The Sunshine Synopsis

A compilation of public records cases in the Ohio Courts of Appeals

State ex rel. Clinton v. MetroHealth Systems
2014 Ohio 4469 (8th App. Dist. Cuyahoga)
Decided October 9, 2014
Ms. Clinton formerly worked at MetroHealth. She claimed she became ill and disabled as a result of breathing fumes that came from a malfunctioning morgue incinerator at the hospital.
Ms. Clinton made a series of public records requests over the years. She requested records in both 2003 and 2004 through her attorney. She filed a mandamus action in 2005 based on those requests. The Court rejected the request for mandamus at that time.

Ms. Clinton made another public records request in 2007. She claimed the hospital did not fully comply with this request. Finally, in April 2010, Ms. Clinton made a 30-part public records request. In her complaint, Ms. Clinton admitted that many of her requests were the same as in 2007. In August 2010, she filed a second mandamus action.

To the extent that Ms. Clinton's 2010 request matched her 2007 request, the Court determined that she did not file her complaint in a timely manner:

Although the statute does not specify the time period in which an alleged aggrieved person has to file her mandamus action, given the statute's emphasis on promptness, we find it unreasonable that Clinton waited until 2010 to file this action relative to the documents she requested in 2007.
Ms. Clinton was not entitled to the remaining items she requested for several reasons: 1) there was insufficient evidence they existed; 2) medical records are confidential and not subject to the Public Records Act; 3) the issue had been decided in the prior mandamus action; and/or 4) the request was unclear.

Salemi v. Cleveland Metroparks
2014 Ohio 3914 (8th App. Dist. Cuyahoga)
Decided September 9, 2014
Cleveland Metroparks operates eight golf courses in northeast Ohio. Mr. Salemi is the owner and architect of a golf club that directly competes with those courses. Mr. Salemi made an extensive public records request to Metroparks for information ranging from marketing plans to employee information. Metroparks denied the request, claiming the information was exempt from disclosure as a trade secret.
The court determined that the portion of the request asking for patron information was protected by Ohio trade secret law as a customer list and was not subject to disclosure. It also found that the Metroparks business plan and marketing program were trade secrets.

The court determined, however, that Metroparks failed to show that other records were exempt. Instead, it found:

Salemi's request for checks, contracts, agreements, minutes of meetings, emails, and letters that relate to the marketing of the golf courses is overly broad and unreasonable in its scope because the request is not limited to a specific time period.
The court ordered Metroparks to allow Mr. Salemi to revise his request to include a time period that was not overly broad and produce the records to him after proper redaction.

State ex rel. Podolsky v. Wenninger
2014 Ohio 3288 (12th App. Dist. Brown)
Decided July 28, 2014
Mr. Podolsky filed a motion to unseal records in a criminal case. The Post and Email, an online newsletter

publication, intervened in the case based on a First Amendment public right to know. The trial court denied the motion.
On appeal, the plaintiffs claimed they were entitled to the records based on several theories, including the Public Records Act. The Court of Appeals upheld the trial court. First, it determined that sealed court records are subject to an exception, because their release is prohibited by state or federal law. The court also pointed out that the release of the records is a fourth-degree misdemeanor under R.C. 2953.55. Second, the court determined that a motion to unseal records is not a public records request under R.C. 149.43.

State ex rel. Carr v. London Correctional Institution
2014 Ohio 1325 (12th App. Dist. Madison)
Decided March 31, 2014
An inmate tried to make a public records request for an interoffice memorandum a chaplain had sent to the mailroom. When his request was rejected, because it was ambiguous and overly broad, he made two more requests. The first was for all memos and emails from the chaplain to the mailroom during the months of January and February 2012. When that request was rejected, he submitted another request for all such emails during February 2012. Once again, the correctional institution rejected the request as overly broad.
The court agreed with the prison's position:

Instead of providing the prison with a specific request by identifying with reasonable clarity the records at issue, Carr simply asked for an entire body of communication. The request for *all* emails and memoranda sent between Chaplain Cahill and the mailroom employees did not make any reference to a particular work-related activity, such as training the new employees on sorting religious material, or some equally-specific request.
Rather, Carr expected the prison to duplicate its entire volume of emails and memoranda between Chaplain Cahill and the mailroom and/or its supervisors over a two-month period without any clarification or restrictions.

* * *

By asking for everything, while not offering any specific reference to a particular work-related activity, Carr's requests were overly broad.

