black’s employment are discussed and attempts to sway other members of council. I am also requesting any text messages involving the so-called “Gang of 5” in which Harry Black’s employment is discussed – including any text messages in which race is discussed.

The text messages we are requesting are between March 1 and April 12, 2018.

The City asserts that the request is for every text message sent by council members, rather than just those sent between them, and demands a search through their text messages for any “in which Black’s employment status” is discussed. (Response at 5.)

{¶14} In *State ex rel. Kesterton v. Kent State Univ.*, Slip Opinion at 2018-Ohio-5110, the Court found a request for “[a]ll records regarding [a student]’s departure from

the University (including all communications such as emails, text messages, voicemails, etc.)” to be an overly broad request for information, rather than reasonably identifying the records sought. *Id.* at ¶ 28-30. However, other requests that were limited “temporally, by subject matter, and in all but one instance, by the specific employees concerned,” were found not overly broad. *Id.* at ¶ 23-27. The Court noted that “a request for e-mails sent or received by a specific individual regarding a specific topic during a reasonably short time period is not the type of request that we have previously found to constitute impermissible research,” citing *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, ¶ 30, 33-35. *Id.* at ¶ 26.

{¶15} Sinclair Media’s request is limited to a reasonably short period of six weeks. The subject matter is limited to Black’s employment status. The request seeks only text messages, rather than all communications, and is limited to texts from city council members, the mayor, and Black. The middle paragraph of the request appears only to emphasize the requester’s interest in any subset of responsive messages that discuss votes and race. It thus does not expand the overall request, and is mere surplusage. Further, even if the middle paragraph were found to be a separate request that is ambiguous or overly broad on its specific terms, it would be severable from the remaining, properly framed request presented by the first and third paragraphs.

{¶16} I find under the facts and circumstances of this case that the request was not improperly ambiguous or overly broad. I therefore recommend that the motion to dismiss on this ground be denied, and the matter determined on the merits.

#### **Application of Law to the Evidence**

{¶17} Claims under R.C. 2743.75 are determined using the standard of clear and convincing evidence. *Hurt v. Liberty Twp.*, 2017-Ohio-7820, 97 N.E.3d 1153, ¶ 27-30 (5th Dist.). Review of the evidence in this case confirms that the requested text messages meet the definitions of “records” and “public record.” The text messages reviewed *in camera* appear on their face to have been sent or received by the named

city councilpersons and employees. The City represents that the text messages are all responsive to the request, and were retrieved from the named correspondents either directly, or by a vendor's forensic efforts. (Supp. Response.) I find clear and convincing evidence that these items were created or received by, or come under the jurisdiction of, the City, and were kept by the City through its council members and employees.

{¶18} Further, the City's policies anticipate that employees will create records using non-City wireless/mobile/electronic devices. Its access agreement for employees using such devices includes the following:

2. The User agrees to utilize City email and City internet access in accordance with the Electronic Mail/Messaging Systems, Internet Access and Employee Responsibilities sections of the City's IT Security Policy.
3. The User acknowledges that any email sent to or from the Non-City wireless device via the City's email network is subject to public records laws.
4. The User acknowledges there is not a guarantee of privacy for any device connected to the City's data network.<sup>5</sup> ETS is not aware of any ways that Non-City email accounts and internet access through the vendor-provided browsers are accessible, filtered, or documented through City systems. Nevertheless, public records laws in this area are unclear. The Non-City wireless device is being used at least in part for City business and is connected to City networks, the User and the device MAY be subject to public records laws.

(Hardin Aff. Exh. 4, Sect. 4.0, ¶ 2-4.) The City identifies no functional or legal distinction between employee email, listed as records in its retention schedules (Hardin Aff. Exh. 1, p. 14, 64, 100), and text messages. Indeed, many series in the City's schedules broadly list "Electronic" in the Media Type column. (*Id.*, *passim.*) As relevant examples, Retention Schedule 17-019 for Correspondence records of Mayor/City Council/Clerk of

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<sup>5</sup> "[W]e have not authorized courts or other records custodians to create new exceptions to R.C. 149.43 based on a balancing of interests or generalized privacy concerns." *State ex rel. WBNS TV, Inc. v. Dues*, 101 Ohio St.3d 406, 2004-Ohio-1497, 805 N.E.2d 1116, ¶ 31.

Council lists media types “Paper/Electronic” (*Id.*, p. 77), and Citywide Retention Schedule 99-3 for “Official Correspondence email messages – Messages that deal with \* \* \* personnel matters” requires retention on “Magnetic Disk.” (*Id.*, p. 32.)

