

[Cite as *Tingler v. Wyandot Cty. Prosecutor's Office*, 2022-Ohio-3143.]

CHARLES TINGLER	Case No. 2022-00437PQ
Requester	Special Master Jeff Clark
v.	<u>REPORT AND RECOMMENDATION</u>
WYANDOT COUNTY PROSECUTOR'S OFFICE	
Respondent	

{¶1} The Ohio Public Records Act (PRA) requires copies of public records to be made available to any person upon request. The state policy underlying the PRA is that open government serves the public interest and our democratic system. *State ex rel. Gannett Satellite Information Network, Inc. v. Petro*, 80 Ohio St.3d 261, 264, 685 N.E.2d 1223 (1997). To that end, the public records statute must be construed liberally in favor of broad access, with any doubt resolved in favor of disclosure of public records. *State ex rel. Rogers v. Dept. of Rehab. & Corr.*, 155 Ohio St.3d 545, 2018-Ohio-5111, 122 N.E.3d 1208, ¶ 6. This action is filed under R.C. 2743.75, which provides an expeditious and economical procedure to enforce the PRA in the Court of Claims.

{¶2} On May 24, 2022, requester Charles Tingler made the following public records request to respondent Wyandot County Prosecutor's Office (Wyandot PO):

I would like a copy of any/all police reports, dispatch records, witness statements, and documents in connection with the death of former Wyandot County Prosecutor, Jonathan Miller, conducted by Investigator William Latham of the Wyandot County Prosecutor's Office.

(Complaint at 2.) SOCF responded on May 25, 2022: "The Wyandot County Prosecutor's Office is not in possession of any of the records you have requested." (*Id.*) On May 25, 2022, Tingler filed a complaint under R.C. 2743.75 alleging denial of access to public records. Following unsuccessful mediation, Wyandot PO filed a response and motion to dismiss on July 28, 2022.

Burden of Proof

{¶3} A requester must establish a public records violation by clear and convincing evidence. *Hurt v. Liberty Twp.*, 2017-Ohio-7820, 97 N.E.3d 1153, ¶ 27-30 (5th Dist.). At the outset, a requester bears the burden of production to plead and prove facts showing he sought identifiable public records from a public office pursuant to R.C. 149.43(B)(1) and that the request was denied. *Welsh-Huggins v. Jefferson Cty. Prosecutor's Office*, 163 Ohio St.3d 337, 2020-Ohio-5371, 170 N.E.3d 768, ¶ 33. When a public office denies that responsive records exist in its keeping, the requester has the burden to show by clear and convincing evidence that the records both exist and are maintained by the office. *State ex rel. Cordell v. Paden*, 156 Ohio St.3d 394, 2019-Ohio-1216, 128 N.E.3d 179, ¶ 5-10.

Non-Existent Records

{¶4} A “record” is defined for purposes of the Public Records Act as 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). A document must be one “created or received by or coming under the jurisdiction of any public office” to meet this definition and thus must exist before it can be the subject of a public “records” request. A public office has no duty to provide records that do not already exist or that it does not possess. *State ex rel. Alford v. Toledo Corr. Inst.*, 157 Ohio St.3d 525, 2019-Ohio-3847, 138 N.E.3d 1133, ¶ 5; *Cordell v. Paden* at ¶ 8-10.

Requester's Claim

{¶5} Tingler seeks certain police records and other unspecified “documents” created “in connection with the death of former Wyandot County Prosecutor, Jonathan Miller, conducted by Investigator William Latham of the Wyandot County Prosecutor's

Office.” (Complaint at 2.) The request clearly identifies the records sought as relating to a specific incident within an investigation conducted by a named person.

Respondent’s Denial

{¶6} The Wyandot PO asserts that “the Prosecutor’s Office did not investigate Mr. Miller’s death,” and had not been provided any of the requested records by the office that did investigate the incident. (Response at 1-2.) Nevertheless, the PO then gathered some of the requested records from where they existed in other public offices and provided them to Tingler. (Response at 2; Exhs. B – E.)

