

[Cite as *Narciso v. Powell Police Dept.*, 2018-Ohio-5017.]

{¶1} On July 24, 2018, requester Dean Narciso requested “information related to DEAN NARCISO	Case No. 2018-01195PQ
Requester	Judge Patrick M. McGrath
v.	<u>ENTRY ADOPTING</u>
POWELL POLICE DEPARTMENT	<u>RECOMMENDATION OF</u>
Respondent	<u>SPECIAL MASTER</u>

the domestic violence investigation or report between Courtney and Zachary Smith from October, 2015” from respondent Powell Police Department (Powell PD). Powell PD provided Narciso with an incident run sheet and two pages of the initial incident report form related to an October 25, 2015 incident. On August 10, 2018, Powell PD received a second request seeking “an opportunity to inspect or obtain copies of public records that pertain to the case file of the Oct. 24 [sic], 2015 domestic violence investigation related to Zach and Courtney Smith, including all audio, transcripts of interviews, photographs and other evidence.” This request included “the same case file information for a menacing investigation in November, 2015.” Powell PD responded that any further records were excepted from disclosure as confidential law enforcement investigatory records (CLEIRs) that would reveal the identity of an uncharged suspect. R.C. 149.43(A)(2)(a).

{¶2} On August 15, 2018, Narciso filed a complaint pursuant to R.C. 2743.75 alleging denial of access to public records by Powell PD in violation of R.C. 149.43(B). On September 6, 2018, Powell PD filed its answer. Powell PD filed an unredacted copy of the withheld records under seal. On September 28, 2018, Narciso filed a reply. Powell PD asserted that: 1) the withheld records are exempt as having a high probability of revealing the identity of an uncharged suspect, 2) release of parts of the records would disclose information that would endanger the physical safety of a crime victim or witness, 3) some of the records are subject to a constitutional right of privacy, and 4) any items that were not actually used to document the investigation are non-records.

{¶3} On August 27, 2018, special master Jeffery Clark issued a report finding that Powell PD must release additional parts of the initial incident reports, including documents incorporated into the incident reports by reference. The special master found that the investigatory file contained specific items of information that if released would have a high probability of disclosing the identity of an uncharged suspect. The special master further found that Powell PD provided no evidence that disclosure of any record would endanger the life or physical safety of a crime victim or witness. The special master further found that social security numbers and images of genitals, breasts and underwear were subject to a Fourteenth Amendment right to privacy and may be redacted from the records. The special master further found that to the extent the contents of storage devices obtained in the investigation were not actually used to document the investigation, they were not “records” of the Powell PD and thus not subject to the Public Records Act. The special master further found that Powell PD could redact information excepted by R.C. 149.43(A)(1)(dd) and R.C. 1306.23. Other than specified information excepted under R.C. 1306.23, and the video portion of a victim interview, the special master found that none of the excepted information was “inextricably intertwined” with the records in which they were contained. The special master recommended the court grant Narciso’s claim for production of records, subject to the specific redactions approved in the report.

{¶4} 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.

{¶5} Powell PD is ordered to provide the investigatory records in conformity with the report and recommendation, retaining the pagination used in the sealed records. The court finds that requester is entitled to recover from respondent the costs associated with this action, including the twenty-five-dollar filing fee. R.C. 2743.75(F)(3)(b). Court costs are assessed against the respondent. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge