

[Cite as *Colahan v. Worthington Police Dept.*, 2018-Ohio-4593.]

STEPHEN T. COLAHAN	Case No. 2018-00928PQ
Requester	Special Master Jeffery W. Clark
v.	<u>REPORT AND RECOMMENDATION</u>
WORTHINGTON POLICE DEPARTMENT	
Respondent	

{¶1} On May 1, 2018, requester Stephen Colahan called respondent Worthington Police Department and asked for records of the case involving Dan Burke at 440 West 2nd Avenue, Columbus, Ohio 43201. A records custodian looked up the case and advised Colahan that because the case was still open they would not release the records. (Complaint.) On June 7, 2018, Colahan filed a complaint pursuant to R.C. 2743.75 alleging denial of access to public records in violation of R.C. 149.43(B). On August 8, 2018, the court was notified that mediation had terminated without full resolution. On August 21, 2018, Worthington PD filed its motion to dismiss (Response). On September 9, 2018, per court order, Worthington PD filed seven CD-ROM disks under seal containing unredacted copies of the records responsive to the request. Worthington PD provided a table listing page ranges of sealed records and claimed exceptions therein. (Sept. 5, 2018 Response to Order at 2-11.) On September 14, 2018, Colahan filed a reply.

Remedy Under R.C. 2743.75

{¶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). The policy underlying the Act is that "open government serves the public interest and our democratic system." *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364, 2006-Ohio-1825, 848 N.E.2d 472, ¶ 20.

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. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686, ¶ 13. Claims under R.C. 2743.75 are determined using the standard of clear and convincing evidence. *Hurt v. Liberty Twp.*, 5th Dist. Delaware No. 17CA1050031, 2017-Ohio-7820, ¶ 27-30.

Motion to Dismiss

{¶3} Worthington PD moves to dismiss the complaint on the grounds that 1) the request was ambiguous and overly broad, 2) all withheld records are subject to the confidential law enforcement investigatory records exception, and 3) the personal information of victims and witnesses in the file is subject to a constitutional right of privacy.¹ (Response, Memo in Support at 4-12.) 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. If a court determines that records withheld from release are exempt from disclosure, a complaint based solely on denial of access to the records is subject to dismissal for failure to state a claim upon which relief may be granted. *Perry v. Onunwor*, 8th Dist. Cuyahoga No. 78398, 2000 Ohio App. LEXIS

¹ The Worthington PD records custodian did not deny Colahan's request on the basis of ambiguity, overbreadth, or a constitutional right of privacy. However, the initial explanation provided to the requester "shall not preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section." R.C. 149.43(B)(3).

5893, *3-5 (December 7, 2000); *State ex rel. Welden v. Ohio State Med. Bd.*, 10th Dist. Franklin No. 11AP-139, 2011-Ohio-6560, ¶ 2, 13-15.

Ambiguous or Overly Broad Request

{¶4} Worthington PD's first basis for dismissal is that Colahan's request was ambiguous and overly broad, and therefore unenforceable. Under the Ohio Public Records Act a public records requester must reasonably identify the particular records sought, and a request that is ambiguous or overly broad may be denied. R.C. 149.43(B)(2). Accordingly, "it is the responsibility of the person who wishes to inspect and/or copy records to identify with reasonable clarity the records at issue." *State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228, 976 N.E.2d 861, ¶ 21. Judicial determination of whether a public office has properly denied a request as ambiguous or overly broad is based on the facts and circumstances in each case, *Id.* at ¶ 26.

{¶5} For purposes of the motion to dismiss, the court must accept as true the following allegations of the complaint regarding the request:

On May 1 around 11:50 a.m., I called Worthington Police Department. I asked for the custodian of records. The custodian asked me information about the case I was inquiring public records for, I said Dan Burke, specifically Dan Burke at 440 W 2nd Ave Columbus, OH 43201. The custodian looked up the record and then mentioned that because that case is still open that they will not release the records.

