

[Cite as *State ex rel. Ellis v. Cleveland Police Forensic Laboratory*, 2019-Ohio-710.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 107571

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STATE OF OHIO, EX REL.  
LDDARYL ELLIS

RELATOR

vs.

CLEVELAND POLICE FORENSIC LABORATORY

RESPONDENT

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**JUDGMENT:**  
WRIT GRANTED IN PART AND DENIED IN PART

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Writ of Mandamus  
Motion No. 522640  
Order No. 524796

**RELEASE DATE:** February 22, 2019

## **FOR RELATOR**

Lddaryl Ellis, pro se  
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## **ATTORNEYS FOR RESPONDENT**

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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 Cleveland Police Forensic Laboratory (“Forensic Lab”) to provide copies of the following records: 1) all investigative reports, all laboratory or hospital reports, books, papers, documents, photographs, tangible objects, buildings, or places, all scientific tests, any memorandum, memo notes, emails, police detective statements and reports, witness statements and reports, and victim statements and reports; 2) records relating to the ballistic test of a Skyy 9 mm caliber pistol model CPX-1, serial number 018313; and 3) copies of Forensic Lab’s records retention schedule, records retention policy, and public records policy. The Forensic Lab has filed a Civ.R. 56(C) motion for summary judgment, which is granted in part and denied in part for the following reasons.

{¶2} In order to properly analyze Ellis’s request for a writ of mandamus, we must separately examine the three distinct categories of requested public records. Initially, we find

that the first category of requested public records is overly broad because Ellis has failed to specify or identify with reasonable clarity what public records should be provided by the Forensic Lab through the request for all investigative reports, all laboratory or hospital reports, books, papers, documents, photographs, tangible object, buildings, or places, all scientific tests, any memorandum, memo notes, emails, police detective statements and reports, witness statements and reports, and victim statements and reports. The aforesaid 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} Ellis, through his second category of requested public records, seeks records that deal with the ballistic test of a Skyy 9 mm caliber pistol model CPX-1, serial no. 018313. 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.*

(Emphasis added.)

{¶4} The Supreme Court of Ohio, with regard to the application of R.C. 149.43(B)(8), has established that:

The language of the statute is broad and encompassing. R.C. 149.43(B)(8) clearly sets forth heightened requirements for inmates seeking public records. The General Assembly's broad language clearly includes offense and incident reports as documents that are subject to the additional requirement to be met by inmates

seeking records concerning a criminal investigation or prosecution. The General Assembly clearly evidenced a public-policy decision to restrict a convicted inmate's unlimited access to public records in order to conserve law enforcement resources.

*State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 966, ¶ 14.

{¶5} In *State v. Ellis*, Cuyahoga C.P. No. CR-12-568532-A, Ellis was convicted of the offenses of murder, involuntary manslaughter, felonious assault, and aggravated riot, all with attached firearm specifications, and sentenced to incarceration for 15 years to life.<sup>1</sup> Further review of the docket in

CR-12-568532-A fails to disclose that Ellis has complied with the statutory requirement of R.C. 149.43(B)(8) by requesting a finding from the sentencing judge that the information sought in the public record request, as made to the Forensic Lab, was necessary to support what appears to be a justiciable claim. The failure to request the finding of necessity from the sentencing judge prevents Ellis from demonstrating that he possesses a clear legal right to the requested public records he seeks in his petition, and that the Forensic Lab is under a clear legal duty to release the requested records. *State ex rel. Chatfield v. Flautt*, 131 Ohio St.3d 383, 2012-Ohio-1294, 965 N.E.2d 304; *State ex rel. Barb v. Cuyahoga County Jury Commr.*, 124 Ohio St.3d 238, 2010-Ohio-120, 921 N.E.2d 236.

{¶6} The doctrine of res judicata also bars Ellis from seeking a writ of mandamus in order to compel the Forensic Lab to provide him with any public records that relate to the ballistic test of the Skyy 9 mm caliber pistol, model CPX-1, serial no. 018313. The Supreme

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<sup>1</sup>The Supreme Court of Ohio has held that a court may take judicial notice of a docket that is publicly available via the internet. *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, 874 N.E.2d 516; *State v. Chairperson of the Ohio Adult Parole Auth.*, 10th Dist. Franklin No. 17AP-651, 2018-Ohio-1620.

Court of Ohio, in *O’Nesti v. DeBartolo Realty Corp.*, 113 Ohio St.3d 59, 2007-Ohio-1102, 862

N.E.2d 803, reaffirmed the application of the doctrine of res judicata and held that:

The doctrine of res judicata encompasses the two related concepts of claim preclusion, also known as res judicata or estoppel by judgment, and issue preclusion, also known as collateral estoppel. *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, 381, 1995-Ohio- 331, 653 N.E.2d 226. Claim preclusion prevents subsequent actions, by the same parties or their privies, based upon any claim arising out of a transaction that was the subject matter of a previous action. *Fort Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd.* (1998), 81 Ohio St.3d 392, 395, 1998-Ohio-435, 692 N.E.2d 140. Where a claim could have been litigated in the previous suit, claim preclusion also bars subsequent actions on that matter. *Grava*, 73 Ohio St.3d at 382, 653 N.E.2d 226.

