The Sunshine Synopsis

A compilation of public records cases in the Ohio Supreme Court

State ex rel. Plunderbund Media, L.L.C. v. Born
2014 Ohio 3679
Decided August 27, 2014
Plunderbund requested that the Ohio Department of Public Safety provide it with the number of investigations the Highway Patrol had conducted of threats made against the Governor, along with a copy of the final investigation reports. The Department refused to provide any records, including redacted ones, claiming they were security records under R.C. 149.433(B). Plunderbund filed suit to obtain the records.
The Supreme Court sided with the Department. The Court rejected the argument that R.C. 149.433 only applied to "the placement of cameras, blueprints of the building, or the scheduling of security personnel."

Indeed, a public office cannot function without the employees and agents who work in that office, and records 'directly used for protecting or maintaining the security of a public office' must inevitably include those that are directly used for protecting and maintaining the security of the employees and other officers of that office.
The remaining question was whether the documents contained information to protect or maintain the Governor "against attack, interference or sabotage." In this case, the Court found that they did. As a result, the documents were not subject to release:

If a record does not meet the definition of a public record, or falls within one of the exceptions to the law, the records custodian has no obligation to disclose the document.

State ex rel. Davis v. Metzger
139 Ohio St.3d 423
Decided June 4, 2014
On December 8, 2011, Mr. Davis served a public records request on the West Licking Joint Fire District for the personnel files of six public employees. On December 13, 2011, Mr. Davis called to get the status of his request at approximately 11:30 a.m. Mr. Metzger told him that the records were being reviewed by legal counsel. At 1:59 p.m., less than three business days after making his request, Mr. Davis filed his lawsuit seeking the records. Legal counsel finished reviewing the records that afternoon, and Mr. Metzger forwarded the records to Mr. Davis by email at 3:28 p.m.
Mr. Davis claimed the District took an unreasonable amount of time in supplying the records to him. The Court disagreed. The Court specifically rejected Mr. Davis' objections to counsel's review of the records:

The review had a minimal impact on the timeliness with which the district produced the records to Davis. Moreover, personnel files require careful review to redact sensitive personal information about employees that does not document the organization or function of the agency. The district was not remiss in delaying the response for a short time to allow counsel to review the records before they were produced.
The Court concluded that three days was not an unreasonable amount of time to provide personnel records for six employees.

State ex rel. DiFranco
138 Ohio St. 3d 378, 2014 Ohio 539 and 138 Ohio St. 3d 367, 2014 Ohio 538
Decided June 4, 2014
In these two cases, Ms. DiFranco claimed she was entitled to a mandatory award of attorney fees and statutory damages. The Court disagreed, holding that the statute only provides for mandatory attorney fees if a public office supplies the requested records after the court orders it to do so. In cases such as these, where the records were

delivered before a court ordered their release, mandatory attorney fees are not available. The Court pointed to two policy reasons that support its reading of the statutes:
First, it encourages people requesting public records to remind the government entity that the request remains unfulfilled without resorting to litigation. This allows the requester to receive the records without burdening the public purse. DiFranco has done this many times without incident, though she did not do so in this case.

Second, this interpretation reins in attorneys. R.C. 149.43 is designed to ensure that public agencies and employees timely and reasonably respond to public-records requests, not to ensure a livelihood for attorneys who scour the state hoping for a failure to respond. Making the award of both discretionary and mandatory attorney fees dependent on a court order makes it more likely that the attorney was required to provide a real service beyond the filing of a complaint.
As for statutory damages, the Court found the Court of Appeals used an inapplicable public benefit test. The Supreme Court returned the case to the court below to consider the request for statutory damages in light of the criteria set out in the statute.

State ex rel. Miller v. Ohio State Highway Patrol
136 Ohio St. 3d 350, 2013 Ohio 3720
Decided September 3, 2013
Mr. Miller sought public records from the Ohio State Highway Patrol related to traffic incidents involving a particular trooper. At issue in this case were video and audio from the trooper's cruiser and impaired driver reports dealing with a particular traffic stop, detention and arrest. In a letter to Mr. Miller's attorney, the patrol said it was withholding the records as work product under the law enforcement investigator records exception.
The Court noted that because the patrol denied the request, it must show that the records fall squarely within the statutory exception. To prevail, the patrol needs to establish that the withheld records pertain to a "law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature" whose release would create a "high probability of disclosure" of "specific investigatory work product." The case was remanded to the Court of Appeals to review the records to determine if they met the requirements for the exception.

State v. Athon
136 Ohio St.3d 43, 2013-Ohio-1956
Decided May 15, 2013
Mr. Athon was pulled over and charged with operating a motor vehicle while under the influence of alcohol, speeding and failure to reinstate his driver’s license. Under Criminal Rule of Procedure 16(H), when a criminal defendant seeks discovery, a reciprocal duty to provide discovery to the prosecution automatically arises. Rather than request discovery, Mr. Athon asked an attorney to serve a public records request. When the prosecutor asked Mr. Athon to provide reciprocal discovery, he claimed he did not owe reciprocal discovery because he did not make a discovery request. The Supreme Court rejected this reasoning:
When an accused directly or indirectly makes a public records request for information that could be obtained from the prosecutor through discovery, the request is the equivalent of a demand for discovery and triggers a duty to provide reciprocal discovery as contemplated by Crim.R. 16.

