

[Cite as *Parrish v. Glendale*, 2018-Ohio-2912.]

KEVIN L. PARRISH

Requester

v.

VILLAGE OF GLENDALE

Respondent

Case No. 2018-00191PQ

Special Master Jeffery W. Clark

REPORT AND RECOMMENDATION

{¶1} On January 20, 2018, requester Kevin Parrish made a public records request to the Village of Glendale for

the 2015 file for all sewer + water issues or a letter of explanation as to why there was no activity for 2015. Also records for the budget for 2015 as it relates to sewer + water + all other utilities as related to the Village of Glendale.

(Complaint at 4.) On January 26, 2018, Kevin Bell, Chief Utility Operator, advised Parrish that records responsive to the request “have been collected and will be made available for your inspection in the Village Office at a time and date to be arranged.” (*Id.* at 2.) On February 12, 2018, Parrish filed a complaint under R.C. 2743.75 alleging denial of access to public records and “Incomplete Copies/Unavailable Documents.” (*Id.* at 1.) On March 2, 2018, the Village produced records to Parrish at the Village offices for inspection. (Response, Cordes Aff. at ¶ 8.) The Village filed a motion to dismiss on May 1, 2018 based on mootness (Response). On May 2, 2018, the court issued an order directing Parrish to file a reply addressing whether respondent had provided all records responsive to his January 20, 2018 requests. Parrish did not file a reply.

{¶2} Ohio’s Public Records Act, R.C. 149.43, provides a remedy for production of records under R.C. 2743.75 if the court of claims determines that a public office has denied access to public records in violation of R.C. 149.43(B). “[O]ne of the salutary

purposes of the Public Records Law is to ensure accountability of government to those being governed.” *State ex rel. Strothers v. Wertheim*, 80 Ohio St.3d 155, 158, 684 N.E.2d 1239 (1997). 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. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 376, 662 N.E.2d 334 (1996). Claims under R.C. 2743.75 are determined using the standard of clear and convincing evidence. *Hurt v. Liberty Twp.*, 5th Dist. Delaware No. 17CAI050031, 2017-Ohio-7820, ¶ 27-30.

{¶3} The complaint asserts that the Village has a continuing practice of “denial + edited material that is being provided,” and attaches four public records requests dated September 18, 2017 (2), December 21, 2017, and January 20, 2018. Parrish gives the date of denial for which relief is sought as January 16, 2018. (Complaint at 1.) This is the date Parrish signed for receipt of nine pages of records in response to his request of December 21, 2017. (*Id.* at 5.) The letter dated January 20, 2018 confirms that Parrish viewed records at the Village office on January 16, 2018 and states that he “noticed that for 2015 there was no file.” Parrish concludes that “[a]t this time I would formally request” the 2015 sewer and water records. (*Id.* at 4.) The claim before the court is thus limited to records allegedly missing from the production on January 16, 2018, and otherwise specified in the January 20, 2018 letter. The Village moves to dismiss the claim on the ground that all responsive documents have been presented to Parrish.

Motion to Dismiss

{¶4} In construing a motion to dismiss pursuant to Civ.R. 12(B)(6), the court must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). Then, before the court may dismiss the complaint, it must appear beyond doubt that plaintiff can prove no set of facts entitling him to recovery. *O’Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245,

327 N.E.2d 753 (1975). The unsupported conclusions of a complaint are, however, not admitted and are insufficient to withstand a motion to dismiss. *Mitchell* at 193.

{¶5} Parrish alleges that the Village has failed to produce all records responsive to his requests. While respondent may defend a public records claim by proving that all responsive records have been provided subsequent to the filing of the complaint, mootness is not proven on the face of the complaint. I therefore recommend that the motion to dismiss be denied, and the matter determined on the merits.

Suggestion of Mootness

{¶6} In an action to enforce R.C. 149.43(B), a public office may produce the requested records prior to the court's decision, and thereby render the claim for production moot. *State ex rel. Striker v. Smith*, 129 Ohio St.3d 168, 2011-Ohio-2878, 950 N.E.2d 952, ¶ 18-22. Village Administrator Walter Cordes attests that

On March 2, 2018, Glendale made all of the records requested by Mr. Parrish on December 21, 2017, available to him again for his inspection at the Village Offices. These records included the 2015 Televac records which had since been re-filed apart from the 2014 Televac records. In addition, Glendale also made available to Mr. Parrish for his inspection those additional public records requested by Mr. Parrish's January 20, 2018, public records request.

(Response, Cordes Aff. at ¶ 8.) On May 2, 2018, the court issued an order directing Parrish to file a reply addressing whether respondent had provided all records responsive to his January 20, 2018 requests and, if not, to identify what specific records the Village had failed to produce. Parrish filed no response to the order.

{¶7} Although respondent provides only a general assertion of compliance, it stands uncontradicted. Under these circumstances, I find that respondent has met its burden to establish that it has provided the public records requested in the letter of January 20, 2018. *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, ¶ 14-16.

Timeliness

{¶8} The Village did not produce the additional records requested in Parrish's January 20, 2018 letter until six weeks after the request. The Village provides no explanation for the delay, or any indication that the records required legal review or redaction prior to public inspection. I find that the Village failed to comply with its obligation under R.C. 149.43(B)(1) to promptly prepare these records for inspection.

Conclusion

{¶9} Upon consideration of the pleadings and attachments I recommend that the court deny the Village's motion to dismiss. I further recommend that the court deny requester's claim for production of records as moot. I further recommend that the court find that the Village failed to provide the records promptly, and that costs therefore be assessed to respondent.

{¶10} *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).*

JEFFERY W. CLARK
Special Master