State ex rel. Harper v. Muskingum Watershed Conservancy District
2014 Ohio 1222 (5th App. Dist. Tuscarawas)
Decided March 21, 2014
Ms. Harper requested a list of addresses of all persons who were leasing property from the Conservancy District. The District refused to provide the requested list, claiming the addresses were not a public record under *State ex rel. Dispatch Printing Co. v. Johnson* (2005), 106 Ohio St. 3d 160, 2005 Ohio 4384 (home addresses of public employees are not public records unless there is a residency requirement or the employee works from home). The Court of Appeals disagreed with the District's position. First, the court determined that the privacy interest of a lessee was not as great as the interest of public employees in their home addresses, because the lessees were conducting business with the District. The District generated more than $2 million in rental income from approximately 1,300 cottage sites and 12 commercial parcels. The court also found that disclosure of the addresses would aid the public in monitoring the District's billing practices.

State ex rel. Todd v. City of Canfield
2014 Ohio 569 (7th App. Dist. Mahoning)
Decided February 14, 2014
Mr. Todd requested copies of all reel-to-reel tape recordings made during the period in which the City's police department used such a system. Mr. Todd claimed that the City could not take the position that his request was

overly broad, because the doctrine was an affirmative defense, and the City failed to raise it in its answer. The court rejected Mr. Todd's argument:

The assertion that a public records request is overly broad and unenforceable is not an affirmative defense, because it directly attacks an element of Appellant's *prima facie* case and does not assume or confess the elements of the mandamus action. To establish a *prima facie* case for mandamus or forfeiture, Appellant's claims must be based on a valid records request. Raising a defect in the underlying request is clearly not a confession of the elements of mandamus. Instead, such a challenge directly addresses a necessary element of the *prima facie* claim.

The court also reaffirmed its position from a prior case that a request for identifiable records can be "so voluminous that it is overly broad and unenforceable."

State ex rel. Bott Law Group v. Ohio Dept. of Natural Resources

2013 Ohio 5219 (10th App. Dist. Franklin)

Decided November 26, 2013

At issue in this case were three arguably overly broad and ambiguous public records requests a law firm made to the Ohio Department of Natural Resources (ODNR). The department provided some records in response to all three requests, only raising the overbreadth issue in response to the second request. In response to the subsequent lawsuit, the department claimed it had complied with the law because the three requests were overly broad. The court disagreed:

Under both the statute and the policy, the requestor's duty to revise the request arises only after the agency has informed the requestor that the request is either ambiguous or overly broad. If ODNR believed the May 17, 2011 and February 3, 2012 public records requests were so ambiguous and overly broad to relieve it of its duty to promptly prepare responsive records, ODNR was obligated to inform relator of the issue and to ask relator to revise the request. The use of the word "shall" in R.C. 149.43(B)(2), and "will" in ODNR's policy means that the duty is mandatory.

With respect to the October 27, 2011 public records request, the evidence shows that Rowan informed relator that ODNR considered the request to be both unclear and overly inclusive, and he asked relator to revise the request. Rowan did not, however, deny the request as is permitted under R.C. 149.43(B)(2), nor did he inform relator of the manner in which ODNR records are maintained and accessed by its employees in the ordinary course of its business, as is required by R.C. 149.43(B)(2). When relator subsequently asked for guidance in revising its request, ODNR did not respond.

The court, however, rejected the request for attorney fees because the law firm acted on its own behalf in prosecuting the lawsuit.

State ex rel. Verhovec v. City of Northwood

2013 Ohio 5074 (6th App. Dist. Wood)

Decided November 15, 2013

Mr. Verhovec sought access to all images captured by the city's traffic photo enforcement program — whether or not any enforcement action was taken — over the program's entire six-year history. When he was not satisfied with the city's response, Mr. Verhovec brought an action for civil forfeiture for illegal destruction of public records under R.C. 149.351 and mandamus under the Public Records Act.

The court found that Mr. Verhovec was not entitled to civil forfeiture for illegal destruction of records because he did not really want the records:

Appellant admitted in his deposition that he had no interest in the content of the images and was simply interested in whether they existed or not. Further, in his deposition, appellant concedes that his only reason for interest in the records was to satisfy his contract with attorney Paul Cushion so he could get paid.

The court also rejected the mandamus claim because the request was overly broad: "However, both R.C. 149.43(B)(2) and Ohio case law restrict these requests to those which are not ambiguous, overly broad, or all encompassing. Because of their overbreadth, such requests do not rise to the status of a request pursuant to R.C. 149.43."