(Complaint.) The request was for a case involving a named person, who was further identified by address. Instead of denying the request as not reasonably identifying the records sought, the records custodian proceeded to look up the case based on the given information. The court may reasonably infer from the result of this question and answer process that Colahan and the custodian resolved any ambiguity in identifying the relevant criminal case containing the records sought. *See State ex rel. Hartkemeyer v. Fairfield Twp.*, 12th Dist. Butler No. CA2012-04-080, 2012-Ohio-5842, ¶ 27. Colahan references the case as "WPD's investigation of Dan Burke," including "files, documents,

and evidence pertaining to an investigation of him,” a description consistent with the police department criminal investigatory case records that Worthington PD has submitted under seal as the records it deems responsive to the request. Worthington PD’s response seeks to characterize the allegations in Colahan’s complaint as a request made for “information related to Burke.” (Response at 4-5.) However, Worthington PD provides no evidence that the request was made using this alternate wording, and does not dispute the colloquy as related in the complaint.

{¶6} Regardless of wording, Worthington PD asserts that the request is insufficiently specific because the department “maintains information as it relates to an incident report,” and “does not maintain information specifically by ‘suspect.’” (Response at 5.) However, Worthington PD’s own testimony establishes that it may search its records management system by an individual’s name and address to obtain an incident report number, with which it then routinely accesses and retrieves associated incident reports and investigatory case files. (Response to Order, Santuomo Aff. at ¶ 5-8.) The special master takes judicial notice that law enforcement agencies routinely identify and provide criminal case materials to each other and to public records requesters based on the name and other identifiers of a criminal suspect. The special master is not persuaded that the Worthington PD is unable to identify and retrieve criminal investigatory case files based on a suspect’s name and address. I find that the request made, discussed, and resolved between Colahan and Worthington PD’s records custodian was not improperly ambiguous or overly broad.

{¶7} Worthington PD’s second and third grounds for dismissal assert public records exceptions that would, if proven, allow or require the office to withhold requested records. However, the factual allegations in the complaint do not establish that either the confidential law enforcement investigatory records exception or the constitutional right of privacy apply to the withheld records. Worthington PD concedes that it bears the burden to show that withheld records fall squarely within an asserted

exception (Response at 3). Moreover, a review by the court *in camera* is routinely required to determine the portion(s) of the records to which either of these exceptions may apply. I find that Worthington PD cannot establish on the face of the complaint that any of the withheld records were excepted from disclosure, and therefore does not show that that plaintiff can prove no set of facts entitling him to recovery. I recommend that the motion to dismiss be denied, and the case decided on the merits.

Application of Claimed Exceptions

{¶8} R.C. 149.43(A)(1) sets forth specific exceptions from the definition of “public record,” as well as a catch-all exception for “[r]ecords the release of which is prohibited by state or federal law.” R.C. 149.43(A)(1)(v). A public office bears the burden of proof to establish the applicability of any exception:

Exceptions to disclosure under the Public Records Act, R.C. 149.43, are strictly construed against the public-records custodian, and the custodian has the burden to establish the applicability of an exception. * * * A custodian does not meet this burden if it has not proven that the requested records fall squarely within the exception.

State ex rel. Cincinnati Enquirer v. Jones-Kelley, 118 Ohio St.3d 81, 2008-Ohio-1770, 886 N.E.2d 206, ¶ 10. Worthington PD thus bears the burden of proving that any withheld record falls squarely within one or more of the claimed exceptions to disclosure.

Confidential Law Enforcement Investigatory Work Product

{¶9} R.C. 149.43(A)(1) provides that “[p]ublic record” does not mean * * *: (h) Confidential law enforcement investigatory records.” R.C. 149.43(A)(2) defines “confidential law enforcement investigatory records” (“CLEIRs”), in pertinent part, as:

“any record that *pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature*, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(c) Specific confidential investigatory techniques or procedures or *specific investigatory work product*.”

