

[Cite as *Wengerd v. E. Wayne Fire Dist.*, 2017-Ohio-9414.]

DAVID L. WENGERD	Case No. 2017-00426-PQ
Requester	Judge Patrick M. McGrath
v.	<u>ENTRY ADOPTING</u>
EAST WAYNE FIRE DISTRICT	<u>RECOMMENDATION OF</u>
Respondent	<u>SPECIAL MASTER</u>

{¶1} On May 9, 2017, requester David Wengerd filed a complaint under R.C. 2743.75 alleging denial of access to public records in violation of R.C. 149.43(B) by respondent East Wayne Fire District ("East Wayne FD"). Wengerd had requested:

1. All invoices received and checks that have been written to Atty. Comstock, * * * in 2015 and 2016.

3. I am looking for the applications, notifications, and terms of the following FEMA Grants.

A. 2014 SAFER Grant for hiring for \$648,000.00.

B. 2015 SAFER Grant for recruitment for \$639,950.00.

C. 2015 AFG Grant for Paid On Call/Stipend for personal protection for \$284,457.00.

5. The number of Fire and EMS runs for the Village of Dalton for 2016.

6. The number of runs for Fire and EMS for the unincorporated parts of Sugar Creek Township for 2016."

East Wayne FD moved to dismiss the claims on the grounds that, 1) the request for fire and EMS runs had been rendered moot by provision of those records subsequent to the filing of the complaint, 2) the request for legal invoices for David Comstock had been rendered moot by provision of those records subsequent to the filing of the complaint, 3) the legal invoices of David Comstock were properly redacted to withhold attorney-

client privileged information, and 4) with respect to the applications for FEMA grants, a) no copies are kept by East Wayne FD, b) the final application is the property and record of the Department of Homeland Security, c) the "grant narrative" portions of the grant applications constitute trade secrets of East Wayne FD and the independent consultant who composed the narratives, and d) the "grant narrative" portions of the grant applications are copyrighted as the literary work of the grant writer and the District.

{¶2} On November 8, 2017, Special Master Clark issued a report recommending that the court issue an order dismissing the complaint as moot with respect to the request for fire and EMS run sheets. The Special Master further found that East Wayne FD properly redacted attorney-client privileged narratives from the itemized attorney billing statements it provided to Wengerd. However, the Special Master found that the grant applications were public records documenting its functions, policies, decisions, procedures, operations, or other activities, and that East Wayne FD maintained these records through its direct access to storage on the federal Department of Homeland Security web site, as well as through files kept by its grant writing consultant. Further, the Special Master found that respondent failed to prove that the "grant narrative" portions of the grant applications constituted either trade secret or copyrighted literary work. The Special Master recommended that the court order East Wayne FD to provide Wengerd with unredacted copies of the requested grant applications, other than information subject to certain other public records exceptions.

{¶3} R.C. 2743.75(F)(2) states, in part: "Either party may object to the report and recommendation within seven business days after receiving the report and recommendation by filing a written objection with the clerk * * *." No objections were filed by either party. The court determines that there is no error of law or other defect evident on the face of the Special Master's decision. Therefore, the court adopts the Special Master's report and recommendation as its own, including findings of fact and conclusions of law contained therein. East Wayne FD is ORDERED to provide Wengerd

with unredacted copies of the requested grant applications, other than as detailed in the Special Master's report.

{¶4} Court costs are assessed against respondent, and respondent is further ordered to make payment of twenty-five dollars to requester as recovery of his filing fee in this case. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

cc:

Alfred E. Schrader
441 Wolf Ledges Parkway, Suite 400
P.O. Box 0079
Akron, Ohio 44309

David C. Comstock, Jr.
3701B Boardman-Canfield Road
Suite 101
Canfield, Ohio 44406

Filed December 11, 2017
Sent to S.C. Reporter 1/11/18