Quolke v. Strongsville Bd. of Education
2013 Ohio 4481 (8th Dist. Cuyahoga)
Decided October 7, 2013
Mr. Quolke asked his attorneys to forward a public records request to the board of education seeking, among other things, the names, addresses, telephone numbers and employee identification numbers of teachers and substitute teachers that the district employed during a strike. The district provided 65 pages of documents, but redacted the names, addresses, telephone numbers and identification numbers based on the teachers' constitutional right to privacy and personal safety. By the time the court decided the case, Mr. Quolke narrowed his request to just the names of the replacement teachers.
First, the court determined that Mr. Quolke had standing to bring the lawsuit even though his attorneys made the actual public records request. Turning to the substantive issue, the district argued that incidents and threats of violence during the strike demonstrated that the substitute teachers would be at risk if their names were released. The court rejected this argument, however, because the acts and threats ended when the strike was over. The court ordered the district to supply the names. The court also pointed out it was not deciding whether the constitutional right to privacy and personal safety would justify withholding the names "during a strike that showed threats and acts against those replacement teachers."

Wagner v. Huron County Bd. of County Commissioners
2013 Ohio 3961 (6th App. Dist. Huron)
Decided September 13, 2013
The Veeder Root system at the Huron County Airport is a leak detection system for the underground fuel tanks. The system takes periodic measurements of the fuel level in the tanks. Among the many documents Mr. Wagner sought from various public offices were copies of Veeder Root reports dating as far back as 1998. The earliest report that the airport authority provided Mr. Wagner was dated June 9, 2007. The prior documents were no longer in existence. Mr. Wagner claimed the records were illegally destroyed. The airport authority argued that its records retention schedule justified the disposal of the records. The court rejected the authority's argument:

However, appellees' argument overlooks the fact that the retention schedule they rely upon was enacted after the disposal of the Veeder Root reports and Wagner's October 27, 2010 records request. A straightforward application of R.C. 149.351(A) leads us to conclude that a public office must dispose of its public records in accordance with a then-existing retention schedule. The statute makes no provision for the retroactive application of a retention schedule.

State ex rel. Brown v. Village of North Lewisburg
2013 Ohio 3841 (2nd App. Dist. Champaign)
Decided September 5, 2013
Ms. Brown is one of six village council members. Ms. Brown hand-delivered a letter seeking all the village's invoices and purchase orders for 2011 and January 2012, including all voided and misprinted ones. She also requested all checks to and from the village for the same time period. Not satisfied with the responses she received, Ms. Brown filed suit against the village.
The village claimed it did not respond to the letter as required under the Public Records Act because: 1) it was not a public records request but a request from Ms. Brown for information she needed as a member of council; and 2) Ms.

Brown had access to all of the requested documents at each council meeting. Without deciding these issues, the court assumed that Ms. Brown was entitled to the copies under the Public Records Act. However, it still rejected her request for statutory damages and litigation costs:

Although we have found no authority setting forth an exception when an individual making a public records request has access to the records in some other capacity, we cannot ignore the main purpose of the Public Records Act – to provide access to public records for inspection. Under the totality of the facts and circumstances in this case, we find it would not be unreasonable for Respondents, the custodians of the records requested, to have believed that Brown was not entitled to duplicative, voluminous copies of records to which the testimony in this matter demonstrates she has access at each Village council meeting.

Under R.C. 149.43(C)(1)(b), we also find that Respondents could reasonably have believed that their conduct would serve public policy. At a time when the public demands and scrutinizes fiscal responsibility, superfluous duplication of documents flies in the face of sound policy when the documents are readily available to the person requesting them by means other than a public records request.

State ex rel. Toledo Blade v. City of Toledo
2013 Ohio 3094 (6th App. Dist. Lucas)
Decided July 12, 2013
Officer Noon was assigned to the gang task force of the Toledo Police Department and to a task force with the Bureau of Alcohol, Tobacco and Firearms (ATF). As a reference tool, Officer Noon created a gang map showing where gang territories were located in the city. The map included stars indicating the locations of the clubhouses of three motorcycle gangs. Officer Noon testified that he created the map with information from confidential informants, surveillances, crime reports, field interviews and felony crime logs.
An employee of the *Toledo Blade* requested to inspect the map. The department refused, claiming the map was a confidential law enforcement investigatory record, the release of which would create a high probability of disclosure of specific confidential investigatory techniques, procedures or specific investigatory work product.
The court sided with the *Blade*. First, after recounting how the map was made, the court determined that it was undisputed that the release of the map would not reveal any confidential investigatory techniques or procedures. Second, the court found that the map was not created for a pending or highly probable criminal prosecution. Instead, it was created to be a tool or reference. Consequently, the map was not specific investigatory work product. The court ordered the department to release the map.