(Emphasis added.) Applying the CLEIRs exception to claimed investigatory work product thus involves a two-part test: first, whether the records pertain to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature; and second, whether the release of those records would create a high probability of disclosure of specific investigatory work product. *State ex rel. Miller v. Ohio State Highway Patrol*, 136 Ohio St.3d 350, 2013-Ohio-3720, 995 N.E.2d 1175, ¶ 25. The first prong is readily resolved in this case, as the parties do not dispute that records of the investigation of Dan Burke pertain to a law enforcement matter of a criminal nature.

Specific Investigatory Work Product

{¶10} With regard to the second prong, the definition of “[s]pecific investigatory work product” includes “any notes, working papers, memoranda or similar materials” and all other “information assembled by law enforcement officials, in connection with a probable or pending criminal proceeding.” *Cincinnati Enquirer v. Ohio Dep’t of Pub. Safety*, 148 Ohio St.3d 433, 2016-Ohio-7987, ¶ 41. In the seminal case of *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 434, 639 N.E.2d 83 (1994), the Supreme Court stated that “[t]his definition (working papers) is broad enough to bring under its umbrella any records compiled by law enforcement officials.” See also *State ex rel. Caster v. Columbus*, 151 Ohio St.3d 425, 2016-Ohio-8394, 89 N.E.3d 598, ¶ 25-30.

{¶11} However, a law enforcement record is not investigatory work product if it merely triggers or initiates the investigation. *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St.3d 374, 377-378, 662 N.E.2d 334 (1996) (9-1-1 call tapes); *Gannett GP Media v. Chillicothe Police Dept.*, Ct. of Cl. No. 2017-00886-PQ, 2018-Ohio-1552, ¶ 16-23. A report that an incident has occurred is not “investigatory” in nature when received or created prior to the commencement of an investigation. The Supreme Court states that “incident reports initiate criminal investigations, but are not part of the investigation.” *State ex rel. Beacon Journal Publ. Co. v. Maurer*, 91 Ohio St.3d 54, 56,

741 N.E.2d 511 (2001). In *Maurer*, the incident report was made using the Ohio Uniform Incident Report (UIR) form. *Id.* at 54. In the UIR Training Manual on page 2, the Administrative Section of the form is described as including the purpose “to record preliminary information regarding the incident.”² The UIR form (or an electronic version thereof) often serves as the initial offense or incident report for law enforcement investigations. See *State ex rel. Lanham v. Smith*, 112 Ohio St.3d 527, 2007-Ohio-609, 861 N.E.2d 530, ¶ 13 (citing *Maurer* and the UIR form). In addition to completing the form itself, the reporting deputy in *Maurer* attached thirty-five pages of transcripts and written statements to the UIR form, and incorporated them by reference in the space used to describe events. *Maurer* at 54. The Court held that “this report, including the typed narrative statements, is not a confidential law enforcement investigatory record.” *Id.* at 56.

{¶12} Worthington PD concedes that incident reports are not included in the CLEIRs exception, and in partial compliance has disclosed the first two pages of Incident Report No. 17-1205. (Response, Memo in Support at 1-2; Response to Order at 4, ref. WP000614-WP000615.)³ However, review of the withheld records shows that the next page of the UIR form for Incident Report No. 17-1205, titled OHIO SUSPECT/ARREST, was completed on the same date as the first two pages and similarly reflects initial factual information. (*Id.*, WP000616.) The reporting date for the first three pages of the UIR form is September 25, 2017 – the same date that the victim spoke with Officer Agin (see below). Based on the chronology, content, and authorship of the record, I find that page WP000616 constitutes part of the initial incident report.

² See *Ohio Uniform Incident Report (UIR) Training Manual* (August 2011), p. 1, at http://ocjs.ohio.gov/oibrs/Forms/UIR_Training.pdf (accessed October 2, 2018). The UIR is a publication of the Ohio Department of Public Safety, Office of Criminal Justice Services, and is designed to capture crime data for the Ohio Incident-Based Reporting System and the FBI National Incident-Based Reporting System. The basic UIR form is contained in the Manual immediately following the Table of Contents.