{¶19} The City notes that not every message or piece of paper possessed by a public official is a record under the jurisdiction of their public office. (Response at 4.) See *State ex rel. Cincinnati Enquirer v. Ronan*, 127 Ohio St.3d 236, 2010-Ohio-5680, 938 N.E.2d 347, ¶ 13. For example, portions of documents that constitute personal information or otherwise fail to meet the definition of “record” need not be disclosed. *Mohr v. Colerain Twp*, Ct. of Cl. No. 2018-01032PQ, 2018-Ohio-5015, ¶ 9-12. However, the City has abandoned this defense for the text messages here. (Second Supp. Response.) The special master further notes that text messages, instant messaging, email, and other forms of electronic correspondence are often managed under a *Transient Records* schedule that provides for disposal after a short period, or when no longer of administrative value. (E.g., Hardin Aff. Exh. 1, p. 32, Citywide Schedule 99-1 *Transitory email messages*; AG Series No. 561-OAG-09 *Transient Material*.<sup>6</sup>) Like paper correspondence, email disposed of prior to a public records request need not be produced, *Glasgow*, 119 Ohio St.3d 391, 396, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 24, fn. 1, unless it was disposed of improperly. *State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Comms.*, 120 Ohio St.3d 372, 2008-Ohio-6253, 899 N.E.2d 961. Moreover, public offices are only required to retain records that are *necessary* to document the activities of the office. R.C. 149.40. However, the City does not assert that any of these text messages were properly disposed of prior to Sinclair Media’s request.

{¶20} Based on the pleadings, admissions, and evidence in this case, I find that all the text messages filed with the court under seal are public records subject to disclosure under R.C. 149.43 and R.C. 2743.75.

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<sup>6</sup> Search at <https://apps.das.ohio.gov/rims/Search/PublicSearch.asp> (accessed Apr. 10, 2019).

### **Failure to Provide Required Information and Opportunity to Revise**

{¶21} In responding to Sinclair Media, the City neither denied the request (Supp. Response) nor provided information as to the manner in which its records are maintained and accessed. Because the initial explanation for denial “shall not preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending an” enforcement action, R.C. 149.43(B)(3), the City was permitted to plead the defense of overbreadth. However, the City became subject to mandatory statutory obligations at that point. Following denial for ambiguity or overbreadth, a public office

shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office’s or person’s duties.

R.C. 149.43(B)(2). This requirement remains vital even after enforcement litigation has commenced where, as here, the proceedings include mandatory court mediation.

{¶22} The statute does not require the office to rewrite the request for the requester, but the office should convey relevant information to support revision of the request. Options include, but are not limited to: offering to discuss revision with the requester, *Zidonis*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861 at ¶ 4-5, 40, providing the requester with a copy of the office’s records retention schedule, *Id.* at ¶ 36, and providing an explanation of how office records are maintained and accessed. *Id.* at ¶ 35. A public office may inform the requester if all or some of the requested records have already been compiled in agency reports, in litigation, or for any other reason, and are thus readily identified and available.<sup>7</sup>

{¶23} Having denied the request by raising the defense of overbreadth, the failure of the City to provide information and invite revision constitutes a *per se* violation

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<sup>7</sup> An existing compilation of records is a “record” separate and apart from its component records. *State ex rel. Cincinnati Post v. Schweikert*, 38 Ohio St.3d 170, 527 N.E.2d 1230 (1988); *Kish v. City of Akron*, 109 Ohio St.3d 162, 2006-Ohio-1244, 846 N.E.2d 811, paragraph one of the syllabus.

of R.C. 149.43(B)(2). *State ex rel. ESPN v. Ohio State Univ.*, 132 Ohio St.3d 212, 2012-Ohio-2690, 970 N.E.2d 939, ¶ 10-11. As in *ESPN*, Sinclair Media does not ask that respondent be ordered to inform it of the way the City maintains its records, and thus fails to state a claim for relief for this violation. *Id.* at ¶ 12-15. In future requests, the parties are encouraged to utilize the tools provided by R.C. 149.43(B)(2) through (7) to resolve concerns over ambiguity or overbreadth prior to litigation. See *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901, 906 N.E.2d 1105, ¶ 15-20.

### **Conclusion**

{¶24} Upon consideration of the pleadings and attachments, I recommend that the court issue an order for respondent to disclose the text messages filed under seal.

{¶25} Pursuant to R.C. 2743.75(F)(2), either party may file a written objection with the clerk of the Court of Claims of Ohio within seven (7) business days after receiving this report and recommendation. Any objection shall be specific and state with particularity all grounds for the objection. A party shall not assign as error on appeal the court's adoption of any factual findings or legal conclusions in this report and recommendation unless a timely objection was filed thereto. R.C. 2743.75(G)(1).

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JEFFERY W. CLARK  
Special Master