State ex rel. Cincinnati Enquirer v. Sage
2013-Ohio-2270 (12th App. Dist. Butler)
Decided June 3, 2013
The *Enquirer* made a public records request for a recording of an outbound call made by a 911 operator. A murder suspect confessed during the call. The prosecutor claimed the tape was a trial preparation record and a confidential law enforcement investigatory record. He also felt that releasing the tape would prejudice the defendant's right to a fair trial.
Instead of releasing the recording, the prosecutor sought a protective order from the trial court. Following a hearing, the judge issued a protective order prohibiting the release of the recording because the release would prejudice the defendant's right to a fair trial. The judge later issued an amended order allowing release of the recording just prior to its "admission and publication to the jury" during trial. At that point, the recording was delivered to the newspaper.

The *Enquirer* filed a mandamus action in the court of appeals. That court found that the recording was neither a trial preparation record nor a confidential law enforcement investigatory record, so the prosecutor could not use those exceptions to withhold the records. The court also determined that the trial judge did not receive sufficient evidence or

consider sufficient alternatives before he determined that the defendant's Sixth Amendment right to a fair trial justified withholding the recording. As a result, the recording should have been released to the *Enquirer*.

Johns v. Allen
2013-Ohio-2045 (11th App. Dist. Trumbull)
Decided May 20, 2013
The court rejected Ms. Johns' request for a writ of mandamus because the Trumbull County officials she was suing had provided her with access to the records she sought. The court stated:
There is an adequate remedy at law through respondent's agreement to provide all available documents to relator. The letter sent to relator specifically stated that she could come to the courthouse to review the case file and would be allowed to make copies of the documents in the file. Under R.C. 149.43(B)(1), "making the records 'available for inspection to any person at all reasonable times during regular business hours'" fulfills the requirement of complying with a public records request.

State ex rel. Rhodes v. Chillicothe
2013-Ohio-1858 (4th App. Dist. Ross)
Decided May 3, 2013
Mr. Rhodes made a public records request to the city for images captured by red light cameras. Mr. Rhodes made the request because an attorney hired him to do so. The attorney promised to pay Mr. Rhodes $4,000 upon the successful retrieval of the records.
Under the city's enforcement program, the images fell into two categories. "Accepted images" are digital photos that result in the issuance of a citation. "Rejected images" do not result in a citation. Not all rejected images are shared with the city. Instead, the rejected images are first reviewed by a contractor. Those that clearly do not show a violation are rejected by the contractor and these are never sent to the city. Images that may show a violation are sent to the city, which makes a determination as to whether to issue a citation. The city provided Mr. Rhodes with copies of only the accepted images, but not with rejected images. Mr. Rhodes claimed the rejected images were public records. The court partially agreed with Mr. Rhodes:

[S]ome of the "rejected images" were forwarded by Redflex to the city of Chillicothe. The Chillicothe Police Department utilized some of the images in order to issue citations and rejected other images. The "forwarded rejected images" were used by the city in performing a governmental function and in making decisions regarding whether a citation would be issued. These "forwarded rejected images" are records subject to disclosure under the Act.
Mr. Rhodes also sought civil forfeiture for alleged illegal destruction of public records pursuant to R.C. 149.351. The court rejected this claim because Mr. Rhodes' reason for seeking the records was pecuniary. As a result, he was not an aggrieved person under the statute.

State ex rel. Davis v. Metzger
2013-Ohio-1699 (5th App. Dist. Licking)
Decided April 25, 2013
On February 8 and 9, 2011, Mr. Davis served a pair of overly broad public records requests on the West Licking Joint Fire District ("WLJFD"). The WLJFD notified Mr. Davis that his request was improper, but that it had contacted its information technology provider to sort through WLJFD's emails responsive to his request, that the review would take some time and seeking clarification of some of Mr. Davis' requests. On April 13, 2012, the WLJFD notified Mr. Davis that the records would be ready for pick up at 1:00 p.m. on the April 16, 2012. The documents were not available on that date and Mr. Davis filed his suit. The records were provided to Mr. Davis on April 25, 2012.
The court determined that the WLJFD's delivery of the records 54 business days after the request was reasonable:

R.C. 149.43(A), which exempts certain types of records from disclosure, envisions an opportunity on the part of the public office to examine records prior to inspection in order to make appropriate redactions of exempt materials.

* * *

In the instant case, Relator's requests were in effect asking for complete duplication of the WLJFD's files. Respondents requested clarification and kept Relator informed of the process concerning compilation and review of the files. Under the facts and circumstances of this case, we find that the time within which Respondents provided the records was reasonable.

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