³ The case file submitted under seal contains some duplicate records, including the first three pages of Incident Report No. 17-1205 at WP00626-WP00628.

{¶13} On the next UIR form page, titled OHIO NARRATIVE and dated October 5, 2017, the initial text is a recitation by [Reporting] Officer Agin of factual information he received from the victim on September 25, 2017. This factual narrative is followed by separate notes of investigatory contacts and attempted contacts that begin on September 25, 2017 and continue through later dates. (*Id.*, WP000617.) Based on chronology, content, and authorship, I find that the narrative text on this page prior to the September 25, 2017 entry regarding Agin's attempted contact of a person of interest constitutes part of the initial incident report. I find that the text on the page from that point forward constitutes specific investigatory work product.

{¶14} Contemporaneous with the creation of the incident report, the victim delivered a FedEx envelope to Worthington PD containing either 60 or 80 letters. (Response, Memo in Support at 1; Exh A at 2, ref. PROPERTY section, DESCRIPTION field; WP000615.) Based on this chronology, and the express reference to the letters in the incident report, I find that the referenced letters constitute part of the initial incident report. See *Maurer*, 91 Ohio St.3d at 54, 56.

{¶15} The final three pages of the UIR Form, also titled OHIO NARRATIVE, were completed on and after October 5, 2017 and contain investigative notes and supplemental reports by various officers. (*Id.*, WP000618-WP000620.) After an investigation has been initiated, supplementary reports of investigators are "investigatory" work product. See *State ex rel. Fields v. Cervenik*, 8th Dist. Cuyahoga No. 86889, 2006-Ohio-3969, ¶ 22, 26, 30-32, 34, 35, 48, 52, 55, 58, 59, 77, 81; *Perry v. Onunwor*, 8th Dist. Cuyahoga No. 78398, 2000 Ohio App. LEXIS 5893, *5 (Dec. 7, 2000). The clearance category checked on Incident Report No. 17-1205 is: "Investig. Pending." (Response, Exh. A at 1, ADMINISTRATIVE section, CLEARANCES field; WP000614.) Sergeant Mette's approval of the initial incident report form on October 5, 2017 includes follow-up assignment to [Detective] B. BABB (*Id.*, concluding section, FOLLOW-UP fields). These administrative notations presumptively establish

that subsequent activity in the matter will be investigatory rather than case-initiating. Based on separation in time of these pages from the initial incident report, the investigatory nature of the matters recorded therein, and additional authorship by supervisory and investigatory officials, I find that they do not constitute part of the initial incident report.

{¶16} I conclude that the first three pages of Incident Report No. 17-1205, the text on the fourth page that reflects receipt of factual information from the victim on September 25, 2017, and the letters referenced on the second page, constitute the initial incident report in this case and do not constitute investigatory work product. The subsequent portions of the UIR forms in the case file, as well as all documentary evidence subsequently received and the later “notes, working papers, memoranda or similar materials” of the investigators, do constitute investigatory work product. The video recordings submitted under seal by Worthington PD and marked as WP001553-WP001558 consist of interviews conducted by a female. Although the recordings are undated and the participants unidentified, they bear no indicia of having been created at the time of the initial incident report and are not referenced in the initial incident report. Based on this limited evidence, I find that these videos are more likely than not investigatory work product created after the filing of the initial incident report and after the assignment of Detective Babb to conduct the investigation.

Investigatory Work Product Exception – Expiration

{¶17} There is no express time limit to the CLEIRs exceptions in the statute. R.C. 149.43(A)(2). Law enforcement investigatory work product records “continue to be exempt despite the passage of time, [or] the lack of enforcement action, * * *.” (Citations omitted.) *State ex rel. National Broadcasting Co. v. Cleveland (“NBC II”)*, 57 Ohio St.3d 77, 78-80, 566 N.E.2d 146 (1991); accord *State ex rel. Bonnell v. Cleveland*, 8th Dist. Cuyahoga No. 64854, 1993 Ohio App.LEXIS 4225, *9-10 (August 26, 1993); see also *State ex rel. Polovischak v. Mayfield*, 50 Ohio St.3d 51, 552 N.E.2d 635 (1990),

