

[Cite as *State ex rel. Patton v. Rhodes*, 2011-Ohio-213.]

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

|                               |   |                   |
|-------------------------------|---|-------------------|
| STATE OF OHIO EX REL. MICHAEL | : | CASE NO. C-100258 |
| EARL PATTON,                  | : |                   |
| Relator,                      | : | <i>DECISION.</i>  |
|                               | : |                   |
| vs.                           | : |                   |
|                               | : |                   |
| DUSTY RHODES, HAMILTON        | : |                   |
| COUNTY AUDITOR,               | : |                   |
| Respondent.                   | : |                   |

Original Action in Mandamus

Judgment of Court: Action Dismissed as Moot; Motion for Fees and Damages Overruled

Date of Judgment Entry on Appeal: January 21, 2011

*Curt C. Hartmann*, for Relator,

*Joseph T. Deters*, Hamilton County Prosecuting Attorney, *Christian J. Schaefer*,  
and *Roger E. Friedmann*, Assistant Prosecuting Attorneys, for Respondent.

**SYLVIA SIEVE HENDON, Judge.**

{¶1} In this original action, relator Michael Earl Patton asks this court for a writ of mandamus compelling respondent Dusty Rhodes, Hamilton County Auditor, to make available certain county financial reports. In addition, Patton seeks an award of attorney fees and statutory damages.

{¶2} The auditor has filed an answer as well as a motion for summary judgment on the mandamus claim.

{¶3} Because the auditor produced the requested records after the commencement of this action, the action is dismissed as moot, and the summary-judgment motion is overruled as moot.<sup>1</sup> Nevertheless, Patton's request for attorney fees and damages is not rendered moot by the production of the records.<sup>2</sup>

*Patton Requests Public Records*

{¶1} On March 5, 2010, Patton hand-delivered to the county auditor's office a letter stating, "I request a copy of the financial reports of Hamilton County prepared by the county auditor for the fiscal years of 2004, 2005, 2006, and 2008. The information may be either released to me personally or put on the county auditor's website. If the latter, then please contact me when the information has been added."

{¶2} R.C. 319.11 requires the county auditor to prepare a financial report of the county for the preceding fiscal year. Upon completion of the report, the auditor must publish notice that the report has been completed and must file a copy with the

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<sup>1</sup> See *State ex rel. Cincinnati Enquirer v. Ronan*, 124 Ohio St.3d 17, 2009-Ohio-5947, 918 N.E.2d 515, ¶4.

<sup>2</sup> Id. at ¶10, citing *State ex rel. Cincinnati Enquirer v. Heath*, 121 Ohio St.3d 165, 2009-Ohio-590, 902 N.E.2d 976, ¶18; see, also, *State ex rel. Mahajan v. State Medical Board*, \_\_\_ Ohio St.3d \_\_\_, 2010-Ohio-5995, \_\_\_ N.E.2d \_\_\_, ¶64.

state auditor. The parties agree that the financial reports sought by Patton constitute “public records.”

{¶3} At the time that Patton made his request, the annual county financial statements that had previously been audited by the state auditor were posted on the county auditor’s website. The county auditor had not posted the financial statements for 2004, 2005, and 2006 because the audits of those statements by the state auditor could not be completed due to unresolved potential claims by the state of Ohio and the federal government concerning certain expenditures and accounting procedures of the Hamilton County Department of Job and Family Services (“HCJFS”) in those years. Because of the complex nature of the issues causing the 2004, 2005, and 2006 financial statements to remain unaudited, the subsequent audits had become more complex and the audit of the 2008 financial statement had not been completed.

{¶4} The audit of the 2008 financial statement did not begin until December 2009, and the delay was indirectly attributable to the same unresolved financial issues affecting the audits of the 2004, 2005, and 2006 financial statements.

{¶5} Because of the potential state and federal claims, and because of the potential adverse effect on bondholders that the posting of unaudited financial statements could have, the county auditor, upon receiving Patton’s request, sought guidance from the county prosecutor’s office as well as from the state auditor’s office.

{¶6} On March 15, six business days after receiving Patton’s request, the county auditor contacted the office of the state auditor to ask whether the county auditor was required to provide the financial reports for the “unaudited years.” On March 16, the county auditor contacted the state auditor’s office to determine if the state auditor had any objections to the posting of the unaudited financial statements on the website. On March 31, 18 days after Patton delivered his request, the state auditor’s office sent an email to the county auditor cautioning that the financial statements should be “clearly marked unaudited, and possibly indicate that they are not the final.”