State ex rel. Luken v. Corp. for Findlay Market of Cincinnati
135 Ohio St. 3d 416, 2013-Ohio-1532
Decided April 24, 2013
Findlay Market is a public market that was historically owned and operated by the City of Cincinnati. In 2004, the city entered into lease and management agreements under which the corporation managed the Market for the city. Mr.

Luken requested various documents related to the Market. When he obtained copies of the leases for the various spaces at the Market, the agreed terms and rents were blacked out. The corporation claimed that the information was a trade secret.
Mr. Luken sued, claiming he was entitled to unredacted copies of the leases. The Court disagreed. First, the information at issue fit the definition of a trade secret. Second, though this was a closer call, the corporation took reasonable measures to keep the lease terms secret "under the standard precautions for the industry." As a result, Mr. Luken was not entitled to unredacted copies of the leases.

State ex rel. Motor Carrier Serv. Inc. v. Rankin
135 Ohio St.3d 395, 2013-Ohio-1505
Decided April 18, 2013
In 1994, Congress enacted the Driver Privacy Protection Act (the "DPPA") to regulate the disclosure and resale of personal information contained in state motor vehicle records. This led, in turn, to the promulgation of a rule in the Ohio Administrative Code that provides two methods for obtaining motor vehicle records from the BMV. First, a person can make a public records request for the record. Under this method, the record will have personal information redacted, but the record will be provided at cost. Second, a request may be made on a BMV form with proof of identity and a statement indicating which exception to the regulation allows the requestor to obtain the record with the personal information intact. For this type of a request, the record will be provided to the requester without redaction but it will cost $5.00.
Motor Carrier Service claimed that the Public Records Act required the BMV to provide it with unredacted records at cost, rather than paying the $5.00 fee. The Supreme Court rejected this argument:

Thus, under *Slagle* and the precedent cited there, a specific statute establishing a fee or a method for determining a fee for a requested public record acts as an exception to the general "at cost" language in R.C. 149.43. Here, the BMV permissibly set up a special procedure for the release of certain records, together with a special provision requiring the payment of a specific fee for that release. Under R.C. 1.51 and *Slagle*, these are special provisions that supersede the general language of R.C. 149.43.

State ex rel. Gambill v. Opperman
135 Ohio St.3d 298; 2013-Ohio-761
Decided March 7, 2013
Mr. Gambill is a real estate appraiser who sought a copy of the database that the Scioto County Engineer uses to create readable tax maps of individual properties and to store aerial photographs. The County Engineer's office does not have tax maps of the individual properties. Instead, the office has data files. The maps are created when an individual inputs search parameters into a terminal. The files are manipulated by software created by Environmental Systems Research Institute, Inc., ("Esri"). The software allows specific tax maps to be created in accordance with the desired parameters. Esri's software has numerous copyright registrations. The software is subject to a license that prohibits the office from sharing the software without Esri's written permission.
In response to Mr. Gambill's request, the office responded that it does not maintain the maps and photographs in any format except electronic and it was not permitted to reproduce or transmit Esri's software to third parties. The office estimated that it would cost $2,000, plus the cost of the hard drive to extract the information necessary to create a tax map without Esri's software. The office was willing to produce the public portions of the database to Mr. Gambill once he paid the fee. Mr. Gambill sued to obtain the database.

The Supreme Court determined that the database is a public record. That did not mean, however, that the County Engineer was required to release it. The Public Records Act contains an exception for "[r]ecords the release of which is prohibited by state or federal law." Copyright law exempts records from disclosure under the Public Records Act. Because the non-exempt materials are "inextricably intertwined" with copyrighted materials, they are not subject to

disclosure “insofar as they are inseparable.” Given that, the office was not required to provide Mr. Gambill with the database. If Mr. Gambill wished to have a copy of the non-exempt material, he would have to pay the $2,000 fee.

State ex rel. Lanham v. Dewine
135 Ohio St.3d 191, 2013-Ohio-199
Decided January 29, 2013
Mr. Lanham complained that certain documents withheld by the Attorney General in response to his records request, based on attorney-client privilege, should have been released. Mr. Lanham also alleged the Attorney General’s privilege log was insufficient.
After examining the records in camera, the Court determined that six of the disputed emails were properly withheld based on the privilege.

The six e-mails are communications between a client—in this case, members of the administration of the attorney general’s office who asked for legal advice—with an attorney—in this case, members of the opinions section of the attorney general’s office. They contain legal analysis and conclusions—that is, legal advice—from the attorneys in the opinions section to their clients in the administration.
The Court also determined that documents sent by the House Minority Counsel to an Assistant Attorney General conducting an investigation were also privileged. “In particular, in *Toledo Blade*, we held that an attorney’s factual investigation, if incident to or related to any legal advice that the attorney would give on a particular issue, is covered by the privilege.” Finally, the Court rejected the claim that the privilege log was insufficient because the Attorney General’s office had no duty under R.C. 149.43 to submit a privilege log.