syllabus. This does not mean that the exception extends indefinitely.⁴ The specific investigatory work product exception has been held to apply only so long as a record is maintained “in connection with a probable or pending criminal proceeding.” *Steckman*, 70 Ohio St.3d 420, 639 N.E.2d 83 at paragraph five of the syllabus. The exception would thus cease when there was no possibility of a criminal proceeding, such as after the expiration of the statute of limitations for the putative crime. The exception would also expire if the sole suspect died, or prosecution was declined, or the agency conclusively determined that no crime had occurred. See *Bentkowski v. Trafis*, 8th Dist. Cuyahoga No. 102540, 2015-Ohio-5139, 56 N.E.3d 230, ¶ 4-7, 24-26 (prosecutor concluded that no crime was committed). For a non-exhaustive list of criminal case clearance codes, and descriptions of circumstances that may terminate the possibility of future criminal proceeding, see the Ohio Uniform Incident Report Training Manual, p. 3-5.⁵ The work product exception also “does not extend beyond the completion of the trial for which the information was gathered.” *Caster*, 151 Ohio St.3d 425, 2016-Ohio-8394, 89 N.E.3d 598 at ¶ 47.

{¶18} Colahan states, “I believe that the WPD’s investigation of Dan Burke is finished, and [the investigatory records] should be released.” However, the Worthington PD detective assigned to the case attests that the investigation has proceeded as if a crime has occurred, and that the investigation remains active as to multiple suspects. (Babb Aff., ¶ 12, 14-17.) I find that Worthington PD has met its burden of proof in showing that, with the exceptions described herein, the withheld records pertain to a law enforcement matter of a criminal nature that has not yet

⁴ Nor are the CLEIRs exceptions mandatory, as the statutory wording “are not public records” means only that a public office is not *required* to disclose the records, but may do so at its discretion. 2000 Ohio Op. Att’y Gen. No. 021; 2001 Ohio Op. Att’y Gen. No. 041.

⁵ Ohio Department of Public Safety Office of Criminal Justice Services, *Ohio Uniform Incident Report (UIR) Training Manual* (August 2011) http://ocjs.ohio.gov/oibrs/Forms/UIR_Training.pdf (accessed October 2, 2018).

concluded, and that the law enforcement investigatory work product exception continues to apply.

Other Nonexempt Material in Case File

{¶19} Unquestionably nonexempt documents do not become exempt simply because they are placed in a law enforcement investigative file. *State ex rel. Ohio Patrolmen's Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 448, 732 N.E.2d 969 (2000) (copies of newspaper articles and statutes); *State ex rel. WLWT-TV5 v. Leis*, 77 Ohio St.3d 357, 361, 673 N.E.2d 1365 (1997) (copies of the indictment, statutes, news articles, blank charitable organization registration form, organization's yearbook and buyer's guide, transcript of plea hearing, videotape of news reports, and campaign committee finance report), overruled on other grounds by *Caster* at ¶ 47. Respondent concedes this point. (Response at 8.) However, pages WP000700-WP000703 of the withheld records are a copy of a statute - one example of a document in the case file clearly subject to disclosure pursuant to the above case law.⁶ Respondent remains obligated to disclose to Colahan any other case documents that are non-exempt copies of statutes, media articles or tapes, and court filings.

Other Confidential Law Enforcement Investigatory Records Exceptions

{¶20} Worthington PD asserts that unspecified portions of its investigative records would be subject to additional exceptions provided in R.C. 149.43(A)(2), as records that would have a high probability of disclosure of 1) the identity of an uncharged suspect, 2) information that would endanger the life or physical safety of victims and witnesses, or 3) specific confidential investigatory techniques or procedures. (Response, Memo in Support at 10-11.) These second-prong CLEIRs exceptions have

⁶ Respondent does not assert that it has reviewed the responsive records to identify similar non-exempt material. It is the responsibility of respondent, not the court, to review its voluminous investigative file for any additional non-exempt material subject to disclosure.

been held to remain applicable “so long as the conditions justifying those exceptions still exist.” *Caster* at ¶ 48.