Issue preclusion, on the other hand, serves to prevent relitigation of any fact or point that was determined by a court of competent jurisdiction in a previous action between the same parties or their privies. *Fort Frye*, 81 Ohio St.3d at 395, 692 N.E.2d 140. Issue preclusion applies even if the causes of action differ. *Id.*

*O’Nesti Id.* at ¶ 6-7.

{¶7} On February 21, 2018, Ellis filed a “public records access formal complaint” with the Ohio Court of Claims pursuant to R.C. 2743.75(D) and 149.43. *See* Ohio Ct. of Cl. No. 2018-00238PQ. The complaint filed with the Ohio Court of Claims alleged that:

1. I made a public records request on December 28, 2017 to the Cleveland Police Forensic Laboratory requesting for the following document: ballistic test of the following weapon: Skyy 9 mm caliber pistol, model CPX-1, with serial #018313. See attached exhibit A.

#2. I sent the public request to the Cleveland Police Forensic Laboratory by certified mail return receipt that was signed by their agent S. Roberto on January 11, 2018 at 11:58 a.m. See exhibits B and C.

3. The Cleveland Police Forensic Laboratory have failed to respond to my public records request affirmatively within a reasonable time. See attached exhibit D.

{¶8} On February 28, 2018, Special Master Jeffery W. Clark recommended that the complaint filed with the Ohio Court of Claims be dismissed per Civ.R. 12(B)(6) for failure to

state a claim upon which relief can be granted. The recommendation of the Special Master was premised upon the failure of Ellis to comply with the mandatory requirement of R.C. 149.43(B)(8). On March 29, 2018, the recommendation of the Special Master was accepted by the Ohio Court of Claims and the complaint was dismissed based upon the failure of Ellis to comply with R.C. 149.43(B)(8). Res judicata thus bars Ellis from seeking the requested ballistics report from the Forensic Lab, and the request for a writ of mandamus fails. *Barb, supra; State ex rel. Sprague v. Wellington*, 7th Dist. Mahoning No. 11-MA-112; 2012-Ohio-1698.

{¶9} However, R.C. 149.43(B)(8) is not applicable to Ellis's third category of requested public records that involves the records retention schedule, records retention policy, and the public records policy kept or employed by the Forensic Lab. The specific language of R.C. 149.43(B)(8) is strictly limited to the public records request of an incarcerated individual that concerns a criminal investigation or prosecution.

{¶10} The Forensic Lab has failed to demonstrate that a copy of its records retention schedule, records retention policy, and public records policy have been provided to Ellis.

{¶11} Thus, the Forensic Lab is ordered to provide Ellis with the requested records retention schedule, records retention policy, and public records policy within 14 days of the date of this entry. If the Forensic Lab possesses no retention schedule, records retention policy, or public records policy, a certification shall be immediately provided to this court indicating that no such schedules or policies exist. The Forensic Lab is not required to create a requested record. *State ex rel. Pietrangelo v. Avon Lake*, 149 Ohio St.3d 273, 2016-Ohio-5725, 74 N.E.3d 419.

{¶12} Finally, statutory damages are only available under R.C. 149.43(C) if this 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 Forensic Lab possessed no duty to provide Ellis with: 1) all investigative reports, all laboratory or hospital reports, books, papers, documents, photographs, tangible objects, buildings, or places, all scientific tests, any memorandum, memo notes, emails, police detective statements and reports, witness statements and reports, and victim statements and reports; and 2) records relating to the ballistic test of a Skyy 9 mm caliber pistol model CPX-1, serial number 018313. However, the Forensic Lab possesses a duty to provide Ellis with a copy of its records retention schedule, records retention policy, and public records policy if available. Absent the demonstration of the existence of a records retention schedule, records retention policy, or public records policy, Ellis is not entitled to statutory damages. *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.

{¶13} Accordingly, we grant in part and deny in part the Forensic Lab's motion for summary judgment. Mandamus to compel the disclosure of a records retention schedule, records retention policy, or public records policy is granted, if they exist, but is denied as to all other public records requests. Costs are waived. Ellis is granted leave to file an appropriate motion for statutory damages pursuant to R.C. 149.43(C) within 14 days of the receipt of any records retention schedule, records retention policy, or public records policy. Forensic Lab is granted a period of 14 days to file a response to any request for statutory damages. This court

rules that there exists no just reason for delay pursuant to Civ.R. 54(B). 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).

{¶14} Writ granted in part and denied in part.

FRANK D. CELEBREZZE, JR., JUDGE

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