Requester’s evidence

{¶7} Tingler states in his complaint that “Prosecutor Rowland and his investigator William Latham were on scene that day and did a Joint investigation with Police, Sheriff, and Coroner. Records do exist.” (Complaint at 1.) He attached to the complaint several media reports, an Upper Sandusky Police Department incident report and event log, an email to the Wyandot County Coroner requesting an autopsy report, and a set of notes regarding disposition of the decedent’s medications. (*Id.* at 3-26.) The police report notes that William Latham arrived at the incident scene and was interviewed by the responding detective regarding decedent’s recent behavior. (*Id.*, Incident Report at 7-9.) The medication disposition notes (Complaint at 16) document the gathering, securing, and disposal of medications found at the home of the decedent. The notes page is signed by William Latham. Tingler does not relate where he obtained any of these documents.

Respondent’s Evidence

{¶8} The Wyandot County Prosecutor attests that his office “did not conduct any kind of investigation into the death of Mr. Miller,” and that “[t]here were no reports provided by the Upper Sandusky Police Department to the Wyandot County Prosecutor’s Office as there was no request for felony charges.” (Response, *passim*; Rowland Aff. at ¶ 4-6.) On review, the event log and police incident report provided by both Tingler and the PO are consistent with the assertion that William Latham went to the scene of the relevant

incident, was interviewed as a background witness, and did not conduct any separate or joint investigation of the incident for the Prosecutor's Office.

Analysis

{¶9} The Prosecuting Attorney's affidavit is some evidence supporting the non-existence of any investigation "conducted by Investigator William Latham of the Wyandot County Prosecutor's Office" into the relevant incident and thus of any records of such an investigation. See *State ex rel. Fant v. Flaherty*, 62 Ohio St.3d 426, 427, 583 N.E.2d 1313 (1992); *State ex rel. Toledo Blade Co. v. Toledo-Lucas County Port Auth.*, 121 Ohio St.3d 537, 2009-Ohio-1767, 905 N.E.2d 1221, ¶ 14-15. While neither Tingler nor the PO explain from which public office they obtained Latham's notes regarding medication disposition, the untitled document does not suggest on its face or in conjunction with any other evidence that Latham conducted an investigation of the underlying incident for the PO. The Special Master is persuaded that the Upper Sandusky PD incident report identifying the incident as a suicide, and all other documentation submitted by both parties, either affirmatively supports or is fully consistent with the non-existence of any separate "investigation" by the PO.

{¶10} Tingler counters that "Prosecutor Rowland and his investigator William Latham were on scene that day and did a Joint investigation with Police, Sheriff, and Coroner. Records do exist." (Complaint at 1.) The incident report does document the presence of then-Assistant Prosecutor Rowland and Investigator William Latham at the incident scene but reflects only Detective Howell as the report's author. Neither the incident report or any other documentation refers to the assignment of Latham by the PO to conduct an investigation, joint or otherwise. Tingler's assertion that "[r]ecords do exist" thus offers no more than his belief in the existence of a joint investigation and records thereof. It is well-settled that a requester's mere belief in the existence of additional records does not constitute the clear and convincing evidence necessary to establish that such documents exist. *State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office*, 133

Ohio St.3d 139, 2012-Ohio-4246, 976 N.E.2d 877, ¶ 22-26; *State ex rel. Morabito v. Cleveland*, 8th Dist. Cuyahoga No. 98829, 2012-Ohio-6012, ¶ 13.

{¶11} Considering all the evidence before the court, the Special Master finds Tingler has not proven by clear and convincing evidence that any responsive records existed in the PO's keeping at the time the request was made.

Conclusion

{¶12} Upon consideration of the pleadings and attachments the special master recommends the court deny requester's claim for production of records for failure to show that the requested records existed in respondent's keeping. It is recommended that costs be assessed to requester.

{¶13} *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).*

JEFF CLARK
Special Master