{¶7} On April 16, Patton filed this mandamus action.

{¶8} On April 20, the county auditor contacted the state auditor's office to ask whether certain language would adequately caution its website readers about the posting of unaudited financial statements.

{¶9} On April 30, the prosecutor's office notified Patton that the county's financial reports for 2004, 2005, and 2006 had been posted several days earlier, and that the 2008 report had been posted that day. None of the financial statements had been stored in electronic format, so the reports had had to be scanned and formatted to be posted online.

{¶10} On May 28, 2010, four weeks after the final financial report was posted, Patton informed the county auditor that he considered his records request satisfied.

#### *Attorney Fees*

{¶11} Under Ohio's Public Records Act, R.C. 149.43, a court may award reasonable attorney fees to the aggrieved person in a mandamus action. The act sets forth certain circumstances in which an award of attorney fees is mandatory.<sup>3</sup>

{¶12} Patton argues that this court must award attorney fees pursuant to R.C. 149.43(C)(2)(b)(i). Under that section, a court must award attorney fees when the public office "failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B) of this section."

{¶13} Division (B) of R.C. 149.43 provides that when a person requests public records, the public office or person responsible for the public records must promptly prepare the records and make them available for inspection by the requestor during regular business hours. Where a person requests copies of the records, the public office

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<sup>3</sup> R.C. 149.43(C)(2)(b)(i) and (ii).

must make copies of the records available at cost “and within a reasonable period of time.”<sup>4</sup>

{¶14} At issue in this case is whether the county auditor complied with Patton’s request within a reasonable period of time. The determination of whether a public office complied with its statutory duty to “timely provide copies of the requested records depends upon all of the pertinent facts and circumstances” surrounding the request.<sup>5</sup>

{¶15} R.C. 149.43(E)(1) requires all public offices to adopt a policy for responding to public-records requests. The county auditor has adopted such a policy to ensure the prompt preparation of responses to public-records requests. The policy specifically states that “[s]ome requests will take longer to fulfill because of complexity, size, redaction of information excluded by statute, review by the County Prosecutor, and/or retrieval from off-site storage.”

{¶16} Upon receiving Patton’s records request, the county auditor contacted the county prosecutor and the state auditor about the online posting of unaudited financial statements. The county auditor sought their advice because of the outstanding potential claims related to HCJFS, and because of the potential effect of such a posting on bondholders.

{¶17} Upon consideration of the pertinent facts in this case, we conclude that the county auditor complied with his duty under R.C. 149.43(B)(1) to timely provide copies of the requested records.<sup>6</sup> Compliance with Patton’s request was complicated by the unresolved claims of state and federal governments and the attendant need to seek guidance from the county prosecutor and the state auditor. Under these circumstances,

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<sup>4</sup> R.C. 149.43(B)(1).

<sup>5</sup> *State ex rel. Andwan v. Greenhills*, 1st Dist. Nos. C-100011 and C-100051, 2010-Ohio-5962, ¶13, citing *State ex rel. Morgan v. Strickland*, 121 Ohio St.3d 600, 2009-Ohio-1901, 906 N.E.2d 1105, ¶10.

<sup>6</sup> *Id.* at ¶19.

the delay was not unreasonable. Consequently, we hold that Patton is not entitled to mandatory attorney fees under R.C. 149.43(C)(2)(b)(i).

*Statutory Damages*

{¶18} Patton also seeks statutory damages under R.C. 149.43(C)(1). Under the statute, a requestor is entitled to recover statutory damages “if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.”<sup>7</sup> Because we have concluded that the county auditor did not fail to comply with an obligation under R.C. 149.43(B)(1), we hold that Patton is not entitled to any statutory damages.

*Conclusion*

{¶19} In sum, we dismiss Patton’s mandamus action as moot. We overrule the auditor’s summary-judgment motion as moot. And we overrule Patton’s motion for attorney fees and statutory damages.

Judgment accordingly.

**CUNNINGHAM and DINKELACKER, JJ., concur.**

Please Note:

The court has recorded its own entry on the date of the release of this decision.

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<sup>7</sup> R.C. 149.43(C)(1).