

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

December 1, 2015

[Cite as *12/01/2015 Case Announcements #2*, 2015-Ohio-4913.]

MOTION AND PROCEDURAL RULINGS

2014-0244. State ex rel. Schiffbauer v. Banaszak.

In Mandamus. On relator's motion for statutory damages and attorney fees and motion to strike. Motions denied. On respondents' motion to strike. Motion denied. Kennedy, French, and O'Neill, JJ., dissent.

O'NEILL, J., dissenting.

{¶ 1} I respectfully dissent from the majority's decision not to award attorney fees and statutory damages in this case. Under the statute, a requester of public records is eligible for statutory damages if a court determines that the public office failed to comply with its obligation to make the records available. R.C. 149.43(C)(1). The amount of damages is fixed at \$100 for each business day the public office fails to comply with the law, up to a maximum of \$1,000. R.C. 149.43(C)(1). Because the records were requested in January 2014 and were not produced until this court issued a writ on May 21, 2015, 142 Ohio St.3d 535, 2015-Ohio-1854, 33 N.E.3d 52, relator, Anna Schiffbauer, is entitled to the maximum statutory damages of \$1,000.

{¶ 2} Similarly, the court may award attorney fees if it renders a judgment ordering the public office to comply with the Public Records Act ("PRA"). R.C. 149.43(C)(2)(b). Schiffbauer is entitled to reasonable attorney fees.

{¶ 3} Both damages and attorney-fee awards may be reduced or eliminated if a well-informed public office reasonably would have believed that refusing to produce the requested

records would not violate the PRA and would serve the public policy underlying the authority cited for denying the request. R.C. 149.43(C)(1) and 149.43(C)(2)(c).

{¶ 4} However, having issued a peremptory writ ordering the release of the requested records, it is disingenuous for this court to now find that the Otterbein University police department was reasonable in its belief that it was not a public office subject to the PRA. The whole purpose of awarding attorney fees and statutory damages in public-records cases is to encourage compliance with the law and to compensate those who have had to file a lawsuit to force compliance. We just held that the chief of the Otterbein police department was *not* in compliance with the law when he refused to release the requested records.

{¶ 5} The reality is that the May 21, 2015 ruling in this matter settles a major question in public-records law. From that day forward, all private universities are on notice that their privately funded campus police departments are creating records that are public and subject to disclosure. I do not have to agree with that holding to assert that the individuals who challenged the Otterbein University police department's interpretation of the law are entitled to be compensated.

{¶ 6} Therefore, I dissent and would award statutory damages, costs in the amount of \$246.59, and reasonable attorney fees in the amount of \$15,050.14.

KENNEDY and FRENCH, JJ., concur in the foregoing opinion