{¶21} I will assume, *arguendo*, that Worthington PD has sufficiently asserted that the uncharged suspect exception, R.C. 149.43(A)(2)(a), applies to information contained in withheld records that have been determined above to be part of the initial incident report. (Response to Order of August 24, 2018 at 4, ref. WP000616-WP000620.) However, information incorporated into the initial incident report is not subject to any part of the confidential law enforcement investigatory records exception, including the identity of an uncharged suspect. *Maurer*, 91 Ohio St.3d at 57, 741 N.E.2d 511. I therefore find that the uncharged suspect exception may not be applied to the initial incident report in this case.

{¶22} Because I find that the specific investigatory work product exception currently applies to all of the responsive records that are not either the initial incident report or non-exempt non-investigatory material, it is unnecessary to analyze the additional CLEIRs exceptions with regard to the remaining withheld records. If a future public records request is made after this investigation concludes, Worthington PD may assert those exceptions to the extent they apply at the time. By then, one or more exceptions may have expired – for example, if one or more uncharged suspects has been charged – and additional responsive records will likely have accumulated to which the exceptions may or may not apply. Finally, as a practical matter affecting the court’s ability to determine this issue, Worthington PD failed to identify by page, paragraph, line, and word or image the specific portions of the withheld records allegedly subject to these exceptions as ordered by the special master. (August 24, 2018 Order; Respondent’s Response to Order of August 24, 2018.) While future consideration of these exceptions will require compliance with such an order, the issue may be disregarded under these circumstances in the interest of expediting disposition of the

present case. I recommend that the court decline to decide these additional CLEIRs defenses at this time.

Constitutional Right of Privacy

{¶23} Finally, respondent argues that release of unspecified portions of the withheld records is prohibited by the victims' and witnesses' constitutional right of privacy, which if proven would make them "records the release of which is prohibited by state or federal law." (Response, Memo in Support at 11-12.) As with its other claimed exceptions, Worthington PD has failed to identify by page, paragraph, line, and word or image the specific portions of the withheld records allegedly subject to this exception. However, because the remaining withheld records are subject to the confidential law enforcement investigatory work product exception the court need not address this issue. "Courts decide constitutional issues only when absolutely necessary." (Citations omitted.) *State ex rel. Beacon Journal Publ'g Co. v. Akron*, 104 Ohio St.3d 399, 2004-Ohio-6557, 81 N.E.2d 1087, ¶ 48.

Social Security Numbers

{¶24} Although the initial incident report may not be withheld as a confidential law enforcement investigatory record, information within the report that is otherwise exempt under state or federal law may be redacted. *Beacon Journal v. Akron, supra*, at ¶ 55. Therefore, social security numbers contained in the initial incident report may be redacted. *State ex rel. Beacon Journal Publishing Co. v. Akron*, 70 Ohio St.3d 605, 640 N.E.2d 164 (1994); 2004 Ohio Op. Atty Gen. No 45.

Conclusion

{¶25} I recommend that respondent's motion to dismiss for failure to state a claim pursuant to Civ.R. 12(B)(6) be denied. Upon consideration of the pleadings and attachments, I find that requester has established by clear and convincing evidence that respondent violated R.C. 149.43(B) by withholding portions of the initial incident report as detailed above, and by withholding other records in the investigatory file to which no

exception applies. Beyond these documents, I find that requester fails to establish respondent's duty to disclose any other records at this time. I recommend that the court issue an order for respondent to disclose the additional pages of the initial incident report as identified above. I further recommend that the court order respondent to review the investigatory file and disclose pages WP000700-WP000703 and any other copies of statutes, media articles or tapes, and publicly available court filings contained in the investigatory file. I recommend that costs be shared equally between the parties.

{¶26} *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