

[Cite as *State ex rel. Ellis v. Maple Hts. Police Dept.*, 2019-Ohio-367.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107572

STATE EX REL.
LDDARYL ELLIS

RELATOR

vs.

MAPLE HEIGHTS POLICE DEPARTMENT

RESPONDENT

JUDGMENT:
WRIT DENIED

Writ of Mandamus
Motion No. 521790
Order No. 524564

RELEASE DATE: January 25, 2019

FOR RELATOR

Lddaryl Ellis, pro se
Inmate No. A641151
Trumbull Correctional Institution
5701 Burnett Road
Leavittsburg, Ohio 44430

ATTORNEY FOR RESPONDENT

Frank Consolo
Consolo Law Firm Co., L.P.A.
212 Hoyt Block
700 W. St. Clair Avenue
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., J.:

{¶1} Lddaryl Ellis has filed a complaint for a writ of mandamus, pursuant to R.C. 149.43(C)(1)(b), in order to compel the Maple Heights Police Department to provide copies of the following records: 1) “all incident reports, books, papers, documents, photographs, tangible objects, buildings, or places, memorandum, memo notes, emails, transfer papers, etc.”; and 2) “copies of all records retention schedule, records retention policy, and public records policy.” The Maple Heights Police Department has filed a Civ.R. 56(C) motion for summary judgment, which is granted for the following reasons.

{¶2} Initially, we find that the request for public records is overly broad because Ellis has failed to specify or identify with reasonable clarity what public records should be provided by the Maple Heights Police Department. The general request for public records by Ellis is extremely vague and overly broad and not subject to disclosure. *State ex rel. Dehler v. Spatny*, 127 Ohio St.3d 312, 2010-Ohio-5711, 939 N.E.2d 831; *State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, 894 N.E.2d 686.

{¶3} In addition, Ellis has failed to comply with R.C. 149.43(B)(8), which provides that:

A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

{¶4} Herein, Ellis is currently incarcerated at the Trumbull Correctional Institution in Leavittsburg, Ohio. See exhibit A attached to the complaint for a writ of mandamus. Because Ellis is incarcerated, he is required to comply with the mandatory requirement of R.C. 149.43(B)(8) and seek leave of the judge that sentenced him to incarceration prior to seeking public records. The failure to seek the permission of the sentencing trial court judge prior to requesting public records is fatal to the complaint for a writ of mandamus. *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 966; *State ex rel. Brown v. Rhodes*, 112 Ohio St.3d 153, 2006-Ohio-6523, 858 N.E.2d 412; *State v. McDuffie*, 8th Dist. Cuyahoga No. 105614, 2017-Ohio-8490.

{¶5} Furthermore, Ellis's request for a writ of mandamus is moot. Attached to the Maple Heights Police Department's motion for summary judgment is an affidavit, executed by the records clerk for the Maple Heights Police Department, which demonstrates that: 1) Ellis's request for public records was received on July 11, 2018; and 2) on July 12, 2018, the records clerk for the Maple Heights Police Department compiled all documents responsive to Ellis's request for public records and transmitted the assembled records, via regular U.S. mail, to Ellis. See exhibit No. 2 attached to the motion for summary judgment. In addition, attached to the motion for summary judgment are copies of the public records that were transmitted to Ellis. See exhibits A, B, and C. Thus, Ellis's request for a writ of

mandamus is moot. *Strothers v. Norton*, 131 Ohio St.3d 359, 2012-Ohio-1007, 965 N.E.2d 282; *State ex rel. Striker v. Smith*, 129 Ohio St.3d 168, 2011-Ohio-2878, 950 N.E.2d 952, *State ex rel. Toledo Blade Co. v. Toledo-Lucas Cty., Port Auth.*, 121 Ohio St.3d 537, 2009-Ohio-1767, 905 N.E.2d 1221.

{¶6} Finally, statutory damages and costs are only available under R.C. 149.43(C) if a court determines that the public office or the person responsible for public records has failed to comply with an obligation in accordance with R.C. 149.43(B). A public office is required to make public records available within a reasonable period of time. R.C. 149.43(B)(1). Herein, the Maple Heights Police Department promptly provided Ellis with the requested records and we have found that mandamus does not lie. Thus, Ellis is not entitled to statutory damages or costs. *State ex rel. Cincinnati Enquirer v. Pike Cty. Coroner's Office*, 153 Ohio St.3d 63, 2017-Ohio-8988, 101 N.E.3d 396; *State ex rel. Consumer News Servs., Inc. v. Worthington City Bd. of Edn.*, 97 Ohio St.3d 58, 2002-Ohio-5311, 776 N.E.2d 82.

{¶7} Accordingly, we grant the Maple Heights Police Department's motion for summary judgment. Costs to Ellis. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶8} Writ denied.

FRANK D. CELEBREZZE, JR., JUDGE

MARY EILEEN KILBANE, A.J., and
SEAN C. GALLAGHER, J., CONCUR